REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

GOLDEN ARCHES DEVELOPMENT CORPORATION,
Petitioner,

- versus -

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 5348

Promulgated:

MAR 26 1999 Fmargarita

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DECISION

This case involves a claim for refund in the amount of Six Million Two Hundred Seventy Eight Thousand Four Hundred Eighty Two (₱6,278,482.00) Pesos allegedly representing excess or unutilized creditable withholding taxes for the calendar year 1993.

Petitioner is a domestic corporation authorized primarily to acquire by purchase, lease, or otherwise, and to own, use, hold, sell, convey, exchange, lease, franchise, license, work, improve, develop, divide, and otherwise handle, deal in, and dispose of real and personal properties (Exh. A).

On April 14, 1994, Petitioner filed its annual corporate income tax return for 1993 declaring a net loss of ₱7,076,350.00. It also showed prior year's excess credits amounting to ₱25,344,166.00 and creditable tax withheld of ₱6,278,482.00 (Exh. B) which was mainly derived from rental income paid by Petitioner's franchisees (TSN, Aug. 13, 1996, p. 9).

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Due to the loss so declared, Petitioner carried over the said prior year's excess credit and creditable tax withheld or a total of ₱31,622,640.00, in its 1994 annual income tax return which Petitioner filed on April 17, 1995. For the taxable year 1994, Petitioner claimed a taxable income in the sum of ₱22,056,411.00. The withholding tax for the same period was ₱10,275,815.00 which exceeded the tax due on its income which was ₱7,719,744.00 (Exh. C). As a consequence, the total tax credits was augmented to ₱34,178,711.00 because the creditable taxes withheld which were carried over from 1993 were not utilized.

On April 15, 1996, Petitioner filed its 1995 annual income tax return declaring again a loss and creditable taxes withheld in the amount of ₱11,983,701.00 (Exh. B-1). Thus, per its 1995 income tax return, Petitioner's tax credits totalled ₱46,162,412.00 (Exh. B).

Subsequently, on October 3, 1996, Petitioner amended its income tax return (Exh. H) but it was not clearly shown to the Court if the BIR authorized said amendment (TSN, Oct. 10, 1996, p. 26). The amendment was done for the main purpose of deducting the excess withholding taxes for 1993 and 1994, subject of Petitioner's claims for refund (*ibid.*, p. 27).

A claim for the refund of ₱6,278,400.00 representing excess or unutilized creditable income taxes withheld at source for 1993 was filed by the Petitioner on April 5, 1995. Respondent's inaction impelled Petitioner to file the instant Petition for Review on April 11, 1996, lest its claim for refund be barred by the two-year prescriptive period.

To bolster its claim, Petitioner presented the following documentary evidence, to wit:

1. 1993 Corporate Annual Income Tax Return;
2. 1994 Corporate Annual Income Tax Return;
3. 1995 Corporate Annual Income Tax Return;
4. 1995 Amended Corporate Annual Income Tax Return;
5. SEC Certificate of Registration;
6. Articles of Incorporation;
7. Certificates of Creditable Taxes Withheld at Source; and
8. Letter-claim for refund.

Petitioner also presented a witness in the person of Mr. Jose I. Sagun to testify and identify some of its documents (see TSN, Aug. 13, 1996 and Oct. 10, 1996).

Respondent averred, by way of Special and Affirmative Defenses, that:

> 6. Petitioner has not shown proof that it has incurred losses in the year 1993, mere declaration of deduction in the return without being supported by records of pertinent papers proving that the claimed deductions were really paid or incurred during the year in question is insufficient;

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7. The expense claimed by Petitioner in its 1993 return are not totally allowable, thus even if granting, for the sake of argument, that the withholding tax payments for that year are correct and accurate, the same are insufficient to cover the payment of its deficiency taxes;

8. The petition states no cause of action as it does not allege the date/s when the tax sought to be refunded was/were actually paid;

9. The best evidence of payment and remittance of taxes withheld are the official receipts;

10. In claiming for refunds, it is incumbent upon Petitioner to prove that it is indeed entitled thereto. It must be able to point positively a provision of law granting such right, otherwise, it would be fatal to the claim for refund;

11. Claims for refund are construed strictly against the claimant, the same being in the nature of exemption from taxes;

12. It is incumbent upon Petitioner to show compliance with the provision of Section 230 of the Tax Code;

13. Consequently, all told, Petitioner is not entitled to the claim herein sought to be refunded.

The only issue which this Court is being confronted is whether or not Petitioner is entitled to its claim of excess or unutilized creditable taxes withheld at source.

Pertinent is Section 69 of the National Internal Revenue Code, as amended, which provides, thus:

Sec. 69. ***Final adjustment return.*** - Every corporation liable to tax under Section 24 shall file a final adjustment return covering the total net 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 excess tax still due; or
>
> (b) Be refunded the excess amount paid, as the case may be.
>
> 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.

