REPUBLIC OF THE PHILIPPINES
*Court Of Tax Appeals*
QUEZON CITY

# *SECOND DIVISION*

MITSUBISHI MOTORS PHILS. CORPORATION,
*Petitioner,*

-versus-

COMMISSIONER OF INTERNAL REVENUE,
*Respondent.*

**C.T.A. CASE NO. 6426**

Members:

CASTAÑEDA, JR., Chairperson
UY, and
PALANCA-ENRIQUEZ, JJ.

**Promulgated:**

FEB 15 2007

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# DECISION

**PALANCA-ENRIQUEZ, J.:**

*Legal Principle Involved*

A taxpayer's excess withholding tax credits for the taxable quarter/taxable year shall automatically be allowed as a credit for purposes of filing his income tax return for the taxable quarter/taxable year immediately succeeding the taxable quarter/taxable year in which the aforesaid excess credit arose. This right to refund or credit, however, is not automatic, the taxpayer must be able to prove the same by substantial evidence, in compliance with the basic requirements set forth in our Tax Code.

**THE CASE**

This is a Petition For Review filed by Mitsubishi Motors Phils. Corporation praying for the issuance of a Tax Credit Certificate in the amount of P68,224,340.00 representing excess creditable withholding taxes for the calendar year 1999.

**THE FACTS**

In their "Joint Stipulation of Facts and issues", the parties agreed on the following facts:

> "1. Petitioner is a domestic corporation duly organized and existing under and by virtue of Philippine laws, with principal office at the MMPC Building, Ortigas Avenue Extension, Cainta, Rizal.
>
> 2. Respondent is the duly appointed Commissioner of Internal Revenue with authority to act as such, including, among others, the power to decide, approve and grant refunds or tax credit of overpaid internal revenue taxes as provided by law with office at the BIR National Office Building, Diliman, Quezon City, where he may be served summons and other court processes.
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> 3. On March 15, 2002, Petitioner filed an administrative claim for refund its excess creditable

withholding taxes for the calendar year ended December 31, 1999 with the Large Taxpayers Service, BIR National Office, Diliman, Quezon City, in accordance with Sections 204 and 229 of the Tax Code.

4. On April 13, 2000, Petitioner filed with the Bureau of Internal Revenue ('BIR') its Annual Corporate Income Tax Return ("ITR') for the Calendar Year ended December 31, 1999.

5. In its ITR for Calendar Year ended December 31, 1999, Petitioner reported a refundable income tax or an excess creditable withholding tax in the amount of Sixty Eight Million Two Hundred Twenty Four Thousand Three Hundred Forty Pesos (₱68,224,340.00).

6. Petitioner marked the box 'To be issued a Tax Credit Certificate' in its ITR for Calendar Year ended December 31, 1999."

In his Answer, respondent Commissioner of Internal Revenue (hereafter "respondent") alleged by way of special and affirmative defenses:

"**Petitioner failed to comply with the provisions of Revenue Regulations 6-85**

3. Claims for tax credit or refund of income tax deducted and withheld on income payments shall be given due course only when:

a. It is shown on the return that the income payment received has been declared as part of gross income;

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b. The fact of withholding is established by a copy of the withholding tax statement duly issued by the payor to the payee showing the amount paid and the amount of tax withheld there from;

c. The claim for refund is filed within the two (2) year prescriptive period prescribed under Section 230 of the National Internal Revenue Code.

These requirements of law find support in the declarations of this Honorable Court in the cases of *Philippine American Life Insurance Co. vs. Commissioner of Internal Revenue, CTA Case No. 4018* and *PDCP vs. Commissioner of Internal Revenue, CTA Case No. 5237* among others.

Assuming that the petitioner's claim was filed within the period provided by law, it, however, failed to establish the fact of withholding. It further failed to allege the dates when the taxes sought to be refunded were actually paid (*Manufacturer's Bank and Trust Co. as Trustees for Gen. Trust Plan vs. Commissioner of Internal Revenue, CTA Case No. 1659*).

4. Petitioner's alleged claim for refund is subject to administrative routine investigation/examination by respondent's Bureau;

5. Taxes paid and collected by the Bureau of Internal Revenue are presumed to have been paid in accordance with law, and the burden of proof to prove otherwise is upon the petitioner;

6. Assuming but without admitting the fact that petitioner is entitled to tax refund, it is incumbent upon the latter to show that it has complied with the provisions under

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> Sections 204 (C) and 230 of the Tax Code. Otherwise, its failure to prove the same is fatal to the claim for refund;
>
> 7. Claims for refund are construed strictly against the claimant for 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 1211*);"

Petitioner presented Arnold Almario, and Atty. Rosario Bernaldo, the duly Commissioned Independent CPA, as witnesses, and submitted its documentary evidence, marked as *Exhibits "A" to "EEEE"*, together with their submarkings, which was admitted by the Court, subject to a final evaluation as regards their probative value.

