REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

GOLDEN ARCHES DEVELOPMENT CORPORATION,
Petitioner,

- versus -

C.T.A. CASE NO. 6272

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
APR 28 2003

x - x

DECISION

This case involves a claim for refund or issuance of tax credit certificate in the amount of P35,992,235 allegedly representing excess/unutilized creditable withholding tax for the calendar year 1998.

The antecedent facts of the case are as follows:

Petitioner is a corporation duly organized and existing under and by virtue of Philippine laws, and is primarily engaged in the business of leasing property, with principal office located at 17th Floor, Citibank Centre, 8741 Paseo de Roxas, Makati City *(Paragraph 1, Joint Stipulation of Facts and Issues).*

On April 15, 1999 petitioner filed its Corporate Annual Income Tax Return for the calendar year ended December 31, 1998 *(Exhibit A)*. It is reflected in the return that petitioner had gross income of P379,898,530.00 and operating expenses of P634,285,836.00, resulting to a net operating loss of P254,387,306.00. Pursuant to

Section 27(E)(1) of the 1997 Tax Code, petitioner is still liable for the Minimum Corporate Income Tax (MCIT) in the amount of P7,597,777.00. Since petitioner had creditable taxes withheld of P42,505,243.00, then it still has an excess creditable taxes withheld P34,907,466.00, which petitioner opted to be refunded by ("x") marking the appropriate box in its 1998 Income Tax Return.

On September 29, 2000, petitioner filed an amended 1998 Annual Corporate Income Tax Return for the calendar year ended December 31, 1998 to include additional creditable taxes withheld in the amount of P1,084,769.00. Consequently, its total creditable taxes withheld increased to P43,590,012.00 and after deducting its MCIT for the said year, its excess or unutilized income tax payment also increased to P35,992,235.00 *(Exhibit B).*

On April 2, 2001, petitioner filed with the Bureau of Internal Revenue, through the Chief of the Large Taxpayer's Division, its administrative claim for refund or issuance of a tax credit certificate of P35,992,235.00 representing the excess/unutilized creditable withholding taxes for the taxable year 1998 *(Annex D, Petition for Review).*

Unable to find any response from the respondent and to toll the running of the two-year prescriptive period, petitioner elevated the case through a Petition for Review with this court on April 10, 2001.

Respondent filed his Answer through registered mail on June 7, 2001, alleging the following as Special Defenses and Affirmative, thus:

> 5. The amendment of the petitioner's 1998 income tax return was not made in accordance with the Tax Code, hence, not allowed;

6. Petitioner has not shown that the income received subject to withholding has been reported in its income tax return and that the excess withholding has not been applied to the next succeeding quarters or year/s;

7. The petition states no cause of action as it does not allege the date/s when the tax/es sought to be refunded was/were actually paid;

8. Taxes paid and collected are presumed to have been made in accordance with the law and regulations, hence, not refundable;

9. In an action for tax refund/credit, the burden of proof is on the taxpayer to establish its right to the refund and failure to sustain the burden is fatal to the action for tax refund/credit;

10. Well-settled is the rule that claims for refund are construed in strictissimi juris against the claimants since it partakes of the nature of exemption from taxation.

After trial on the merits, the court issued a resolution dated January 16, 2003 and considered the case submitted for decision sans evidence and memorandum from respondent.

In their Joint Stipulation of Facts and Issues, the parties submitted the following issues for this court's resolution:

1. Whether petitioner's creditable withholding taxes for the year 1998 are duly substantiated by the necessary statement issued by the various withholding agents, showing the amount of tax withheld from petitioner.

2. Whether the income upon which the creditable taxes were withheld by the income payors were included and reported as part of petitioner's revenues in its income tax return for the year 1998.

3. Whether the amount of excess and/or unutilized creditable taxes of petitioner for the year 1998 was carried forward to the subsequent taxable year and applied against any of petitioner's income tax liability for the subsequent year.

4. Whether petitioner is entitled to the refund and/or tax credit of the amount of P35,992,235.00 representing its unutilized creditable taxes for the taxable year 1998.

