REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SITHE PHILIPPINES HOLDINGS, INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 6274

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
APR 04 2003

x - x

DECISION

This Petition for Review involves a claim for refund or issuance of a tax credit certificate in the amount of P4,117,343.00 allegedly representing the overpaid income tax and unutilized creditable withholding tax for the taxable years 1998 and 1999, respectively.

The facts of the case are undisputed.

Petitioner is a corporation organized and existing under and by virtue of Philippine laws, with principal office at 36th Floor, Tower 1, The Enterprise Center, 6766 Ayala Avenue, Makati City, Metro Manila, where it may be served with legal processes *(Stipulated Fact, Item No. 1, CTA docket p.127)*.

On April 15, 1999, petitioner duly filed with the BIR its Tentative Corporate Annual Income Tax Return for the calendar year ended December 31, 1998 *(Exhibit A)*, declaring a gross income of P259,617,830.00 and total deductions of P181,987,048.00, leaving petitioner with a taxable income amounting to P77,630,782.00 and a corresponding income tax liability of P26,394,466.00. The same tax return showed that petitioner has available withholding tax credits in the amount of P12,377,103.00, which was offset against its income tax due, thus resulting to an income tax payable of P14,017,363.00 *(Exhibit A-3)*. Petitioner paid the said amount upon the filing of its income tax return *(Exhibit A-4; Exhibit J)*.

On April 14, 2000, petitioner filed its 1999 tentative Corporate Annual Income Tax Return *(Exhibit C)* declaring a gross income of P47,246,000.00 and total deductions in the amount of P134,765,287.00, resulting to a net loss in the amount of P87,519,287.00.

Subsequently, on May 10, 2000, petitioner filed its amended 1998 Corporate Annual Income Tax Return *(Stipulated Fact, Item No. 6, CTA docket p. 128; Exhibit B)* based on the audited financial statements wherein it declared a reduced income in the amount of P251,131,250.00, foreign exchange gain in the amount of P111,192.00 and total deductions in the amount of P178,131,007.00, leaving petitioner with a taxable income in the amount of P73,111,435.00 and a corresponding income tax liability in the amount of P24,857,888.00. After applying the creditable taxes withheld in the amount of P12,569,893.00, petitioner is still liable in the amount of P12,287,995.00.

Considering that after audit there was a decrease in the income tax due of petitioner from the income tax due declared in its tentative tax return (from P26,394,466.00 to P24,857,888.00) and that petitioner already made an income tax payment of P14,017,363.00 *(Exhibit B-5)*, the Final Income Tax Return showed an overpayment in the amount of P 1,729,368.00, computed as follows:

Aggregate Income Tax Due		P 24,857,888.00
Less: Total Creditable Tax Withheld	P 12,569,893.00	
Tax paid in return previously filed	14,017,363.00	26,587,256.00
Tax Overpayment		P 1,729,368.00

On November 16, 2000, petitioner filed its amended 1999 income tax return *(Exhibit D)* based on its audited financial statements. In the said return, petitioner reduced the amount of the total deductions from P134,765,287.00 to P120,153,847.00, leaving petitioner with a reduced net loss in the amount of P72,907,847.00. Petitioner carried over the prior year's excess credit, which is the overpayment in the amount of P1,729,368.00. It has also creditable withholding taxes in the amount of P2,387,975.00 for 1999.

Hence, as of the end of taxable year 1999, petitioner had an aggregate amount of overpaid income tax and unutilized withholding tax credits of P4,117,343.00, broken down as follows:

1998 income tax overpayment carried over to 1999	P 1,729,368.00
1999 unutilized withholding tax credits	2,387,975.00
Total Amount Refundable	P 4,117,343.00

Considering that the overpaid income tax and available withholding tax credits were unutilized in 1999 due to petitioner's loss position, petitioner indicated its intention of filing a claim for refund by marking the appropriate box on the face of the Final Return for the said year.

On April 11, 2001, petitioner duly filed with the BIR its Final Corporate Annual Income Tax Return for the taxable year 2000 *(Stipulated Fact, Item No. 10, CTA docket* *p. 129; Exhibit F)*, showing that the amount of P4,177,343.00 was not carried over to that year *(Exhibit F-3)*.

On April 6, 2001, petitioner filed with the respondent BIR an administrative claim for refund and/or issuance of a tax credit certificate of the overpaid income tax and unutilized withholding tax credits for the taxable years 1998 and 1999 in the total amount of P4,177,343.00 *(Stipulated Fact, Item No. 9, CTA docket p. 128; Annex F, Petition for Review)*. Failing to obtain an affirmative relief from the respondent on the said administrative claim for refund, petitioner was compelled to elevate the matter before this court by way of petition for review on April 11, 2001.