On the other hand, respondent presented Ma. Theresa Carillo, as witness, and documentary evidence, marked as *Exhibits "1" to "6"*, with submarkings, which was admitted by the Court.

Thereafter, both parties were ordered to file their simultaneous memoranda, within thirty (30) days from notice, afterwhich the case shall be deemed submitted for decision.

Both parties having filed their respective memoranda, the case was deemed submitted for decision.

**ISSUES**

As stipulated upon by the parties, the following are the issues for this Court's consideration:

> "Whether or not Petitioner is entitled to be refunded its excess creditable withholding taxes for calendar year 1999 by showing that –
>
> a) The creditable withholding taxes amounting to Sixty Eight Million Two Hundred Twenty Four Thousand Three Hundred Forty Pesos (₱68,224,340.00) are duly supported by Certificates of Creditable Tax Withheld at Source;
>
> b) The income from which these creditable taxes were withheld was duly declared as part of Petitioner's income in its Annual Income Tax Return for the calendar year December 31, 1999;
>
> c) Petitioner had shown that it did not carry over its unutilized creditable withholding taxes for the calendar year ended December 31, 1999 to the succeeding taxable year.
>
> d) Petitioner had duly filed both the administrative and judicial claims for refund within the two-year prescriptive period provided under Sections 204 and 229 of the Tax Code, as amended."

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The above stipulated issues boil down to the principal issue of whether or not petitioner is entitled to a refund or a tax credit certificate in the amount of P68,224.340.00, representing the excess creditable withholding taxes for the calendar year 1999.

**Petitioner's Arguments**

Petitioner avers that the creditable withholding taxes amounting to P68,224,340.00 are duly supported by Certificates of Creditable Withheld at Source and the income from which these creditable taxes were withheld was duly declared as part of petitioner's income in its Annual Income Tax Return for the calendar year ending December 31, 1999.

Petitioner further claims that it did not carry over the unutilized creditable withholding taxes for the calendar year ended December 31, 1999 to the succeeding taxable year and it had duly filed both the administrative and judicial claims for refund within the two-year prescriptive period provided under *Sections 204 and 229 of the Tax Code, as amended.*

**Respondent's Counter Arguments**

On the other hand, respondent counterargues that the alleged unutilized creditable withholding taxes in the amount of P68,224,340.00 which pertains to calendar year ending December 31, 1999 should have been properly applied for refund/credit, administratively and judicially, within 2 years from the calendar year ending December 31, 1999 or until December 31, 2001. Petitioner, however, filed its administrative and judicial claims for refund only on March 15, 2002 and April 4, 2002, which were already outside the two-year prescriptive period. Respondent further contends that petitioner failed to prove that the creditable withholding taxes amounting to P68,224,340.00 are duly supported by valid Certificates of Creditable Tax Withheld at Source. Petitioner also failed to prove actual remittance of the alleged withheld taxes to the BIR. The report of the Independent CPA dated October 28, 2003 shows several material discrepancies.

**THE COURT'S RULING**

The Petition is partly meritorious.

Petitioner anchors its claim on *Section 76 of the National Internal Revenue Code of 1997* (hereafter "NIRC of 1997"), *as amended*, which provides:

> "**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 in 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."

Pursuant to the aforequoted provision, a corporation entitled to a tax credit or refund of the excess estimated quarterly income taxes paid is allowed two (2) options:

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1) be credited or refunded (either in the form of cash or credit certificate) with the excess amount paid; or

2) carry-over the excess credit to the succeeding taxable year.

However, once the taxpayer has exercised the option to carry-over and to apply the excess quarterly income tax against income tax due for the taxable quarter of the succeeding taxable year, such option becomes irrevocable for that taxable year and no application for cash refund or issuance of a tax credit certificate shall be allowed therefor.