In accordance with the above provision, 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 noted that Petitioner, having incurred a net operating loss in the calendar year 1993, carried over to the succeeding taxable year of 1994 the prior years excess credit in the total amount of ₱31,622,648.00 which included the sum of ₱6,278,482.00, representing unutilized creditable tax withheld for 1993.

It was error on the part of the Petitioner to carry over all its prior years' excess credit to 1994. Under Section 69 of the NIRC, Petitioner is only allowed to carry over its 1993 excess payment in the amount of ₱6,278,482.00 and not the whole amount of ₱31,622,648.00. Petitioner also erred in thinking that the difference between its tax liability and its tax due for 1994

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represents its excess payment for the same year. For taxable year 1994, Petitioner should have applied first the 1993 creditable tax withheld in the amount of ₱6,278,482.00 to the income tax liability in the sum of ₱7,719,744.00 before applying the 1994 creditable tax withheld. As We have ruled in the case of **Prodigy Distributors, Inc. (currently HAVI Food Services Philippines, Inc.) vs. Commissioner of Internal Revenue, CTA Case No. 5344, dated June 1, 1998,** which is in all fours with the present case:

> Evidently, the Petitioner may validly claim for a refund of unutilized creditable withholding tax for the year 1993 but contrary to the amount of its claim, it is only entitled to the amount of ₱224,137.93 computed as follows:
>
> xxx xxx xxx
>
> Petitioner erroneously thought that the mere difference between its tax liability for 1993 amounting to ₱94,919.00 and its creditable tax withheld for 1993 amounting to ₱751,182.93 represented its unutilized creditable withholding tax for the same year. It completely ignored the fact that in 1993, Petitioner had prior year's (1992) creditable tax withheld which it credited against its tax liability for the year 1993 as reflected in its Annual Corporate Income Tax Return (Exh. "A").
>
> For taxable year 1994, Petitioner inadvertently made the mistake of carrying over its total excess creditable tax for 1993 amounting to ₱964,653.97 which actually consists of Petitioner's excess creditable tax for the years 1992 and 1993. Petitioner is reminded that under Section 69 of the National Internal Revenue Code, excess creditable tax may be credited against the taxpayer's tax

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liability for the succeeding taxable year only xxx.[1]

Petitioner also committed an error in indicating in the 1995 amended income tax return as prior year's credit the excess payments prior to 1993. We would like to stress that under the provisions of Section 69 of the NIRC, the carrying over of an excess income tax payment of a given year is only allowed to be applied automatically to the succeeding taxable year.

However, inasmuch as records of the case show that the withholding taxes for the year 1993 was not utilized in the calendar year 1994 and that in the latter year, Petitioner filed a separate claim for refund in the amount of P2,556,063.00 docketed before this Court as **C.T.A. Case No. 5484,** We will exercise some leniency towards the Petitioner.

But Petitioner is obliged to first comply with certain requirements. Section 10(a) of BIR Revenue Regulations No. 12-94, amending Section 10 of Revenue Regulations No. 6-85, mandates that:

> **Section 10.** ***Claim for Tax Credit or Refund.*** -
>
> (a) Claims for Tax Credit or Refund of income tax deducted and withheld as income payments shall be given due course only when it is shown on the return that the income payment received has been declared as part of the gross income and the fact of withholding is established by a copy of the Withholding Tax

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[1]With Entry of Judgment, dated August 29, 1998.

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Statement duly issued by the payor to the payee showing the amount paid and the amount of tax withheld therefrom.

Corollarily, Section 230 of the Tax Code, as amended, 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 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.

Further, Section 70(b) of the Tax Code, also requires:

> **SEC. 70.** (a) x x x
>
> (b) *Time of filing the income tax return.* - The corporate quarterly declaration shall be filed within sixty (60) days following the close of each of the first three quarters of the taxable year. The final adjustment return shall be filed on or before the 15th day of April or on or before the 15th day of the 4th month following the close of the fiscal year, as the case may be.

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Verily, compliance with the following requisites must be shown, namely:

> 1. that it filed a claim for refund within the two (2) year period as prescribed under Section 299 (now 230) of the NIRC, as amended;
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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 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 (see **Citytrust Finance Corporation vs. The Commissioner of Internal Revenue, CTA Case No. 4134, November 11, 1991; Citytrust Finance Corporation [formerly Investor's Finance Corporation/FNCB Finance] vs. Commissioner of Internal Revenue, CTA Case No. 4046, February 24, 1993; FEB Investments, Inc. vs. The Commissioner of Internal Revenue, CTA Case No. 5353, August 22, 1997; Benguet Corporation vs. Commissioner of Internal Revenue, CTA Case No. 5323, August 25, 1997**).

As the records will disclose, Petitioner filed its claim for refund with the BIR on April 5, 1995 and the instant Petition for Review on April 11, 1996, well within the reglementary period. The two-year prescriptive period commenced to run on April 15, 1994, the time required by law for the Petitioner to file its income tax return for the calendar year 1993. (see **ACCRA Investments Corp. vs. Court of Appeals, G.R. No. 96322, December 20, 1991; Commissioner of Internal Revenue vs. TMX Sales, Inc., G.R. No. 837736, January 15, 1992;**

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Commissioner of Internal Revenue vs. Philippine American Life Insurance Co., G.R. No. 105208, May 29, 1995).

