REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

UNITED INTERNATIONAL PICTURES AB,
Petitioner,

- versus -

C.T.A. CASE NO. 6027

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
JUN 04 2001

x - x

DECISION

The instant petition seeks the refund or issuance of a tax credit certificate in the amount of P6,327,243.00, allegedly representing excess creditable income taxes withheld for the calendar year ended December 31, 1997.

The factual backdrop of the case are as follows:

Petitioner is the Philippine branch of United International Pictures AB, a corporation duly organized and existing under the laws of Sweden. It is licensed to engage in business in the Philippines, with office address at the 4th Floor, Ramon Magsaysay Center, 1680 Roxas Blvd., Malate, Manila.

On March 16, 1998, Petitioner filed its Annual Income Tax Return for the calendar year ended December 31, 1997 (Annex A, Petition for Review), reflecting a refundable amount of P10,369,768.00, detailed as follows:

Taxable income		P 4,996,197.00
Tax due		1,748,669.00
Less: Tax Credits/Payments		
Prior Year's Excess Credit	P5,791,194.00	

Creditable Tax Withheld	6,327,243.00	12,118,437.00
		P10,369,768.00

On April 14, 1998, Petitioner filed with this Court a Petition for Review docketed as CTA Case No. 5618, claiming for the refund or tax credit of the aforestated prior year's excess credit of P5,791,194.00. During the pendency of the said case, or on June 23, 1998, Petitioner filed with Revenue District Office No. 34 of the Bureau of Internal Revenue (BIR) another administrative claim for refund or tax credit for P4,578,574.00 (Annex B, Petition for Review), which amount was arrived at after deducting from the total creditable taxes withheld from Petitioner in 1997 in the amount of P6,327,243.00 its income tax liability for the said year amounting to P1,748,669.00. In support of its claim, Petitioner cited the following provisions of the Tax Code:

> "**Section 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 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.

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> **Section 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."

On October 1, 1999, this Court rendered its decision in CTA Case No. 5618 in favor of herein Petitioner and ordered the refund or issuance of a tax credit certificate but in the reduced amount of P4,007,357.87. In granting the refund, the P1,748,669.00 tax liability of Petitioner for the year 1997 was charged against its prior year's excess credit of P5,791,194.00. However, since Petitioner's claim filed before the BIR on April 14, 1998 was already net of its 1997 tax liability, it filed a revised administrative claim on December 21, 1999 (Annex C, Petition for Review) adding back the P1,748,669.00 previously deducted from its claim or a total of P6,327,243.00.

There being no action on the part of the Respondent and the two-year prescriptive period was about to lapse, Petitioner elevated its case before Us on March 15, 2000.

In his Answer filed on April 7, 2000, Respondent raised the following Special and Affirmative Defenses:

> "5. Assuming but without admitting that petitioner filed an application for refund and/or tax credit with the respondent, the same is subject

to administrative investigation and resolution (*San Carlos Milling vs. Comm. of Internal Revenue*). Thus, (si :) petition is premature.

6. Taxes are presumed to have been collected in accordance with law. Hence, petitioner must prove that the taxes sought to be refunded were erroneously or illegally collected.

7. Petitioner must show that it has complied with the provision (sic)of Section 51 (e) and (f) of the Tax Code, as amended, as enunciated in *City Trust Finance Corporation vs. CTA*, to wit:

   a) That the claim is filed with the Commissioner of Internal Revenue within 2-year period from the date of payment;
   b) It must be shown on the return of the recipient that the income payment received was declared as part of gross income;
   c) The fact of the withholding is established by a copy of the statement duly issued by the payor to payee showing the amount paid and the amount of tax withheld therefrom.

8. Petitioner must show that it has complied with the provision (sic) of Section 204 (3) and 230 of the Tax Code.

9. Claims for refund of taxes are construed strictly against the claimants, the same being in the nature of an exemption from taxation (Manila Electric Co. vs. CIR 67 SCRA 351)."

In their "Joint Stipulation of Facts and Restatement of Issues" filed on June 28, 2000, the parties submitted the following issues for resolution:

"(a) Whether or not there were excess creditable income taxes withheld from Petitioner for the year ended December 31, 1997, and

(b) Whether or not the Petitioner is entitled to the refund or tax credit in the amount of P6,327,243.00 representing its unapplied or excess creditable income taxes withheld from the calendar year ended December 31, 1997."

To support its claim, Petitioner presented its Corporate Annual Income Tax Returns for the years 1996, 1997 and 1998 (Exhibits B, A and C, respectively) as well as a

Certificate of Creditable Income Tax Withheld for the year ended December 31, 1997 (Exhibit B-2). On the other hand, Respondent failed to present any controverting evidence and submitted his case based on the pleadings (p. 86, CTA Records).

After a careful examination of the evidence adduced solely by Petitioner, We rule in its favor.

