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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

AYALA CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 5081

Promulgated:
MAR 31 1997

x - x

DECISION

This is a judicial claim for the issuance of tax credit on overpaid and unused creditable taxes withheld at source for the year ended December 31, 1991 in the amount of P2,020,037.00.

Petitioner is a corporation duly organized and existing under Philippine laws with principal office at the 7th Floor of the Makati Stock Exchange Building located at Ayala Avenue, Makati, Metro Manila.

In a letter-claim, dated March 10, 1993, petitioner applied for a tax credit certificate on the abovementioned taxes with respondent's bureau, and by way of a justification, stated, thusly:

> "Ayala Corporation was on a negative taxable base of P26,370,230.00 for the taxable year ending December 31, 1991. Consequently,

> the company has unused Creditable Taxes as of the same date of **PESOS: TWO MILLION TWENTY THOUSAND THIRTY SEVEN** (₱2,020,037.00). The aforesaid creditable taxes are withheld mainly from commission income received from the Company's Insurance Agency Operations." (Annex "A" of the Petition, p. 26, CTA rec.)

A year later, petitioner's application remained unacted upon despite reported follow-ups. This prompted petitioner to file the instant petition for review on March 24, 1994 in order to protect its interests and to toll the running of the two-year prescriptive period as provided under Section 230 of the Tax Code, as amended.

Hence, this appeal.

Petitioner repleads its stance ***a quo***.

On the other hand, respondent contends, among others, in her answer that the petition is insufficient in form and substance because petitioner failed to state when the alleged taxes withheld were actually paid.

Records reveal that during the Hearing of November 17, 1994, petitioner presented its priorly marked exhibits for identification by its witness, Ms. Ruby Pablo, which for the most part comprised of certificates of creditable income tax withheld at source (see TSN, Hearing of Nov. 17, 1994, pp. 9-17). Inexplicably, however, petitioner failed to make any formal offer of evidence within the time given by this Court (see Order, dated February 5, 1996, p. 90, CTA rec.). So on March 6, 1996, respondent manifested in open court that since petitioner has not filed its formal offer of evidence, she is submitting this case for decision without the necessity of filing a memorandum (Resolution, dated March 11, 1996, p. 92, CTA rec.). Expectedly, petitioner did not also file its memorandum.

The sole issue to be resolved thus is petitioner's entitlement to its claim for tax credit of P2,020,037.00, representing alleged overpaid income tax for 1991.

We absolutely rule in the negative.

Petitioner's lethargic and neglectful pursuit of its case deserves scant attention by this Court's precious time. We have ruled in F. **Jacinto Group, Inc. vs. Commr. of Internal Revenue, CTA Case No. 4971, promulgated on April 5, 1995 (Entry of Judgment on June 29, 1995)**, citing the cases of **Commissioner of Internal Revenue vs. Citytrust Banking Corporation, CA-G.R. SP No. 26839, July 31, 1992** (see also Supreme Court Decision in G.R. No. 106611, July 28, 1994) and **Paseo Realty and Development Corp. vs. Commr. of Internal Revenue, CTA Case No. 4254, August 10, 1993** (affirmed by the Court of Appeals in Ca-G.R. SP No. 32927, February 28, 1994), that "[i]n claims for refund, all that is required is the presentation of Statement of Tax Withheld at Source (BIR Form No. 1743.1) showing the income received and the amount of tax withheld therefrom and that the income was included to form part of petitioner's gross income as stated in its income tax return. x x x."

By failing to formally offer in evidence the various certificates of creditable tax withheld at source (BIR Form 1743.1), petitioner's claim has no supportive evidence to stand on. The Rules of Court is strict in not considering evidence not formally offered (Section 34, Rule 132, Revised Rules of Court).

In the more recent case of **Citytrust Banking Corporation vs. Commr. of Internal Revenue, CTA Case No. 4953, promulgated on May 14, 1996** (p. 6), We have ruled:

> "Under the foregoing situation, the *faux pas* committed by petitioner cannot even be cured by the recent case of **Oñate vs. Court of Appeals and Taguba, G.R. No. 116149**, promulgated on November 23, 1995, where the Honorable Supreme Court, citing the cases of **People vs. Napat-a, 179 SCRA 403 (1989) and People vs. Mate, 103 SCRA 484 (1981)**, relaxed the aforesaid rule and allowed evidence not formally offered to be admitted and considered by the trial court provided the following requirements are satisfied, viz: first, 'the same must have been duly identified by testimony duly recorded and second, the same must have been incorporated in the records of the case'."

While petitioner was able to have the exhibits on the various certificates of creditable tax withheld at source identified by the testimony of its witness duly recorded on the aforestated Hearing of November 17, 1994, it however failed to have the same exhibits incorporated in the records of this case. Thus, this Court is left with no actual documentary proof of said claim to pass upon as part of the docket of this case.

Most importantly, this Court further observes that petitioner elected in its Corporate Annual Income Tax Return (Annex "A" of the Petition) to have its excess creditable taxes withheld at source applied as a tax credit to the succeeding taxable year, as shown by an "x" mark on the appropriate box thereof. This fact, absent of any proof to the contrary, is fatal to the cause of petitioner.

In the decision of the Honorable Court of Appeals in **Paseo Realty and Development Corp. vs. Commr. of Internal Revenue and Court of Tax Appeals, CA G.R. SP No. 33589, October 14, 1994,** it was held that an application for automatic tax credit to the succeeding taxable year of excess credits will no longer entitle the petitioner to a refund because there is really nothing left to be refunded (or credited) and to do so would be tantamount to granting twice the refund being sought.

It may have been different though, if petitioner could have proven that it was not able to apply the above tax credit to the succeeding year (1992), and that, correspondingly, it chose to have the same refunded, as shown by an "x" mark on the appropriate box in the corporate annual income tax return for the year 1992. Sad to say, the case at bar portrays a different factual milieu.

"It must be stressed at this point that a refund (or tax credit) of taxes partakes the nature of a tax exemption and is construed in *strictissimi juris* against the taxpayer and in favor of the taxing authority" **(Associated Sugar, Inc. vs. Commr. of Internal Revenue, CTA Case No. 2944, May 6, 1994, p. 4,** citing **Insular Lumber Co. vs. Court of Tax Appeals, 104 SCRA 710; and Commr. of Internal Revenue vs. Rio Tuba Nickel Mining Corp., 207 SCRA 549).**

WHEREFORE, in view of the foregoing, the instant Petition for Review is hereby **DISMISSED** for lack of merit.

SO ORDERED.

RAMON O. DE VEYRA
Associate Judge

I CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

CERTIFICATION

I hereby certify that this 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
Court of Tax Appeals