REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

HAVI FOODS SERVICES PHILS., INC. (formerly known as PRODIGY DISTRIBUTORS, INC.),
Petitioner,

- versus -

C.T.A. CASE NO. 5610

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
SEP 06 2000

x - x

DECISION

This petition for review is seeking for the refund or issuance of a tax credit certificate in the amount of P4,812,740.34, representing overpaid creditable withholding taxes for the calendar year ended December 31, 1995.

Petitioner is a domestic corporation duly organized and existing under the laws of the Philippines. It is registered with the Philippine Securities and Exchange Commission to primarily engage in the business of establishing, maintaining, operating and offering for a fee services for cold and warm storage of perishable goods with office address at Sumulong Highway, Marikina City, Metro Manila (Exhs. GG and HH, inclusive of submarkings). Its former name is Prodigy Distributors, Inc..

On April 11, 1996, Petitioner filed its 1995 Corporation Annual Income Tax Return reflecting, among others, a net loss from business operations but with an overpaid income tax of P6,923,906.00, representing prior year's excess credit of P2,111,166.00 and the current creditable taxes withheld in the amount of P4,812,740.00 (Exh. "A", inclusive of submarkings). Petitioner opted to refund the said excess income tax payment by marking the box "to be refunded".

On June 25, 1996, Petitioner filed a letter claim for refund with the Revenue District Office No. 45, Bureau of Internal Revenue, seeking only for the refund of P4,812,740.34, representing payments for creditable withholding taxes at source for the year 1995 (Exh. FF, inclusive of submarkings).

However, when Petitioner filed its 1996 Corporation Annual Income Tax Return on March 26, 1997, the whole excess tax credit for the year 1995 in the amount of P6,923,906.00 was again claimed as part of the total tax credit for the year 1996 in the amount of P15,785,198.00 (Exh. EE, inclusive of submarkings). The 1996 final adjustment return also shows that Petitioner incurred another business net operating loss and opted that the whole amount of P15,785,198.00 be again refunded as shown by the "x" mark in the box "to be refunded".

Due to the inaction of the Respondent on its claim for refund, Petitioner on April, 8, 1998, appealed its case before this Court in order to toll the running of the two-year prescriptive period under Section 230 of the Tax Code, as amended.

On December 9, 1998, while the case was pending trial, Petitioner amended its 1996 Corporation Annual Income Tax Return to show that its 1995 unutilized creditable withholding taxes were no longer carried-over as tax credit in the year 1996 (Exhs. LL and LL-2).

In his Answer, Respondent advanced the following Special and Affirmative defenses:

8. That the instant petition for review has already prescribed;

9. That in an action for refund, the taxpayer has the burden to prove that the taxes paid were erroneously or illegally collected and its failure to do so is fatal to the action;

10. That claims for tax refunds are strictly construed against the taxpayer;

11. That the petitioner has no cause of action.

To bolster its claim for refund, Petitioner presented the following documents as evidence:

1. The Corporation Annual Income Tax Returns for the years 1995 and 1996 together with the reports of independent public accountants (Exhs. A, EE, and LL inclusive of submarkings);

2. Various certificates of creditable tax withheld at source (Exhs. B to Z, and AA to DD);

3. Administrative claims for refund for the years 1995 and 1996 (Exhs. FF, and MM, inclusive of submarkings);

4. SEC Certificates of Filing of Amended Articles of Incorporation and By-Laws (Exhs. GG and HH, inclusive of submarkings);

5. Memorandum letter of Revenue Region No. 7 to Revenue District Office No. 45 granting the request for change of name from Prodigy Distributors, Inc. to Havi Food Services Philippines, Inc. (Exh. KK); and

6. Summary of certificates of creditable tax withheld at source (Exhs. NN and NN-1).

Respondent was considered to have waived his right to present evidence for failure of his counsel to appear during the hearing on October 9, 1999, without explanation whatsoever (see Resolution, dated October 5, 1999, CTA records, p. 294).

This case was submitted for decision sans the memorandum of the Respondent.