A careful perusal of petitioner's income tax return for taxable year 1999 shows that petitioner marked the option "To be issued a Tax Credit Certificate" insofar as the reported excess tax credits of P68,224,340.00 is concerned (*Exhibit "A-3"*). A perusal also of petitioner's 2000 income tax return [both original and amended] reveals that petitioner did not carry-over the excess tax credits of P68,224,340.00 as it left blank the space provided for "Prior Year's Excess Credits" (*Exhibit "NNN-2"*). In view thereof, petitioner's excess tax credits for taxable year 1999 in the amount of P68,224,340.00 can be the proper subject of a claim for refund, under *Section 76 of the NIRC of 1997, as amended.*

However, in order to be entitled to the refund/issuance of a tax credit certificate of the claimed unutilized creditable withholding taxes for the taxable year 1999, petitioner must comply with the following requisites prescribed under *Section 2.58.3 of Revenue Regulations No. 2-98*, otherwise known as the *Withholding Tax Regulations*:

1) That the claim for refund was filed within the two-year prescriptive period prescribed 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 (*BIR Form No. 1743-A*), showing the amount paid and the amount of tax withheld therefrom; and
3) That it is shown on the return of the recipient that the income payment received was declared as part of the gross income (*Citybank N.A. vs. Court of Appeals and Commissioner of Internal Revenue, 280 SCRA 459*; *ACCRA Investments Corporation vs. Court of Appeals, 204 SCRA 963*).

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Thus, it is imperative that petitioner should be able to prove the above requisites.

*First Requisite* –
*Claim For Refund Was*
*Filed Within the Two-year*
*Prescriptive Period*

As shown by the evidence on record, the first requisite was met by the petitioner. It timely filed its administrative and judicial claims for refund.

The two-year prescriptive period for the filing of a claim for refund commences from the date of filing of the final adjustment return (*Commissioner of Internal Revenue vs. TMX Sales, Inc., 205 SCRA 184*).

Petitioner filed its income tax return for taxable year ended December 31, 1999 on April 13, 2000 (*Exhibit "A-6"*). Counting from this date, petitioner had until April 15, 2002 (April 13, 2002, being a Saturday) within which to file its claim for refund/tax credit certificate both administratively and judicially. Therefore, both petitioner's administrative claim filed on March 15, 2002 (*Exhibit "MMM"*) and the instant Petition for Review filed on April 4, 2002 were filed within the two-year prescriptive period under *Section 204(C)*, in relation to *Section 229 of the NIRC of 1997, as amended.*

Respondent's contention that the two-year prescriptive period in question commences to run not from the date of filing of the final adjustment return but from the end of the taxable year is devoid of merit.

In a long line of cases, the Supreme Court ruled that the two (2)-year prescriptive period should be counted from the filing of the final adjustment return because it is only during that date that the exact liability or refundability of the tax can be determined. Thus:

> "x x x. In several cases, we have already ruled that income taxes remitted partially on a periodic or quarterly basis should be credited or refunded to the taxpayer on the basis of the taxpayer's final adjusted returns, not on such periodic or quarterly basis. For instance, in the recent case of *Commissioner of Internal Revenue vs. Philippine American Life Insurance Co.,* the Court held:
>
> 'x x x When applied to taxpayers filing income tax returns on a quarterly basis, the date of payment mentioned in Section 292 (now Section 230) must be deemed to be qualified by Sections 68 and 69 of the present Tax Code x x x.
>
> It may be observed that although quarterly taxes due are required to be paid within 60 days from the close of each quarter, the fact that the amount shall be deducted from the tax due for the succeeding quarter shows that until a final

adjustment return shall have been filed, the taxes paid in the preceding quarters are merely partial taxes due from a corporation. Neither amount can serve as the final figure to quantify what is due the government nor what should be refunded to the corporation.

This interpretation may be gleaned from the last paragraph of Section 69 of the Tax Code which provides that the refundable amount, in a case a refund is due a corporation, is that amount which is shown on its final adjustment return and not on its quarterly returns.

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Clearly the prescriptive period of two years should commence to run only from the time that the refund is ascertained, which can only be determined after a final adjustment return is accomplished. Private respondent being a corporation, Section 292 (now Section 230) cannot serve as the sole basis for determining the two-year prescriptive period for refunds. x x x x.'" (*Citibank, N.A. vs. Court of Appeals, 280 SCRA 466-467).*

*Second Requisite* -
*Taxes Withheld Are Duly Supported by Certificates of Withholding Tax*

Petitioner has complied with the second requisite. In compliance with the second requisite, petitioner presented the Certificates of Creditable Tax Withheld at Source duly issued to it by various withholding agents for the year 1999 (*Exhibits "B" to "Z", "AA" to "ZZ",*

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*"AAA" to "LLL"*) showing creditable withholding taxes in the aggregate sum of P81,744,875.04, with the related income payment of P8,204,688,569.76 *(Annex A, Exhibit "RRR")*. As certified by the duly commissioned independent CPA, R.S. Bernaldo & Associates, in its report dated October 28, 2003, these certificates were found to be certified true copies of the originals, except for the certificate marked as *Exhibit "LLL"* supporting the claimed creditable withholding taxes of P13,713.18.