In answer to petitioner's arguments, respondent raised the following Special and Affirmative Defenses, to wit:

> 1. "Petitioner's alleged claim for refund is subject to administrative routinary investigation/examination by the Bureau;
>
> 2. The amount of P4,117,343.00 being claimed by petitioner as alleged unutilized creditable taxes for the years 1998 and 1999 was not properly documented;
>
> 3. In an action for refund, the burden of proof is on the taxpayer to establish its right to refund, and failure to sustain the burden is fatal to the claim for refund/credit;
>
> 4. Petitioner must show that it has complied with the provisions of Sections 204(C) and 229 of the Tax Code on the prescriptive period for claiming tax refund/credit;
>
> 5. Claims for refund are construed strictly against the claimant for the same partake the nature of exemption from taxation."

The issues to be resolved in the case at bar, which were jointly stipulated by the parties, are as follows:

1. Whether the income upon which the creditable taxes were withheld were included and reported in the income tax returns of Petitioner;

2. Whether the creditable withholding taxes are duly substantiated by the necessary statement issued by the withholding agent to Petitioner, showing the amount paid and the amount of tax withheld therefrom;

3. Whether the amount of overpaid and unutilized creditable taxes for the taxable years 1998 and 1999 were carried over to the succeeding taxable year and applied against petitioner's income tax liabilities.

4. Whether Petitioner is entitled to the refund and/or credit of the amount of P 4,117,343.00 representing the overpaid and unutilized creditable taxes for the taxable years 1998 and 1999.

In its petition, petitioner cited three (3) provisions of law in support of its argument that it is entitled to the refund of the overpaid and unutilized creditable income tax. These are Sections 76 and 204, in relation to Section 229, of the 1997 Tax Code, to wit:

> **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.
>
> 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 tax 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."

SEC. 204. ***Authority of the Commissioner to compromise, abate, and refund/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.

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.

As stated earlier, the overpayment of petitioner's 1998 income tax arose from the decrease in petitioner's gross income reflected in its tentative income tax return. The gross income declared in the tentative return was based on the unaudited financial statements of petitioner. Thus, upon completion of the audit, the actual total gross receipts was lowered by P8,486,580.00. As a result, the actual income tax due of petitioner should be P24,857,888.00, which is lower than the amount indicated in the tentative return. On the other hand, the actual withholding of tax credits for the said year increased to P12,569,893.00. Since petitioner already made corresponding tax payments when it filed its tentative return, the amended income tax return showed an overpayment of income tax amounting to P1,729,368.00.

Petitioner's 1998 amended return reflected petitioner's intention to refund the overpayment. However, when it filed its amended 1999 income tax return, the overpaid amount was reflected under the caption "Prior Year's Excess Credit," indicating a change of intention on the part of petitioner. Nevertheless, since in 1999 petitioner suffered a net loss from operations, petitioner again opted to refund both the 1998 and 1999 excess tax credits.

Citing Section 76 of the 1997 Tax Code, *supra*, respondent argued that petitioner is no longer entitled to the refund of its 1998 excess tax credits. Under the said section, if a corporation chooses to carry over its excess tax credits to the succeeding years, the option becomes irrevocable for the taxable period and no application for cash refund or issuance of a tax credit certificate shall be allowed. Thus, since petitioner opted the excess tax credit to be carried-over to the succeeding year, respondent concludes that it could no longer apply for a cash refund or issuance of a tax credit certificate.

Petitioner, on its part, argued that for Section 76 to apply, a taxpayer must have made excess quarterly income tax payments or must have creditable income tax in excess of the amount of income tax due for a certain taxable year. According to petitioner, since the excess amount being claimed merely arose from the erroneous computation of the income tax due which resulted to an erroneous payment of tax to the BIR (and not from quarterly income tax payments nor from excess/unutilized creditable income tax withheld), then, Sections 204 and 229 of the Tax Code necessarily govern.

We rule that Section 76 of the 1997 Tax Code applies to the instant case.

By the clear wording of the said section, every taxpayer-corporation is required to file a final adjustment return reflecting therein all the items of gross income and deductions as well as the total taxable income for the taxable year. By the filing thereof, it enables a taxpayer to ascertain whether it has a tax still due or an excess and overpaid income tax based on the adjusted and audited figures. If it is shown that the taxpayer has a tax still due, then he must pay the balance thereof and on the other hand, if he has an excess or overpaid income tax, then he could carry it over to the succeeding taxable year or he may credit or refund the excess amount paid, as the case maybe.