The sole issue to be resolved by this Court is whether or not Petitioner is entitled to the refund of the sum of P4,812,740.34, representing overpaid creditable withholding taxes for the calendar year 1995.

The legal basis of Petitioner in claiming for the refund of overpaid income tax is Section 69 (now Section 76) of the Tax Code, as amended, which reads as follows:

> **SEC. 69.** ***Final Adjustment Return.*** – Every corporation liable to tax under Section 24 shall file a final adjustment return covering the total 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:
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> (a) Pay the excess tax still due; or
>
> (b) Be refunded the excess amount paid, as the case may be.
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> In case the corporation is entitled to a refund of the excess estimated quarterly income taxes paid, the refundable amount shown on its final adjustment return may be credited against the estimated quarterly income tax liabilities for the taxable quarters of the succeeding taxable year (Underlining supplied).

Based on the afore-quoted proviso, the refundable income tax payment of a given year can only be credited against estimated quarterly income tax liabilities for the taxable quarters of the succeeding taxable year.

It is apparent in the taxable year 1995 that Petitioner has an accumulated creditable withholding taxes in the amount of P4,812,740.34 which were not utilized as tax credit in the year 1995 nor in the taxable year 1996 because, in both years, Petitioner suffered from business losses and therefore had no income tax liability against which the creditable withholding tax payments could be applied. Hence, it is a proper subject of a claim for refund based on Section 69 of the Tax Code, as amended.

But before the present appeal could prosper, Petitioner should prove its entitlement for refund by substantial evidence.

Section 230 of the Tax Code provides:

> **SEC. 230.** ***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 excessive 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 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.

Furthermore, in claiming for the refund of excess creditable withholding tax, Petitioner must show compliance with the following requisites, to wit:

> 1. that it filed a claim for refund within the two (2) year period as prescribed under Section 299 (now 230) of the National Internal Revenue Code;
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> 2. that the income upon which the taxes were withheld were included in the return of the recipient; and

> 3. the fact of withholding is established by a copy of a statement (BIR For 1743.1) duly issued by the payor (withholding agent) to the payee, showing the amount paid and the amount of tax withheld therefrom **(Citibank N.A. vs. Court of Appeals and Commissioner of Internal Revenue, 280 SCRA 459; ACCRA Investment Corporation vs. Court of Appeals, 204 SCRA 957).**

A perusal of the evidence submitted by the Petitioner reveals that the claim for refund was timely filed within two years from the date of payment of the tax. The administrative claim for refund was filed with the Respondent on June 25, 1996 and the Petition for Review was filed with this Court on April 8, 1998. The two-year prescriptive period commences on April 11, 1996, the time when Petitioner filed its 1995 final adjustment return **(Commissioner of Internal Revenue vs. TMX Sales, Inc. et. al., G.R. No. 837736, January 15, 1992).**

It was also established that the income upon which then creditable withholding taxes were paid were included in Petitioner's return. This is shown in Schedules 1, 2 and 3 of Section C of Petitioner's 1995 income tax return and as testified to by Petitioner's witness, Ms. Nora Miguel, Director for Finance (Exhs. A-8, and A-9, see also TSN, January 27, 1999, pp. 30 to 32).

Lastly, the 1995 creditable withholding taxes were duly supported by Certificates of Creditable Withholding Tax at Source duly issued by the Petitioner's clients in accordance with the requirements of Revenue Regulations No. 6-85, as amended.

Therefore, finding Petitioner's evidence sufficient to prove its cause of action, this Court favors the granting of the present appeal.

WHEREFORE, in view of the foregoing, the instant petition for review is hereby **GRANTED.** Respondent is hereby **ORDERED** to **REFUND** or in the alternative to **ISSUE a TAX CREDIT CERTIFICATE** in favor of Petitioner the amount of P4,812,740.34, representing overpaid income tax for the calendar year 1995.

SO ORDERED.

AMANCIO Q. SAGA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

RAMON O. DE VEYRA
Associate 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