REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

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AYALA THEATRES MANAGEMENT, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 7213

Members:

ACOSTA, *Chairperson*
BAUTISTA, and
CASANOVA, *JJ.*

Promulgated:
JUL 10 2007, 9:10 Am

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DECISION

BAUTISTA, *J.*:

This case involves a claim for the issuance of a tax credit certificate in the amount of P862,762.00 allegedly representing excess creditable taxes withheld for the year ended December 31, 2002.

Petitioner is a corporation duly organized and existing by virtue of Philippine laws, with principal office located at the 5th Floor, Glorietta 4, Ayala Center, Makati City.[1] Respondent, on the other hand, is the duly appointed Commissioner of Internal Revenue vested with the authority to act as such, including the power to decide, approve and grant claims for refunds or issuance of tax credit certificate of overpaid internal revenue taxes as

[1] Joint Stipulation of Facts and Statement of Issues, paragraph 1

provided by law with office address at the 5th Floor, BIR National Office Building, Agham Road, Diliman, Quezon City.[2]

On April 14, 2003, petitioner filed with the Bureau of Internal Revenue (BIR) its income tax return for the year ended December 31, 2002[3], declaring therein a taxable income of P1,892,151.00, with the corresponding income tax due of P605,488.00. After offsetting the income tax liability of P605,488.00 against the creditable taxes withheld during the year 2002 of P862,762.00, petitioner reflected an income tax overpayment of P252,273.00, computed as follows:

Sales/Revenues/Receipts		P8,534,165.00
Less: Cost of Sales/Services		-
Gross Income from Operation		P8,534,165.00
Add: Non-Operating & Other Income		428,359.00
Total Gross Income		P8,962,524.00
Less: Deductions		7,070,373.00
Taxable Income		P1,892,151.00
Income Tax Due (32%)		P 605,488.00
Less: Tax Credits		
Creditable Taxes Withheld for the First Three Quarters	P 694,121.00	
Creditable Taxes Withheld for the Fourth Quarter	168,641.00	
Total Tax Credits		P 862,762.00
Tax Overpayment		P 257,273.00[4]

Petitioner, as indicated in the return, opted to be issued a tax credit certificate for the income tax overpayment of P257,274.00.

On December 10, 2003, petitioner filed with the BIR an amended 2002 income tax return[5], this time reflecting an amount of P1,061,441.00 prior year's excess credits which was applied against the income tax liability of P605,488.00 leaving the amount of P455,953.00 prior year's excess credits and creditable taxes withheld during the year 2002

[2] Joint Stipulation of Facts and Statement of Issues, paragraph 2
[3] Exhibit "B"
[4] Should be 257,274.00
[5] Exhibit "C"

in the amount of P862,762.00 totalling P1,318,714.00[6] unutilized as of December 31, 2002, as shown below:

Sales/Revenues/Receipts		P8,534,165.00
Less:	Cost of Sales/Services	-
Gross Income from Operation		P8,534,165.00
Add:	Non-Operating & Other Income	428,359.00
Total Gross Income		P8,962,524.00
Less:	Deductions	7,070,373.00
Taxable Income		P1,892,151.00
Income Tax Due (32%)		P 605,488.00
Less:	Tax Credits	
	Prior Year's Excess Credits	P1,061,441.00
	Creditable Taxes Withheld for the First Three Quarters	694,121.00
	Creditable Taxes Withheld for the Fourth Quarter	168,641.00
	Total Tax Credits	P1,924,203.00
Tax Overpayment		P1,318,714.00

Again, petitioner indicated its intention to be issued a tax credit certificate for the excess tax credits of P1,318,714.00.

On June 17, 2004, petitioner filed with respondent's Revenue District Office No. 47 (East Makati) a written claim for the issuance of a tax credit certificate in the amount of P862,762.00 representing its excess income tax credits generated for the year ended December 31, 2002.[7]

Due to respondent's inaction on its claim, petitioner filed a Petition for Review before this Court on April 14, 2005.