However, We note that the total creditable taxes withheld of P81,744,875.04 reflected in the certificates is lower by P21,075.96, when compared with the creditable taxes withheld of P81,765,951.00 reported per petitioner's 1999 income tax return. Since the amount of P21,075.96 is not supported by withholding tax certificates, the same shall be deducted from petitioner's claim.

In sum, the Court finds that petitioner has sufficiently complied with the second requisite to the extent of P81,731,161.86 (P81,765,951.00 less P21,075.96 and P13,713.18), out of the total reported creditable withholding taxes of P81,765,951.00.

*<u>Third Requisite</u> –*
*<u>The Income Withheld</u>*
*<u>Made Part of Petitioner's</u>*
*<u>Gross Income</u>*

With regard to the third requisite, the certificates show that the subject creditable income taxes were withheld on sales of motor vehicles, parts and miscellaneous income payments received by petitioner for taxable year 1999 in the total amount of P8,204,688,569.76 (*Annex A, Exhibit "RRR"*). In its 1999 income tax return, petitioner's reported revenues from sales of goods and miscellaneous income amounted to P9,487,113,286.00 and P12,844,769.00, respectively, (*page 262, CTA Records*) or in the sum of P9,499,958,055.00. While the total gross income payment of P8,204,688,569.76 appearing in the certificates is lower than the gross income of P9,499,958,055.00 reflected in petitioner's 1999 income tax return, such discrepancy was brought about by certain factors, namely: (1) the ad valorem taxes or value-added taxes were included by petitioner's customers in the tax base upon which the withholding taxes were computed; (2) the timing difference between the point at which petitioner recognized/reported its sales revenues as against the time when the corresponding tax was actually withheld by its

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customers; and (3) income payments received by petitioner in 1999 which were not subjected to withholding tax. This was clearly illustrated by petitioner in its Reconciliation of Sales per ITR and Income Payment Subject to EWT for the year 1999 (*Exhibit "QQQ"*) and explained on direct examination by petitioner's Senior Accounting Manager, Mr. Arnold Almario (*TSN, June 23, 2003, pp. 12-19*).

Clearly, therefore, petitioner properly declared in its income tax return the gross income related to the creditable withholding taxes of P P81,731,161.86.

Having complied with the three requisites previously set forth with respect to the creditable withholding taxes of P81,731,161.86, We now determine petitioner's refundable amount.

In arriving at the income tax overpayment of P68,224,340.00, petitioner's minimum corporate income tax (MCIT) due in the amount of P18,342,841.00 was partially offset against the quarterly income tax payments of P4,801,230.00 indicated in its 1999 income tax return (*line 26B, Exhibit "A"*). Upon verification by the commissioned independent CPA, it was disclosed however, that the amount of P4,801,230.00

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represents final withholding tax on interest income and should not have been applied against the MCIT due. This resulted to petitioner's claiming that the final withholding taxes on interest were creditable withholding taxes, thus, increasing the amount of the claim for tax refund. This erroneous application was, in fact, on direct examination admitted by petitioner's Senior Accounting Manager, Mr. Arnold Almario (*TSN, June 23, 2003, pp. 29-33*). Hence, petitioner can validly claim as tax credits only the amount of P81,731,161.86 representing creditable taxes withheld for the year 1999, which when applied against the MCIT due in the amount of P18,342,841.00 results to a reduced refundable income tax overpayment of P63,388,320.86, computed as follows:

| | |
|---|---|
| Minimum Corporate Income Tax (MCIT) | P18,342,841.00 |
| Less: Substantiated Creditable Taxes Withheld | 81,731,161.86 |
| **Refundable Income Tax Overpayment** | **P63,388,320.86** |

**WHEREFORE**, premises considered, the Petition For Review is hereby **PARTIALLY GRANTED**. Accordingly, respondent Commissioner of Internal Revenue is **ORDERED TO ISSUE A TAX CREDIT CERTIFICATE** in the amount of P63,388,320.86 in favor of petitioner, representing excess creditable withholding taxes for the calendar year 1999.

SO ORDERED.

**OLGA PALANCA-ENRIQUEZ**
Associate Justice

**WE CONCUR:**

**JUANITO C. CASTAÑEDA, JR.**
Associate Justice

**ERLINDA P. UY**
Associate Justice

# ATTESTATION

I attest 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.

**JUANITO C. CASTAÑEDA, JR.**
Associate Justice
Chairperson, Second Division

# CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson's Attestation, 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.

**ERNESTO D. ACOSTA**
Presiding Justice