REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

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HAMBRECHT & QUIST PHILIPPINES, INC.,
Petitioner,

C.T.A. CASE NO. 7126

Members:

- versus -

ACOSTA, *Chairperson*
BAUTISTA, and
CASANOVA, *JJ.*

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
SEP 12 2006, 3:27 PM

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DECISION

CASANOVA, C., J.:

Before Us is a Petition for Review seeking the issuance of a tax credit certificate in the amount of P1,406,971.00 allegedly representing excess or overpaid creditable withholding tax of petitioner for the fiscal year ending September 30, 2002.

Petitioner is a corporation duly organized and existing under and by virtue of the laws of the Philippines, with principal office at 22/Floor PCIBank Tower 2, Makati Avenue, Makati City. It is engaged in the business or industry which provides management and administrative services. It is duly registered with the Bureau of Internal Revenue (BIR) and as such was issued Certificate of Registration with OCN 94-500-001704.[1]

Respondent, on the other hand, is the duly appointed Commissioner of Internal Revenue vested with authority to exercise the functions of said office, including *inter alia* the power to decide, approve and grant tax credit or refund of any national internal revenue tax 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, and holding office at 4th Floor, BIR National Office Building, BIR Road, Diliman, Quezon City, where he may be served with summons and other legal processes.[2]

On January 13, 2003, petitioner filed with the BIR its Annual Corporate Income Tax Return (BIR Form No. 1702) for the fiscal year ending September 30, 2002, which reflects the total excess or refundable withholding tax in the total amount of P1,406,971.00 broken down as follows: *(Exhibit "B")*

Sales/Revenues/Receipt Fees		P 15, 122, 892.00
Less: Cost of Sales/Services		9, 800, 639.00
Gross Income/Loss from operation		P 5, 322, 253.00
Add: Non-Operating & Other Income		33, 663.00
Total Gross Income		P 5, 355, 917.00
Less: Deductions		5, 355, 917.00
Taxable Income/Loss		P -------
Minimum Corporate Income Tax Due (2%)		P 107,118.00
Less: Tax Credits		
For the First Three Quarters	P (1,143,516.00)	
For the Fourth Quarter	(370,573.00)	1,514,089.00
Total Overpayment for the Fiscal Year (Ending September 2002)		P (1,406,971.00)

[1] Paragraphs 1, 3, and 4, Joint Stipulation of Facts and Simplification of Issues
[2] Paragraph 2, Joint Stipulation of Facts and Simplification of Issues

In the said Annual Corporate Income Tax Return filed by the petitioner with the BIR, it indicated therein its intention to be issued a tax credit certificate relative to the above-stated excess or refundable withholding tax by marking the box corresponding to the phrase "To be issued a tax credit certificate".

Petitioner filed the instant petition on January 12, 2005 due to respondent's failure to approve its claim for the issuance of a tax credit certificate and in order to suspend the running of the two-year prescriptive period prescribed under Section 229 of the 1997 NIRC, as amended.

In support of its claim, petitioner offered as part of its evidence, its "Certificates of Creditable Tax Withheld at Source" for the period October 2001 to September 2002 reflecting the taxes withheld from "professional/talent fees paid to juridical persons" *(Exhibits "D", "E", "F", "G", "H", "I", "L", and "M").* Likewise, petitioner presented as its witness, Ms. Melinda P. Evangelista, its Senior Accountant, who further explained that the creditable tax withheld for the last quarter covering the period July 1, 2002 to September 30, 2002 for the fiscal year ending September 30, 2002 amounting to P 370,573.00, comprised the following:

a) P 103,104.07 (*Exhibit "L"*) - creditable tax withheld from professional/talent fees
b) P 265,668.89 (*Exhibit "M"*) - creditable tax withheld from professional/talent fees
c) P 600 (*Exhibit "N"*) - creditable tax withheld from rental of real property
d) P 600 (*Exhibit "O"*) - creditable tax withheld from rental of real property
e) P 600 (*Exhibit "P"*) - creditable tax withheld from rental of real property