Respondent, in his Answer filed through registered mail on June 9, 2005, raised the following Special and Affirmative Defenses:

> "4) Assuming without admitting that Petitioner filed a claim for a tax credit certificate, the same is subject to investigation by the Bureau of Internal Revenue;
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> 5) Petitioner failed to demonstrate that the tax, which is the subject of this case, was erroneously or illegally collected;

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[6] Should be P1,318,715.00
[7] Joint Stipulation of Facts and Statement of Issues, paragraph 3

6) Taxes paid and collected are presumed to have been made in accordance with the laws and regulations, hence, not creditable or refundable;

7) It is incumbent upon the Petitioner to show that it has complied with the provisions of Section 204(C) in relation to Section 229 of the Tax Code, as amended;

8) In an action for tax credit, which is in the nature of refund, the burden is upon the taxpayer to prove that he is entitled thereto, and failure to discharge said burden is fatal to the claim (*Emmanuel & Zenaida Aguilar v. Commissioner, CA-GR No. Sp. 16432, March 30, 1990 cited in Aban, Law of Basic Taxation in the Philippines, 1st Edition, p. 206*);

9) Claims for refund are construed strictly against the claimant, the same partake the nature of exemption from taxation (*Commissioner of Internal Revenue vs. Ledesma, 31 SCRA 95)* and as such, they are looked upon with disfavor *(Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 121*)."

During the trial on the merits, petitioner presented documentary and testimonial evidence. Respondent, on the other hand, did not submit any controverting evidence.

On February 26, 2007, the case was submitted for decision sans the memorandum of respondent.

The parties submitted the following issues for this Court's resolution:

1) Whether or not petitioner has excess/unutilized creditable withholding taxes for the year ended December 31, 2002;

2) Whether or not petitioner's right to claim a refund of the alleged excess/unutilized creditable withholding taxes for the taxable year 2002 was duly substantiated;

3) Whether or not the income payments from which the taxes were withheld were included in petitioner's gross income for 2002;

4) Whether or not petitioner has carried-over to the succeeding taxable year(s) the alleged excess/unutilized withholding tax for the year 2002; and

5) Whether or not petitioner is entitled to the issuance of a tax credit certificate in the total amount of P862,762.00.

Being interrelated, the first and fourth issues shall be discussed jointly.

Petitioner anchors its claim on Section 76 of the National Internal Revenue Code (NIRC) of 1997, which states:

> "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 of tax still due; or
> (B) Carry-over the excess credit; or
> (C) Be credited or refunded with the excess amount paid, as the case may be.
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> In case the corporation is entitled to a tax credit or refund of the excess estimated quarterly income taxes paid, the excess amount shown on its final adjustment return may be carried over and credited against the estimated quarterly income tax liabilities for the taxable quarters of the succeeding taxable years. **Once the option to carry-over and apply the excess quarterly income tax against income due for the taxable quarters of the succeeding taxable years has been made, such option shall be considered irrevocable for that taxable period and no application for cash refund or issuance of a tax credit certificate shall be allowed therefor.**" (*Emphasis supplied)*

Under the aforequoted provision of law, the corporate taxpayer's excess tax credits or overpaid income tax in a given taxable year maybe refunded (either in the form of cash refund or tax credit certificate) or applied against its income tax liabilities of the succeeding taxable years. However, once the option to carry-over has been made, such option becomes irrevocable for that taxable period and no application for cash refund or issuance of a tax credit certificate shall be allowed therefor.

As earlier stated, petitioner's amended 2002 income tax return[8] shows that it had excess tax credits of P1,318,714.00[9] as of December 31, 2002 comprising of the prior year's (2001) excess credits of P455,953.00 and creditable taxes withheld during the year 2002 of P862,762.00, for which it opted to be issued a tax credit certificate. Inasmuch as only the prior year's (2001) excess credits of P455,953.00 were carried-over by petitioner in its 2003

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[8] Exhibit "C"
[9] should be P1,318,715.00

income tax return,[10] the excess creditable taxes withheld in 2002 in the amount of P862,762.00 may be a proper subject of a claim for the issuance of a tax credit certificate under Section 76 of the NIRC of 1997, as amended.

However, as oft-cited by this Court in a number of similar cases, the following requisites must be complied with in order that the subject claim may be granted:

1.) That the claim for refund was filed within the two-year prescriptive period provided under Section 204(C) in relation to Section 229 of the NIRC of 1997, as amended;

2.) That the fact of withholding is established by a copy of a statement duly issued by the payor (withholding agent) to the payee, showing the amount paid and the amount of tax withheld therefrom; and

3.) That the income upon which the taxes were withheld were included in the return of the recipient [***Section 2.58, Revenue Regulations No. 2-98, as amended; Citibank N.A. vs. Court of Appeals and CIR, 280 SCRA 459; ACCRA Investment Corporation vs. CA, 204 SCRA 957***].