Petitioner anchored its claim for refund or issuance of tax credit certificate on Sections 76, 204 and 229 of the 1997 Tax Code, hereunder quoted for easy reference:

SEC. 76. *Final Adjustment Return-* Every corporation liable to tax under Section 27 shall file a final adjustment return covering the total taxable income for the preceding calendar or fiscal year. If the sum of the quarterly tax payments made during the said taxable year is not equal to the total tax due on the entire taxable income of that year, the corporation shall either:

(A) Pay the balance still due;

(B) Carry-over the excess credit; or

(C) Be credited or refunded with the excess amount paid, as the case maybe. (*Emphasis supplied*)

x x x

SEC. 204. *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.-* The Commissioner may-

(A) x x x

(B) x x x

(C) Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. **No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two (2) years after the payment of the tax or penalty:** ***Provided, however,*** **That a return filed**

> **showing an overpayment shall be considered as a written claim for credit or refund.** (*Emphasis supplied*)
>
> x x x
>
> **SEC. 229**. *Recovery of Tax Erroneously or Illegally Collected*.- No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.
>
> In any case, **no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment:** *Provided, however,* That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid. (*Emphasis supplied*).

To prove compliance with the above provisions, petitioner alleged that it filed its administrative claim for refund as well as its Petition for Review within the two-year prescriptive period. And to substantiate its claim, petitioner submitted to the court its 1998 and 1999 Annual Income Tax Returns and various Certificates of Creditable Withholding Taxes. It likewise offered as evidence the testimony of its Senior Accounting Manager, Ms. Cornelia Naguit.

After evaluation of the evidence and arguments of the parties along with the applicable laws and jurisprudence, the court rules to grant the petition.

Time and again, this court has held that there are three (3) basic requirements in claims for refund or issuance of tax credit certificate arising from the excess or unutilized creditable withholding tax at source. They are as follows:

1. That the claim for refund is filed within the two-year reglementary period pursuant to Section 230 of the Tax Code, as amended;

2. That the income upon which the taxes were withheld were included as part of the gross income declared in the income tax return of the recipient; and

3. That the fact of withholding is established by a copy of the statement duly issued by the payor to the payee showing the amount paid and the amount of tax withheld therefrom. *[Citytrust Finance Corporation vs. The Commissioner of Internal Revenue, CTA Case No. 4134, November 11, 1991; affirmed by the Court of Tax Appeals in Citytrust Finance Corporation vs. Court of Tax Appeals and the Commissioner of Internal Revenue, C.A. G.R. SP No. 28239, March 14, 1994; Citytrust Finance Corporation (formerly Investors Finance Corporation/FNCB Finance) vs. Commissioner of Internal Revenue, CTA Case No. 4046, February 24, 1993; affirmed by the Court of Appeals in Commissioner of Internal Revenue vs. Citytrust Finance Corporation (formerly Investors Finance Corp./FNCB Finance) and the Court of Tax Appeals, CA G.R. SP No. 31104, April 18, 1994; Ayala Life Assurance, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 5631, dated May 11, 2000; Stock Transfer Service Inc. vs. Commissioner of Internal Revenue, CTA Case No. 5796, dated May 3, 2000; Union Bank of the Philippines, CTA Case No. 5623, dated April 12, 2000; Citibank, NA vs. Court of Appeals and Commissioner of Internal Revenue, 280 SCRA 459; ACCRA Investments Corporation vs. Court of Appeals, 204 SCRA 957].*

That petitioner's administrative and judicial claims for refund were seasonably filed is conceded (*Paragraph 3, Joint Stipulation of Facts and Issues*). As earlier stated, petitioner filed its 1998 Corporation Annual Income Tax Return on April 15, 1999. Consequently, the two-year period allowed by law within which to file its claim for refund or issuance of tax credit certificate ended on April 14, 2001 (*the year 2000 being a leap year*). Thus, when petitioner filed its administrative claim on April 2, 2001 and this petition on April 10, 2001, it is clear that they were timely filed.

On the second and third requirements, petitioner was able to prove the fact of withholding of the reported creditable taxes withheld at source through the various certificates of creditable tax withheld at source *(Exhibits D-1 to D-33, D-35 to D-43, D-46, D-49 to D-109, D-114 to D-125, E-1 to E-10, E-12 to E-37).* However, after a scrutiny of the said documents, the court found that only the following certificates pertain to the 1998 creditable withholding tax at source, to wit:

