REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

UNITED INTERNATIONAL PICTURES AB,
Petitioner,

- versus -

C.T.A. CASE NO. 6240

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
SEP 12 2002

x - x

DECISION

This case involves a claim for refund or issuance of a tax credit certificate in the amount of P9,309,292.00 allegedly representing excess and unutilized creditable withholding taxes for the taxable years ended December 31, 1998 and December 31, 1999.

The following facts are undisputed:

Petitioner is the Philippine branch of United International Pictures AB, a corporation duly organized and existing under the laws of Sweden, duly licensed to engage in business in the Philippines, with office address at 5th Floor, Viva Entertainment Center, 334 E. Rodriguez Sr. Ave., New Manila, Quezon City *(Par. 1, Stipulation of Facts)*.

Respondent is the duly appointed Commissioner of Internal Revenue, vested with the authority to act as such, including, among others, the power to decide, approve and grant refunds or tax credits of erroneously paid or excess payments of internal revenue taxes. He may be served with summons and other legal processes at his office at the BIR National Office Building, Quezon City *(Par. 2, Stipulation of Facts).*

On April 15, 1999, petitioner filed with the Bureau of Internal Revenue (BIR) its Corporation Annual Income Tax Return for the calendar year ended December 31, 1998 reflecting, among others, a net taxable income from operations in the sum of P24,961,200.00, an income tax liability of P8,486,808.00 but with an excess income tax payment in the amount of P4,325,152.00 arising from quarterly income tax payment and creditable taxes withheld at source, computed as follows: *(Par. 3, Stipulation of Facts; Exhibit A, inclusive of submarkings)*

Gross income	P 42,905,466.00
Less: Deductions	17,944,266.00
Taxable income	P 24,961,200.00
Tax Due	P 8,486,808.00
Less: Tax Credits/Payments	12,811,960.00
Tax Overpayment	P 4,325,152.00

Petitioner opted to carry-over as tax credit to the succeeding taxable year the said overpayment by putting an "x" mark on the corresponding box.

On April 17, 2000, petitioner filed its Corporation Annual Income Tax Return for the calendar year ended December 31, 1999 wherein it reported, among others, a taxable income in the amount of P7,071,651.00, an income tax due of P2,333,645.00 but with an excess income tax payment in the sum of P9,309,292.00, detailed as follows: *(Par. 4, Stipulation of Facts; Exhibit B, inclusive of submarkings)*

Gross income	P 25,240,148.00
Less: Deductions	18,168,497.00
Taxable income	P 7,071,651.00
Tax Due	P 2,333,645.00

Less: Tax Credits/Payments		
a. Prior Year's Excess Credits	P 4,325,152.00	
b. Creditable Tax Withheld	7,317,785.00	11,642,937.00
Tax Overpayment		P 9,309,292.00

On the face of the1999 return, petitioner indicated its option by putting an "x" mark on the box "To be refunded".

Through a letter dated April 28, 2000, petitioner filed with the BIR its administrative claim for refund in the amount of P9,309,292.00 pursuant to Section 229 of the Tax Code, as amended *(Annex C, Petition for Review).*

On February 27, 2001, due to inaction on the part of respondent, petitioner was compelled to file the instant petition for review in order to toll the running of the two-year prescriptive period.

In his Answer filed on March 27, 2001, respondent raised the following Special and Affirmative Defenses:

> "4. Assuming but not 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. Commissioner of Internal Revenue);
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> 5. 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;
>
> 6. Petitioner must show that it has complied with the provisions of Section 51(c) and (d) of the Tax Code, as amended, as enunciated in City Trust Finance Corporation vs. C.T.A., to wit:
>
> > a) That the claim is filed with the Commissioner of Internal Revenue within the 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.

7. Petitioner must show that it has complied with the provisions of Sections 204(c) and 229 of the Tax Code; and

8. 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)."

To bolster its entitlement to the claim for refund, petitioner presented the following documentary evidence:

1. Corporation Annual Income Tax Returns for the years 1998 and 1999 together with their corresponding Certificates of Creditable Tax Withheld at Source and Part II of the Account Information Form (*Exhibits A and B, inclusive of submarkings*);
2. Corporation Annual Income Tax Return for the year 2000 (*Exhibit C, inclusive of submarkings*); and
3. Corporation Quarterly Income Tax Return for the first quarter of 1998 (*Exhibit D, inclusive of submarkings*).