By and large, Section 76 is the provision, which gives the taxpayer the privilege of carrying-over its excess credit or crediting/claiming for the refund of the excess amount paid, as the case may be. If petitioner believed that Section 76 is inapplicable to its case, then why did it carry over to the succeeding taxable year its 1998 excess credit?

Sections 204 and 229 of the 1997 Tax Code, if treated in isolation, vest no right. Section 204 merely provides for the authority of the Commissioner to compromise, abate, and refund/credit taxes and the period of time within which a taxpayer may claim a refund or tax credit. The same holds true with regards to Section 229, which merely sets a period of limitation within which to recover an erroneously or illegally collected tax. Thus, a taxpayer's option to carry over the excess credit or to refund/credit the excess amount paid is actually provided for by Section 76. In order to give effect to its provisions, it is important that Section 76 should be read together with Sections 204 and 229 of the Tax Code.

In the case at bar, when the petitioner opted to carry over its excess tax credit to the succeeding taxable year, it has in effect availed of the privilege allowed only by Section 76. Thus, it is absurd for petitioner to exercise the option to carry-over the excess amount paid and on the same breath, invoke the inapplicability of Section 76 to his case.

In its amended Annual Income Tax Return for the taxable year ended December 31, 1998 *(Exhibit B)*, petitioner indicated its intention to refund the excess payment of P1,729,368.00 by placing an "x" mark on the appropriate box. However, on the following year 1999, petitioner again carried over the same amount. In line with our previous pronouncements on the matter, once an option to carry-over the excess credit is exercised, said option becomes irrevocable. Even though it indicated in the amended 1998 income tax return "To be refunded", it however, already carried-over the overpaid income tax to taxable year 1999. Petitioner's original option to refund the excess tax is actually negated by his very act of carrying over said excess amount to the succeeding taxable year. It had exercised the option to carry-over the excess tax credit to the succeeding taxable year and the option is irrevocable per abovementioned provision. Although there is the original option to refund, what is controlling is the actual exercise of the option, which in this case is the carry-over. Consequently, petitioner is no longer entitled to the refund or tax credit of the overpaid income tax for 1998, as it already opted to carry over said overpaid amount to the succeeding taxable quarter.

We now proceed to resolve petitioner's claim for taxable year 1999. Fundamental is the rule that in order to be entitled to the refund of excess creditable withholding tax at source, petitioner must comply with the following three basic requirements:

1. That the claim for refund was filed within the two-year prescriptive period provided under Section 204(3) [now 204 (C)] in relation to Section 230 [now 229] of the Tax Code, 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 *[Revenue Regulations No. 12-94, which amended Revenue Regulations No. 6-85; 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].*

From the documents submitted to this court, petitioner showed compliance with the aforesaid requirements.

First, the claim for refund was filed within the two-year prescriptive period as provided for by law. The administrative claim filed on April 6, 2001 and this petition for review filed on April 11, 2001 are both within two years reckoned from the date of filing of the final adjustment return, which is April 14, 2000.

Second, the income in the amount of P47,246,000.00 corresponding to the creditable withholding tax in the amount of P2,387,975.00 was declared by petitioner in its annual income tax return.

And last, Petitioner presented the Certificate of Creditable Tax Withheld at Source *(Exhibit I-2)* from San Roque Power Corporation as proof that the amount being claimed for refund was withheld.

The court, however, noted the discrepancy of the amounts of income declared in the certificate and the income tax return, which is P47,759,500.00 and P47,246,000.00, respectively. However, as per petitioner's explanation, the discrepancy was due to difference in exchange rate of the U.S. dollars to Philippine peso brought about by the difference in the time of recording of the income as explained by Ms. Rina Liza Diaz, Chief Accountant of San Roque Power Corporation *(See TSN dated November 14, 2001)*.

It is likewise significant to note that the unutilized creditable withholding tax was no longer carried over to the succeeding taxable year as shown in petitioner's 2000 Annual Income Tax Return *(Exhibit F)*.

Thus, considering that petitioner was able to sufficiently comply with the above-mentioned requirements, this court is inclined to grant petitioner's claim for refund of the unutilized creditable withholding tax for taxable year 1999 in the amount of P2,387,975.00.

WHEREFORE, in view of the foregoing, the instant petition for review is **PARTIALLY GRANTED.** Respondent is hereby **ORDERED** to **REFUND or ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the reduced amount of P2,387,975.00 representing the unutilized creditable withholding tax for taxable year 1999. Petitioner's claim for refund of overpaid income tax for taxable year 1998 is

DENIED without prejudice however, to the right of the petitioner to carry-over the said amount to the succeeding taxable years *ad infinitum* pursuant to Section 76 of the 1997 Tax Code.

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