WITHHOLDING AGENT	EXHIBITS		INCOME PAYMENT		TAX WITHHELD
ALFONSO NG	D-1 to D-12	P	7,202,896.75	P	360,144.80
ANSEL A CORP	D-13 to D-16		4,215,632.32		210,781.58
ARLENE RECTO	D-17 to D-28		9,868,265.91		493,412.42
BLUE DAIRY CORP.	D-29 to D31/E-1		1,999,999.20		99,999.96
CEBU GOLDEN IND	D-32, D-33, E-2, E-3		3,502,046.80		175,102.34
CEBU GOLDEN VENTURES	D-35 to D-38		3,728,988.80		186,449.44
DAVAO CITY FOOD	D-39 to D-42		4,181,920.20		209,096.01
EDSA FOOD IND	D-43, D-46, E-4, E-5		5,076,259.40		253,812.97
GENEVA FOOD	D-49		2,804,341.87		140,217.10
GIANT ARCHES	D-50 to D-53		9,500,368.20		475,018.41
GLENN LIM	D-54 to D-56, E-6		8,682,786.82		434,138.67
GOLDEN CITY	D-57, D-58		1,680,999.40		84,049.97
GOLDEN CITY	E-7 to E-10		1,386,760.00		69,338.00
GOLDEN SOUTH	D-59		3,225,996.80		161,299.84
HAVI FOOD SERVICES	D-60 to D-62, E-12		25,817,223.00		1,290,861.15
JESSICA LIM	D-63 to D-66		4,620,704.59		231,035.23
MARIEL FOOD CORP.	D-67, E-13, E-14		1,623,082.05		81,154.11
MARIEL FOOD CORP.	D-68, E-15		2,114,223.72		105,711.19
MARY GOCHECO	D-69, D-70		1,118,549.40		55,927.47
MCCOLBY'S	D-71 to D-83		642,871.20		321,343.56
MCDANIELS	D-84		2,653,328.92		132,666.45
MCDLC FOODS	D-85 to D-92		8,346,188.92		417,309.46
MCGEORGE FOOD	D-93 to D-96		698,059,315.49		34,902,965.47
MCGILL FOOD	D-97, D-98, E-22		3,692,738.73		184,636.95
MCJOLA	D-99 to D-102, E-23,E-24		8,325,876.60		416,293.83
MCPHILIPS	D-107 to D-109		12,245,821.95		612,291.10
NEEMEE FOOD	E-25		589,770.43		229,052.93
NESTOR DELA MERCED	D-114 to D-119, E-26 to E-30		7,690,291.75		382,011.59
NOEMI CABUAY	D-121, E-31 to E-33		2,811,368.92		140,568.45
TGY & KIDS	D-122 to D-125		5,922,950.80		296,147.54
GOCHECO, EDWARD	E-16 to E-21		2,849,270.52		142,463.54
VZG FOOD	E-34 to E-37		3,464,592.80		173,229.64
TOTAL		**P**	**859,645,432.26**	**P**	**43,468,531.17**

There are some certificates which were disallowed for the following reasons:

WITHHOLDING AGENT	EXHIBITS		INCOME PAYMENT		TAX WITHHELD	REMARKS
MCMIGHTY FOOD CORP.	D-103 to D-106	P	1,661,446.01	P	83,072.25	Not in the name of petitioner
NOEMI CABUAY	D-120		1,896,679.00		94,833.95	Dated 1997
TOTAL		**P**	**3,558,125.01**	**P**	**177,906.20**	

Thus, from the above, petitioner has total creditable taxes withheld in the amount of P43,468,531.17. As to whether or not the income upon which these taxes were withheld were included as part of the gross income declared in the return of the petitioner, the court is convinced that the aforesaid income payments in the amount of P859,645,432.26 were included in the gross revenues declared in petitioner's 1998 Annual Income Tax Return. This finding is based on the fact that the amount of gross revenues reflected in its Account Information Form *(Exhibit A-1)* of P888,575,017.00 is more than the amount of income corresponding to the creditable taxes withheld in the amount of P859,645,432.26.

Finally, petitioner was able to establish that the 1998 excess credit was not carried-over to the succeeding year 1999 as evidenced by the 1999 Annual Income Tax Return *(Exhibit C)*. The said return showed that there is no amount indicated in line 26A as Prior Year's Excess Credits.

WHEREFORE, in the light of the foregoing, petitioner's claim for refund or issuance of a tax credit certificate is hereby GRANTED, but in the reduced amount of P35,870,754.17, computed as follows:

Total Allowable Creditable Taxes Withheld	P43,468,531.17
Less: Minimum Corporate Income Tax	7,597,777.00
Amount Refundable	**P35,870,754.17**

SO ORDERED.

JUANITO C. CASTAÑEDA, JR.
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

LOVELL R. BAUTISTA
Associate Judge

CERTIFICATION

I hereby certify that the above decision was reached after due consultation with the members of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

ERNESTO D. ACOSTA
Presiding Judge