For his part, respondent filed his Answer on April 22, 2005 and averred the following Special and Affirmative Defenses:

"6) Verification with RDO 50 disclosed that Petitioner has not yet submitted the receipts for expenses, which they are claiming as deductions, hence, it is Petitioner's inaction that has prevented the expeditious resolution of their application for tax credit;

7) In an action for tax credit, which is in the nature of refund, the burden is upon the taxpayer to prove that he is entitled thereto, and failure to discharge said burden is fatal to the claim;

8) Petitioner failed to demonstrate that the tax, which is the subject of this case was erroneously or illegally collected;

9) Taxes paid and collected are presumed to have been made in accordance with the laws and regulation, hence, not creditable or refundable;

10) Claims for refund are construed strictly against the claimant, the same partake the nature of exemption from taxes *(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 121)."*

On April 4, 2006, respondent submitted the case for decision based on the pleadings without offering any evidence. In a Resolution dated June 20, 2006, the Court ordered the case submitted for decision.

Petitioner and respondent jointly stipulated on the following issues:

1. Whether or not petitioner is entitled to the issuance of Tax Credit Certificate of the Excess Creditable Withholding Tax amounting to P1,406,971.00 for the fiscal year ending September 30, 2002 subject of the petition;
2. Whether petitioner has carried over to the succeeding taxable years the alleged excess/unutilized creditable withholding tax for the fiscal year that ended September 2002;

3. Whether or not petitioner has excess/unutilized creditable withholding tax for the fiscal year that ended September 2002;
4. Whether or not the income payments from which the taxes were withheld were included in the petitioner's gross income for the fiscal year that ended September 2002; and
5. Whether petitioner's right to claim for refund of the alleged excess/unutilized creditable withholding tax for the fiscal year that ended September 2002 is duly substantiated.

There are two basic issues that are being asked to be determined by this Court, namely: (1) Whether or not petitioner has excess/unutilized creditable withholding tax for the fiscal year ending September 2002; and (2) whether or not petitioner is entitled to the issuance of a tax credit certificate of the excess creditable withholding tax and if legally entitled, whether or not the same is properly substantiated.

We proceed to resolve the first issue.

Evidence proved that petitioner has excess/overpayment of creditable withholding tax for fiscal year ending September 30, 2002. It can be gleaned from petitioner's Annual Corporate Income Tax Return for the fiscal year ending September 30, 2002 that petitioner was liable only for the minimum corporate income tax (MCIT) and after deducting its income taxes withheld for the fiscal year ending September 30, 2002 from the MCIT, as dictated under the "Creditable Withholding Tax System" which considers income taxes withheld by the payor as creditable against the income taxes for that year, the petitioner has excess/overpayment of creditable withholding tax for the fiscal year ending

September 30, 2002 of P1,406,971.00, detailed as follows *(Exhibit "B-4", "B-5"," B-6", "B-7", and "B-8")*:

Minimum Corporate Income Tax Due (2%)		P 107,118.00
Less: Tax Credits		
For the First Three Quarters	P(1,143,516.00)	
For the Fourth Quarter	(370,573.00)	1,514,089.00
Total Overpayment for the Fiscal Year (Ending September 2002)		P(1,406,971.00)

Inasmuch as the question of the petitioner having excess/unutilized creditable withholding tax for the fiscal year ending September 2002 has been answered, We now go to the issue of legal justification for the issuance of the tax credit certificate.

Section 76 of the 1997 NIRC, as amended, gives petitioner three options with respect to excess or overpaid creditable withholding tax, 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 maybe.***
>
> 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 Ours)*

The above quoted law is clear that a corporation entitled to a tax credit or refund has three options and when an option has been exercised, the same shall be irrevocable.