Moreover, Petitioner reported as part of its gross income for the year 1993 the amount of ₱129,277,335.00 as rental income from which the amount of ₱6,278,482.00 was withheld. Petitioner also submitted as part of its evidence, certificates of creditable income taxes withheld at source (Exhs. D-1 to D-22).

Respondent, for his part, presented Mr. Felix Figuerroa, Jr., the BIR examiner who conducted the investigation on Petitioner's claim for refund. His authority to undertake the investigation emanated from a referral letter only (Exh. 1, BIR rec., p. 196).

On August 21, 1997, Mr. Figuerroa completed his verification of Petitioner's claim and submitted to the Court his memorandum report (Exh. 2, BIR rec., p. 250). As a result of his findings, Petitioner was found to be liable in the sum of ₱4,093,938.11 representing tax deficiency on expanded withholding tax on rental expense, and as such, a denial of the claim for refund was recommended.

Regrettably, this Court has no way of knowing if the said memorandum report was ever approved by the Commissioner. In fact, it is relevant to quote part of the proceedings of August 21, 1997, *viz*:

JUDGE DE VEYRA

Mr. Figuerroa, what is the status of your recommendation for the denial of the claim for refund which is the subject of this present petition. What happened to that memorandum report which you prepared? One of which is the denial of the claim for refund of the Petitioner which is the subject of the present case?

A. Your Honors, that is why...

JUDGE DE VEYRA

Just answer my question. What is the status. If you know, what happened to that report of yours?

A. I have to recommend it to the...

JUDGE DE VEYRA

You have not yet submitted your recommendation?

A. Yes, Your Honor.

JUDGE DE VEYRA

So, that memorandum is still with you. You have not yet submitted it to anybody?

A. Yes, Your Honor.

The implication of those questions would naturally be: Was there an assessment notice issued as a consequence of the findings of the revenue examiner? What actions, if any, did Petitioner undertake as a result thereof?

On one hand, it seems that there is nothing wrong with the report after all the investigation/verification was conducted by virtue of the claim for refund.

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However, on the other hand, the subject petition is for the refund of unutilized creditable taxes withheld, which the law, rules, regulations and jurisprudence spell the basic requirements therefor.

After a careful consideration of the facts, issue, arguments, laws, jurisprudence applicable, this Court is of the opinion that the issue relating to assessment will be tackled if and when the corresponding assessment case will be brought before this Court. The last paragraph of the memorandum report stated, in this wise:

> In view of the foregoing the undersigned is denying the claim for refund that is being made by the taxpayer. <u>However, should the latter were (sic) able to produce another document which will disprove the assessment then this findings will not hold true</u>. However, if in case they were not able to disprove this then this case should be consolidated to those whom the Letter of Authority has been issued, with the permission of this Honorable Court. (Emphasis supplied).

Therefore, it is apparent that should Petitioner disprove the assessment by producing other documents. the findings will not be the same.

This is a refund case and the Petitioner presented all the documents necessary to prove the same. The Court is not in the position to decide as to whether or not the assessment was proper as it is not at issue in the present case. As aptly observed by the Petitioner, the computation of the alleged expanded withholding tax

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deficiency is immaterial as it intends to prove a fact which is not an issue in the instant case. The assessment case should be pursued in an appropriate suit in accordance with the procedures provided by law.

In sum and by way of recapitulation, this Court has ruled in numerous cases that the only facts that need to be proven in a claim for refund of excess or unutilized creditable income tax are the following:

1. That Petitioner filed a claim for refund within the two-year period prescribed by law;

2. That the income upon which the taxes were withheld were included in the return of the Petitioner; and

3. That the fact of withholding is established by a copy of the statement duly issued by the payor to the payee (BIR Form 1743.1) showing the amount paid and the amount of tax withheld therefrom.

WHEREFORE, in view of all the foregoing, this Court finds that the Petitioner is partly entitled to the claim for refund. Petitioner failed to submit the certificate of creditable income taxes withheld at source (Form 1743.1) from Meycauayan Store involving the amount of ₱48,476.12. Although it asserted that said certificate was received only after the income tax return was filed, Petitioner failed to submit the same as part of its evidence during the trial of this case.

ACCORDINGLY, the claim for refund of the Petitioner is partially granted. Respondent, Commissioner of Internal Revenue is hereby **ORDERED** to **REFUND** or **ISSUE a TAX CREDIT CERTIFICATE** in favor of the Petitioner in the total amount of Six Million Two Hundred Thirty Thousand Five Pesos and Thirty Eight Centavos (P6,230,005.38) representing excess or unutilized creditable withholding taxes for the year 1993.

SO ORDERED.

RAMON O. DE VEYRA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

AMANCIO Q. SAGA
Associate 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

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