With reference to the first issue, Petitioner's 1997 annual Income Tax Return (ITR) showed tax credits totalling P12,118,437.00 which consisted of its prior year's excess credits of P5,791,194.00 and creditable taxes withheld in 1997 of P6,327,243.00 (Exh. A-2). As stated earlier, since Petitioner's 1997 income tax liability of P1,748,669.00 was deducted from its prior year's excess credits of P5,791,194.00 when this Court rendered its decision in CTA Case No. 5618, the entire amount of P6,327,243.00 creditable taxes withheld in 1997 was left unutilized as of December 31, 1997 and appears to be refundable in accordance with Section 69 (now Section 76) of the Tax Code.

We proceed to the second issue. In order to be entitled to a refund of excess creditable withholding taxes, this Court has consistently held in a number of cases involving claims for refund that Petitioner must prove compliance with the following basic requirements provided for under Revenue Regulations No. 12-94:

1.) That the claim for refund was filed within the two-year prescriptive period provided under Section 230 (now Section 229) of the Tax Code;

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 (amending Revenue Regulations No. 6-85); Citibank, NA vs. Court of Appeals and CIR, 280 SCRA 459; ACCRA Investment Corporation vs. CA, 204 SCRA 957].*

The excess creditable withholding taxes subject of the instant Petition were for taxable year ended December 31, 1997 for which Petitioner filed its annual ITR on March 16, 1998 (Exh. A). Counting from this latter date, Petitioner's original and amended administrative claims for refund filed on June 23, 1998 and December 21, 1999 (Joint Stipulation of Facts, p. 35, CTA Records) as well as the Petition for Review filed on March 15, 2000 fall within the two-year prescriptive period under Section 230 (now Section 229) of the Tax Code.

The fact of withholding was also established through Petitioner's presentation of the Certificate of Creditable Tax Withheld at Source issued by Warner Bros. (F. E.), Inc. to Petitioner for the year 1997 (Exh. B-2). However, the Court noted that the amount of tax withheld of P6,360,830.59 indicated in the certificate is greater by P33,587.59 when compared with the creditable withholding tax of P6,327,243.00 reflected in the 1997 Income Tax Return (Exh. A-2).

As to the third requirement, Petitioner's 1997 ITR showed that out of the gross income from film rentals of P127,216,611.80 from which the creditable withholding taxes of P6,360,830.59 shown in the certificate were withheld, only the amount of P125,717,741.00 was declared, or a difference of P1,498,770.00. Thus, the creditable withholding taxes related to the income of P125,717,741.00 reported in the 1997 Income Tax Return amounted only to P6,285,892.05 computed as follows:

Creditable taxes withheld in 1997 by Warner Bros. (Exh. B-2)		P 6,360,830.59
Less: Creditable taxes withheld pertaining to the Discrepancy in 1997 gross income as reflected in the ITR and in the certificate		
Gross income (film rentals) per certificate (Exh. B-2)	P127,216,611.80	
Gross income (film rentals) per 1997 ITR (Exh. A-3)	125,717,841.00	
Discrepancy in 1997 gross income (film rentals)	P 1,498,770.80	
% of Discrepancy to gross income (film rentals) per Certificate	1.178125%	
Multiplied by creditable taxes withheld per certificate	P 6,360,830.59	74,938.54
Creditable taxes withheld in 1997 pertaining to the income Declared in the 1997 ITR		P 6,285,892.05

Moreover, since in this case Petitioner is seeking for the refund of its excess creditable taxes withheld in 1997, it submitted its 1998 Income Tax Return to prove that the same were not applied or carried over to the succeeding year (Exh. C-1).

Clearly from the foregoing, Petitioner was able to prove that it complied with all the requirements for the refund of excess creditable withholding taxes but in the reduced amount of P6,285,892.05.

In his Memorandum, Respondent argued that the certificate issued by Warner Bros. has no evidentiary value as it was not duly stamped as "RECEIVED" by the BIR and not supported by official receipts issued by the BIR accredited bank. According to Respondent, the BIR proof/date of receipt is necessary to ascertain the timeliness of the filing of the certificate while the official receipts issued by the BIR accredited banks are essential in determining the withholding and remittance of the corresponding taxes.

We do not agree.