Anent the first requisite, Sections 204(C) and 229 of the NIRC of 1997, as amended, provide as follows:

> "SEC. 204. *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.* — The Commissioner may —
>
> xxx xxx xxx
>
> (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*)
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> xxx xxx xxx

[10] Exhibit "D"

"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*)

In the cases of **Commissioner of Internal Revenue vs. TMX Sales, Inc.**[11] and **ACCRA Investments Corporation vs. Commissioner of Internal Revenue,**[12] the Supreme Court held that the two (2)-year prescriptive period should be counted from the filing of the final income tax return, because it is only during that date that the exact tax liability or refundability of the tax can be determined.

In the computation of the two-year prescriptive period, a "year" is understood to be of 365 days as provided under Article 13 of the Civil Code, thus:

"**Article 13**. Where the laws speak of years, months, days or nights, **it shall be understood that years are of three hundred sixty five days each**, months, of thirty days, days of twenty-four hours, and nights from sunset to sunrise.

If months are designated by their names, they shall be computed by the number of days, which they respectively have.

In computing a period, the first day shall be excluded and the last day included.

The instant claim covers taxable year 2002 for which petitioner filed its income tax return on April 14, 2003. Counting from this date, petitioner had 730 days from April 14,

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[11] 205 SCRA 184
[12] 204 SCRA 957

2003 or until April 13, 2005, year 2004 being a leap year, within which to file its claim for refund/tax credit certificate both in the administrative and judicial levels.

In the case of **Primetown Property Group, Inc. vs. Commissioner of Internal Revenue and Arturo V. Parcero,**[13] where the Court of Tax Appeals was asked to rule on the same issue, this Court ruled in this wise:

> "In the case at bar, Petitioner filed its final adjustment return on April 14, 1998. Supposedly, it had until April 14, 2000 the day the instant Petition for Review was filed within which to file the legal remedy. However, the year 2000 is a leap year, the two year period expired on April 13, 2000. It is then obvious that the claim was filed out of time."

The Honorable Supreme Court provided a similar explanation on the matter in the case of **State Investment House, Inc. vs. Court of Appeals,**[14] thus:

> "Under Article 13 of the New Civil Code, a year is understood to be of three hundred sixty-five (365) days. Thus, excluding the first day and counting from August 25, 1983 (under paragraph 3 of Article 13 of the New Civil Code), and bearing in mind that 1984 was a leap year, Cuenca had only until *August 23, 1984*, the 365th day after registration of the sale on August 24, 1983, within which to redeem the foreclosed property in accordance with law. It was thus already beyond the redemption period when Cuenca filed her suit below on *August 24, 1984*.
>
> It should be stressed in this regard that it is not proper to count, as Cuenca submits in her Rejoinder, the period on the basis of 30 days per month. The law speaks of a "one year" period within which to redeem, not twelve months as in the case of redemption by a judgment debtor under Section 30 of Rule 39. **Applying Article 13 of the Civil Code, the period of one year within which to redeem in the case at bar is to count 365 days from August 24, 1983. Consequently, the last day to redeem would be and indeed fell on *August 23, 1984*, said year being a leap year** (cf. *Go vs. Dizon, et al.*, G.R. No. 75915-16, Sept.18, 1992).

Based on the foregoing, petitioner's administrative claim was timely filed on June 17, 2004. However, the Petition for Review was filed out of time on April 14, 2005; one day after the lapse of the two-year prescriptive period on April 13, 2005. Having been barred by prescription, petitioner's claim must fail. Accordingly, it is no longer necessary to delve on petitioner's compliance with the other requisites, quoted earlier.

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[13] CTA Case No. 6113, dated December 15, 2000

[14] 215 SCRA 734, November 13, 1992

WHEREFORE, the instant Petition for Review is hereby **DISMISSED** on the ground of prescription.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

CAESAR A. CASANOVA
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ERNESTO D. ACOSTA
Presiding Justice
Chairperson, First Division