The above evidence were all admitted by the court in its resolution dated February 1, 2002 (*page 126, CTA records*). On July 1, 2002, this case was submitted for decision sans the presentation of respondent's evidence.

The issues we are tasked to resolve have been jointly stipulated by the parties to be as follows:

1. Whether or not petitioner's excess creditable withholding tax in the amount of Nine Million Three Hundred Nine Thousand Two Hundred Ninety Two Pesos (P9,309,292.00) as of December 31, 1999 are duly supported by adequate evidence

2. Whether or not the income from which the excess creditable income tax of Four Million Three Hundred Twenty Five Thousand One Hundred Fifty Two Pesos (P4,325,152.00) were withheld were duly reported as part of petitioner's gross income for calendar year ended December 31, 1998

3. Whether or not the income from which the current year's (1999) tax credits of Seven Million Three Hundred Seventeen Thousand Seven Hundred Eighty Five Pesos (P7,317,785.00) were withheld were duly reported as part of petitioner's gross income for calendar year ended December 31, 1999

4. Whether or not petitioner did not in fact carry over its excess creditable withholding taxes for calendar year ended December 31, 1999 amounting to Nine Million Three Hundred Nine Thousand Two Hundred Ninety Two Pesos (9,309,292.00) to the succeeding taxable year 2000

5. Whether or not the petitioner had duly filed both the administrative and judicial claims for refund within the two-year prescriptive period pursuant to Sections 204 and 229, respectively, of the Tax Code, as amended

The legal anchor of petitioner in claiming for the refund of its excess income tax payment is Section 76 of the Tax Code as amended, which provides:

> **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 net 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.**" (Emphasis supplied)

Under the aforequoted Section 76 of the Tax Code, as amended, the excess tax credits or overpaid income tax of a given taxable year of a corporation may be refunded or may be carried-over and credited against its estimated quarterly income tax liabilities for the taxable quarters of the succeeding taxable years. However, once the option to carry-over has been made, the same becomes irrevocable for that taxable period (***Pilipinas Transport Industries, Inc. vs. Commissioner of Internal Revenue***, CTA Case No. 6073, March 1, 2002).

As stated earlier, petitioner opted to carry-over as credit to the succeeding taxable year its excess income tax payment for the year 1998 in the amount of P4,325,152.00. In its 1999 Annual Income Tax Return, however, petitioner was able to partially utilize the 1998 overpaid income as payment to its 1999 income tax liability in the amount of P2,333,645.00, leaving a balance of P1,991,507.00.

Applying the maxim behind Section 76 of the Tax Code, as amended, to the present case, petitioner is precluded to claim the refund of the excess 1998 income tax payment. Section 76 of the Tax Code, as amended, is clear that the "option to carry over," once exercised, shall be considered irrevocable. It is a well-settled principle in statutory construction that "when the language of the law is clear and unequivocal, the law must be taken to mean exactly what it says" (***Marin vs. Nacianceno*, 19 Phil. 238**). Beyond the words employed, if the meaning is plain and intelligible, neither officer nor court is to go in search of the legislative intent; but the legislature must be understood to intend what is plainly expressed, and nothing then remains but to give the intent effect (***Barlett and Waring vs. Morris***, 9 Port. 266, **cited in** ***Philam Asset Management vs. Commissioner of Internal Revenue***, CTA Case No. 6210, May 2, 2002).

Thus, when petitioner signified its intention to carry-over to the succeeding year its unutilized income tax payment for the year 1998, it is no longer allowed to pursue the instant claim for refund (***The Philippine Banking Corporation (now known as Global Business Bank, Inc.) vs. Commissioner of Internal Revenue***, CTA Resolution, CTA Case No. 6820, August 16, 2001, cited in the case of ***Pilipinas Hino, Inc. vs. Commissioner of Internal Revenue***, CTA Case No. 6074, April 19, 2002). To allow a refund will make Section 76 of the Tax Code, as amended, ineffective. Nonetheless, petitioner will not be prejudiced by the said law because Section 76 permits the application of the excess tax credit against the estimated income tax liabilities of the *succeeding taxable years* until the said excess tax payment is fully utilized. What is prohibited by the said law is the refund of excess income tax payment and not the application as tax credit.