A perusal of petitioner's Annual Corporate Income Tax Return *(Exhibit "B")* unmistakably shows that petitioner chose option "C" as evidenced by an "x" mark in the box corresponding to the phrase, "To be issued a tax credit certificate". Moreover, in its Annual Corporate Income Tax Return for the succeeding year 2003, petitioner did not indicate any amount of prior year's excess credit (*Exhibits "Q" and "Q-1"*), further proving the fact that it chose only one option, that is, to be credited with the excess amount paid rather than to carry-over. Thus, the amount of P1,406,971.00 may be proper subject of a claim for the issuance of a tax credit certificate under Section 76 of the 1997 NIRC, as amended.

Petitioner's entitlement to the issuance of a Tax Credit Certificate, however, will still depend on its compliance with the three requirements prescribed under Section 2.58.3 of Revenue Regulations No. 2-98 (Withholding Tax Regulations), as amended, namely:

1. That the claim for refund (or issuance of a tax credit certificate) was filed within the two-year prescriptive period prescribed under Section 204(C), in relation to Section 229 of the NIRC of 1997;
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 was included in the return of the recipient (*Citibank, NA vs. Court of Appeals and CIR, 280*

SCRA 459; ACCRA Investments Corporation vs. Court of Appeals, 204 SCRA 963).

Anent the first requirement of filing the claim for refund within the two-year prescriptive period, the admission/stipulation made by the parties in their Joint Stipulation of Facts and Simplification of Issues, particularly, in paragraph 8, that the claim for the issuance of a Tax Credit Certificate 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, and the submitted evidence, proved that petitioner's claim satisfies the same.

Long-settled is the rule that the reckoning of the two-year prescriptive period for the filing of a claim for refund/tax credit certificate of excess creditable withholding tax/quarterly income tax payment starts from the date of filing of the annual income tax return.[3] Petitioner's claim covers fiscal year 2002 for which it filed its Annual Income Tax Return on January 13, 2003. Counting the two-year prescriptive period from the said date of filing of Annual Income Tax Return, petitioner had until January 12, 2005 (2004 being a leap year) within which to file its claim for tax credit certificate, both in the administrative and judicial levels. Since petitioner's Annual Income Tax Return for 2002 already constitutes a formal application for the issuance of a tax credit certificate when it has indicated in its income tax return its option for either a cash refund or a tax credit certificate,[4]

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[3] ACCRA Investments Corporation vs. Court Appeals, 204 SCRA 957 (1991); Commissioner of Internal Revenue vs. TMX Sales, Inc., 205 SCRA 184 (1992)]

[4] SECTION 2.58.3. Claim for Tax Credit or Refund. —

(C) Excess Credits — An individual or corporate taxpayer's excess expanded withholding tax credits for the taxable quarter/year shall automatically be allowed as a credit against his income tax due for the taxable quarters/years immediately succeeding the taxable quarters/years in which the excess credit arose, provided he submits with his income tax petitioner's administrative claim is therefore considered filed on January 13, 2003, the date when petitioner filed its 2002 Income Tax Return. The Petition for Review, on one hand, was filed with this Court on January 12, 2005. Thus, both dates of filing fell within the two-year prescriptive period.

With respect to the second requirement, petitioner presented its various Certificates of Creditable Tax Withheld at Source, summarized as follows:

EXH	WITHHOLDING AGENT	PERIOD INVOLVED	INCOME PAYMENT	INCOME TAX WITHHELD
Payments for professional fees				
D	H & Q PHIL VENTURES II, INC.	10/1/01-12/31/01	P 1,131,049.50	P 113,104.95
E	H & Q PHIL HOLDINGS, INC.	10/1/01-12/31/01	2,585,696.64	258,569.67
F	H & Q PHIL HOLDINGS, INC.	1/1/02-3/31/02	2,623,559.08	262,355.91
G	H & Q PHIL VENTURES II, INC.	1/1/02-3/31/02	1,123,200.92	112,320.10
H	H & Q PHIL HOLDINGS, INC.	4/1/02-6/30/02	2,653,533.46	265,353.35
I	H & Q PHIL VENTURES II, INC.	4/1/02-6/30/02	1,160,284.39	116,028.44
J	CAPITAL ONE HOLDINS CORP.	7/1/02-9/30/02	157,838.18	15,783.82
L	H & Q PHIL VENTURES II, INC.	7/1/02-9/30/02	1,031,040.74	103,104.07
M	H & Q PHIL HOLDINGS, INC.	7/1/02-9/30/02	2,656,688.91	265,668.89
		subtotal	**P15,122,891.82**	**P1,512,289.20**
Payments for Rental of Real Property				
N	CAPITAL ONE HOLDINS CORP.	1/1/02-3/31/02	P 12,000.00	P 600.00
O	CAPITAL ONE HOLDINS CORP.	4/1/02-6/30/02	12,000.00	600.00
P	CAPITAL ONE HOLDINS CORP.	7/1/02-9/30/02	12,000.00	600.00
		subtotal	**P 36,000.00**	**P 1,800.00**
		TOTAL	**P15,158,891.82**	**P1,514,089.20**