The fact that the certificate was not duly stamped as "Received" by the BIR and not supported by official receipts issued by the BIR accredited bank does not reduce it to a mere scrap of paper. On the contrary, the certificate provides sufficient proof of the creditable income taxes withheld by Warner Bros. from its income payments to Petitioner in 1997. The said certificate, being a statement duly issued by the payor/withholding agent (Warner Bros) to the payee (Petitioner) showing the amount of income paid and the corresponding tax withheld therefrom, is the document specifically required by Revenue Regulations No. 12-94 in claiming for the refund of excess creditable withholding taxes. Thus, the submission of official receipts issued by the BIR accredited bank evidencing the remittance of the creditable withholding taxes to the BIR is not necessary. Pursuant to Sections 50(b) & 51 [now Sections 57(B) & 58] of the Tax Code, the withholding of creditable income taxes and the remittance thereof to the BIR is the responsibility of the payor/withholding agent (Warner Bros.) and not the payee (Petitioner). Consequently, the failure to withhold and make the necessary remittance will make the payor/withholding agent (Warner Bros.) liable and not the payee (Petitioner). In the case of *Citibank, N.A. vs. Court of Appeals and Commissioner of Internal Revenue, G.R. No. 107434, dated October 10, 1997*, the Supreme Court held that a refund claimant, aside from complying with the two-year prescriptive period, need only to prove the inclusion of the income payments which were the basis of the withholding taxes and *the fact of* *withholding.* As to the questioned BIR proof/date of receipt of the certificate. Petitioner's witness, Ms. Belina Almeria. during the August 9, 2000 session, testified that not all the time do the BIR accredited agent banks stamp all the attachments of the Income Tax Returns filed (TSN, August 9, 2000, pp. 32-33).

Respondent also contends that Petitioner's witness, Ms. Belina Almeria, was incompetent to testify on the 1997 ITR since it was Mr. Tristan Leveriza, Petitioner's general manager, who affixed his signature on the 1997 ITR, thereby making the said return inadmissible as evidence.

Again, We rule otherwise.

In her testimony during the August 9, 2000 hearing of the instant case, Ms. Belina Almeria stated that pursuant to the sub-distribution agreement between Warner Bros. and herein Petitioner, it is among her duties and responsibilities to prepare and file the financial statements and income tax returns of Petitioner She also mentioned in the same hearing that she prepared Petitioner's 1997 ITR in cooperation with the Petitioner's tax lawyer (TSN, August 9, 2000, pp. 6-7, 29-30).

It likewise bears stressing that in his Comment/Objection to Petitioner's Formal Offer of Evidence, Respondent did not object to the admission of the 1997 ITR (Exhs. A to A-4, inclusive). Consequently, he is estopped from questioning the inadmissibility of the 1997 ITR as Petitioner's evidence.

Finally, as regards Respondent's allegation that Petitioner's claim for refund is under BIR investigation thereby making the instant Petition premature, We cite the case of *Commissioner of Internal Revenue, vs. Bank of the Philippine Islands, as Liquidator* *of Paramount Acceptance Corporation and the Court of Tax Appeals, CA-G.R. SP No. 34102, dated September 19, 1994.* In the said case, the Court of Appeals ruled:

> "It is clear that a claim for refund should be filed with the Commissioner of Internal Revenue as a prerequisite before court action on tax refund cases can be commenced and that the suit for refund must be filed within two years from the date of payment of the tax. It is also clear from Section 204 that the claim for refund must be filed with the Commission within two years from payment of the tax. When the two-year period is about to prescribe and the claim for refund with the Commissioner of Internal Revenue has not been acted upon by him, for the protection of the interest of the taxpayer, he should file a petition for a review with the Court of Tax Appeals within the said two-year period; otherwise, if the decision of the Commissioner is adverse to the taxpayer and it was made after the two-year period he can no longer appeal the same to the Court of Tax Appeals (Gonzales and Gonzales, National Internal Revenue Code, 1988 ed., p. 384, citing Gibbs vs. Collector of Internal Revenue and Court of Tax Appeals, 107 Phil. 232; Johnston Lumber Co. vs. CTA, 101 Phil. 151).
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> Accordingly, We do not agree with appellant that it is necessary for the Commissioner of Internal Revenue to act unfavorably on the claim for refund before the Court of Tax Appeals may acquire jurisdiction. This is so because of the positive requirement of Section 230 and the doctrine that delay of the Commissioner in rendering decision does not extend the peremptory period fixed by statute."

Additionally, the Supreme Court in the case of *Commissioner of Internal Revenue vs. Victorias Milling Co., Inc. and the Court of Tax Appeals, 22 SCRA 12*, also passed upon the same issue, thus:

> "x x x The claim for refund with the Bureau of Internal Revenue and the subsequent appeal to the Court of Tax Appeals must be filed within the two-year period. If, however, the collector takes time in deciding the claim, and the period of two years is about to end, the suit or proceeding must be started in the Court of Tax Appeals before the end of the two-year period without awaiting the decision of said Collector."

WHEREFORE, in view of all the foregoing, this Court finds the instant Petition meritorious and in accordance with law. Respondent is hereby **ORDERED** to **REFUND** or to **ISSUE A TAX CREDIT CERTIFICATE** in favor of Petitioner the reduced amount of P6,285,892.05 representing excess creditable taxes withheld for the calendar year ended December 31, 1997.

SO ORDERED.

AMANCIO Q. SAGA
Associate Judge

I CONCUR:

ERNESTO D. ACOSTA
Presiding 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