With respect to the 1999 excess creditable withholding tax, the same appears to be refundable. However, petitioner must still prove its entitlement for the refund by substantial evidence.

Section 229 of the Tax Code provides that the claim for refund both in the administrative and judicial levels, must be filed within two years from the date of payment of the tax. For easy reference, Section 229 of the Tax Code is hereby quoted as follows:

> **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 begun 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 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.

Furthermore, in claiming for the refund of excess creditable withholding tax, petitioner must show compliance with the following basic requisites:

> 1) The claim for refund was filed within two years as prescribed under Section 230 (now 229) of the Tax Code;
>
> 2) The income upon which the taxes were withheld were included in the return of the recipient;
>
> 3) The fact of withholding is established by a copy of a statement (BIR Form 1743.1) duly issued by the payor (withholding agent) to the payee showing the amount paid and the amount of tax withheld therefrom.
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> [Section 10, Rev. Regs. No. 6-85; see **Citytrust Finance Corporation vs. The Honorable Commissioner of Internal Revenue, CTA Case No. 4134, November 11, 1991; affirmed by the Court of 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; and Citytrust Finance Corporation (formerly Investor's 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 Investor's Finance Corp./FNCB Finance) and the Court of Tax Appeals, C.A. G.R. SP No. 31104, April 18, 1994; Citibank, N.A. vs. Court of Appeals and Commissioner of Internal Revenue, 280 SCRA 459**].

That the claim for refund was timely filed is not disputed *(Par. 6, Stipulation of Facts).* Both parties agreed that the administrative claim for refund and the instant petition for review were filed within the two-year prescriptive period.

Likewise, petitioner also established the fact of withholding when it presented the sole certificate of creditable withholding tax at source issued by Warner Bros. (F.E.), Inc. in the amount of P7,317,784.99 (*Exhibit B-13).* However, the court noted that out of the total income payment in the amount of P146,355,699.80 reflected in the certificate, only the sum of P145,381,568.00 was declared in the 1999 final adjustment return (*Exhibit B-14*). Hence, the refund of 1999 excess creditable tax withheld must be correspondingly reduced to the extent of the undeclared income, the computation of which is as follows:

Excess creditable withholding tax	P 7,317,784.99
Less: Creditable tax withheld corresponding to the undeclared income [(P146,355,699.80 - 145,381,568.00 = P974,131.80] [(P974,131.80/P146,355,699.80) x P7,317,784.99]	48,706.59
Unutilized 1999 Creditable Tax Withheld	P 7,269,078.40

Furthermore, the court ascertained that the amount sought to be refunded was no longer carried over in the year 2000 *(Exhibit C).*

Finally, we do not agree with the averment of respondent that the petition was prematurely filed because the claim is still under investigation and verification in the bureau. In the case of ***Insular Lumber Co. vs. Court of Tax Appeals, et. al.,*** G.R. No. L-31057 & L-31137, May 29, 1981, the Supreme Court passed upon a similar issue, thus:

> "If, however, the Commissioner 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 the Commissioner" (***Commissioner of Internal Revenue vs. Victorias Milling Company, Inc.***, 22 SCRA 12, ***Collector of Internal Revenue vs. Court of Tax Appeals***, 1 SCRA 87,

Gibbs vs. Collector of Internal Revenue and Court of Tax Appeals, 107 Phil. 232; ***College of Oral and Dental Surgery vs. Court of Tax Appeals, et. al.***, 102 Phil. 912; and ***P.J. Kiener Co., Ltd. vs. David***, 92 Phil. 945).

WHEREFORE, in view of the foregoing, the instant Petition for Review is hereby **PARTIALLY GRANTED.** Accordingly, respondent is **ORDERED to REFUND** or in the alternative, **ISSUE A TAX CREDIT CERTIFICATE** to petitioner in the amount of P7,269,078.40 representing unutilized creditable withholding tax for the year 1999.

SO ORDERED.

Juanito C. Castañeda Jr.
JUANITO C. CASTAÑEDA, JR.
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