As can be seen above, the total amount of "Income Tax Withheld" arrived at after adding up the various amounts appearing on each "Certificates of Creditable

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return, a copy of the first page of his income tax return for the previous taxable period showing the amount of his excess withholding tax credits, and on which return he has not opted for a cash refund or tax credit certificate.

(1) If in lieu of the automatic application of his excess credit, the taxpayer wants a cash refund or a tax credit certificate for use in payment of his other national internal revenue tax liabilities, **he shall make a written request therefor, within two years after the payment of the tax (Ref. Secs. 204(c) and 229 of the Code), provided however, that if the taxpayer has indicated in his income tax return his option for either a cash refund or a tax credit certificate, such indication shall be considered sufficient for the purpose**. Upon filing of his request, the taxpayer's income tax return showing the excess expanded withholding tax credits shall be examined. The excess expanded withholding tax so determined, shall be refunded/credited to the taxpayer. (*Emphasis supplied*)

Tax Withheld at Source", is the same amount appearing as "Total Tax Credit/Payments" reflected in petitioner's Annual Corporate Income Tax Return *(Exhibit "B-7")*. Hence, the reported creditable withholding taxes of P1,514,089.00 was duly substantiated by withholding tax certificates. Clearly, the second requirement is satisfied.

Going to the last requirement, the certificates show that of the total creditable withholding taxes of P1,514,089.20, the amount of P1,512,289.20 pertains to professional fees received by petitioner in the amount of P15,122,891.82 which is the very same figure reported by petitioner in its 2002 Income Tax Return as revenues from sale of services (*Section A, Schedule 1 of Exhibit "B"*). However, as to the remaining creditable withholding taxes amounting to P1,800.00, the certificates show that the same pertains to petitioner's income from lease of real property in the amount of P36,000.00. In its 2002 Income Tax Return, petitioner did not indicate any income amount from lease of real property. Although petitioner reported an amount of P33,663.00 as other income, it cannot be verified from the records whether the same pertains to petitioner's lease of real property. In other words, petitioner failed to prove that it declared the income of P36,000.00 related to the creditable withholding taxes of P1,800.00.

In sum, out of the reported creditable withholding taxes of P1,514,089.00 for fiscal year 2002, petitioner was able to sufficiently substantiate only the amount of P1,512,289.20.

From all the foregoing, after offsetting petitioner's minimum corporate income tax (MCIT) due for the fiscal year 2002 in the amount of P107,118.00 against its duly substantiated tax credits, petitioner is entitled to the issuance of a tax credit certificate representing excess creditable withholding taxes for fiscal year 2002 in the reduced amount of P1,405,171.00 computed as follows:

Minimum Corporate Income Tax Due	P 107,118.00
Less: Substantiated Tax Credits	1,512,289.00
Refundable Excess Tax Credits	**P1,405,171.00**

WHEREFORE, the instant Petition for Review is **PARTIALLY GRANTED**. Respondent is hereby **ORDERED TO ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the amount of P1,405,171.00, representing excess or overpaid creditable withholding tax for the fiscal year ending September 30, 2002.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

LOVELL R. BAUTISTA
Associate Justice

CERTIFICATION

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

ERNESTO D. ACOSTA
Presiding Justice
Chairperson, First Division