REPUBLIC OF THE PHILIPPINES
Court Of Tax Appeals
QUEZON CITY

SECOND DIVISION

CHEMFIELDS, INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 6691

Members:

CASTAÑEDA, JR., Chairman
UY, and
PALANCA-ENRIQUEZ, JJ.

Promulgated:

JUL 17 2006

x --- x

DECISION

PALANCA-ENRIQUEZ, J.:

Time and again, we are faced with another case for a tax refund which has always been misunderstood by taxpayers. Sad to note, the case at bench is but one of the many suits illustrative of this predicament. Harsh as it is, but tax refunds are in the nature of tax exemptions, hence, it should be construed *strictissimi juris* against the taxpayer.

Pursuant to *Section 76 of the National Internal Revenue Code (hereafter "NIRC") of 1997, as amended*, a taxable corporation with excess quarterly income tax payments as shown on its final adjustment return may apply for either a tax refund which may be issued in the form of cash or tax credit certificate; or a tax credit which shall be carried over the next year or quarter. 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 tax credit certificate shall be allowed therefor.

THE CASE

Before Us is a Petition for Review filed by Chemfields, Inc., (hereafter "petitioner") seeking for the refund of the excess or overpaid income tax amounting to P4,452,728.00 representing the excess creditable withholding taxes for the taxable years 1998 to 2001.

THE FACTS

In their "Joint Stipulation of Facts and Simplification of Issues", the parties agreed on the following facts:

> "1. Petitioner is a domestic corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with principal office at 2nd Floor, Rudgen II Bldg., 17 Shaw Blvd., Pasig City, Philippines;
>
> 2. Respondent 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 a tax

alu

(160)

credit or refund of any national internal revenue tax erroneously or illegally assessed or collected, or of any penalty claimed to have been excessively or in any manner wrongfully collected, and holding office at the 4th Floor, BIR National Office Building, Agham Road, Diliman, Quezon City, Metro Manila;

3. On April 15, 2002, Petitioner filed with the Bureau of Internal Revenue its Annual Corporation Income Tax Return for the Calendar Year ended December 31, 2001, which reflects the total excess or refundable income tax in the Total amount of Php4,452,728.00, as follows:

Gross Income	P4,487,308.00
Less Deductions	83,840,306.00

Taxable Income/ (Loss)	(P79,352,998.00)
Tax Rate	32%

Tax Due	NIL
Less: Tax Credits/Payments	P4,452,728.00

Tax Payable/ (Overpayment)	(P4,452,728.00)
	==============

4. On March 27, 2003 and May 8, 2003, Petitioner filed with the Bureau of Internal Revenue its Annual Income Tax Return and Amended Annual Income Tax Return for the Calendar Year ended December 31, 2002, which reflects the total loss of Php48,706,887.00 as follows:

Gross Income	(P131,605.00)
Less Deductions	48,575,282.00

Taxable Income/(Loss)	(P48,706,887.00)
Tax Rate	32%
	----------------------

ael

161

Tax Due	NIL

5. On September 11, 2002, Petitioner filed with the Bureau of Internal Revenue an application for refund of excess or overpaid income tax in the total amount of P4,452,728.00.

6. That the Petitioner is a duly registered taxpayer with the Bureau of Internal Revenue; and

7. No final action has been taken by the Respondent on Petitioner's claim for refund of unutilized creditable withholding tax."

The administrative claim for refund not having acted upon, the petitioner elevated its claim to this Court via the present Petition for Review.

The Commissioner of Internal Revenue (hereafter "respondent"), in his Answer, alleged by way of Special and Affirmative defenses:

"7. A perusal of the Annual Income Tax Return for the year ended December 31, 2001 shows that the amount of Php4,452,728.00 sought to be refunded, is composed of the following:

Prior Year's Excess Credits	P3,566,197.00
Creditable Tax Withheld for the First Three Quarter	577,314.00
Creditable Tax Withheld for the Fourth Quarter	413,020.00
Total	P4,566,531.00
Less: Aggregate Income Tax Due	103,802.00
Tax Payable/(Overpayment)	(P4,452,728.00)

au

162

Therefore, the bulk of the alleged excess payment sought to be refunded in the amount pf P3,566,197.00, was probably paid or carried over from the taxable year 2000 or previous years. Thus, the same is already beyond the two-year prescriptive period set by the Tax Code within which to resort to the power of adjudication of this Honorable Court; while the balance of the amount sought to be refunded is subject to verification, and examination, therefore, inconclusive.

8. The claim for refund is still under examination by the respondent's Bureau;

9. The burden of proof is upon the petitioner to prove that it is entitled to the claim for refund;

10. The grant of the claim for refund tantamount to an exemption from taxation which is construed strictly against the claimant and in favor of the taxing authority;

11. The taxes sought to be refunded were paid in accordance with law; the burden of proof to the contrary is upon the petitioner-claimant to show with clear and unambiguous provision of law supporting the same."

Petitioner presented Ms. Ma. Wencita C. Salvador and Mr. Gerardo A. Remo, as witnesses, and submitted documentary evidence, marked as *Exhibits "A" to "KK-1"*, including their submarkings.

On the other hand, respondent submitted the case for decision, without presenting any evidence. *au*

163

Thereafter, both parties were ordered to file their respective memoranda within thirty (30) days from notice. Only the Petitioner complied thereto, thus the case was deemed submitted for decision.

THE ISSUES

As stipulated upon by the parties, the following are the issues for this Court's consideration:

I

WHETHER OR NOT THE UNUTILIZED CREDITABLE WITHHOLDING TAX BEING CLAIMED BY PETITIONER IS DULY SUBSTANTIATED BY CERTIFICATES OF TAX WITHHELD.

II

WHETHER OR NOT THE INCOME UPON WHICH THE TAXES WERE WITHHELD WERE DULY DECLARED AND REPORTED BY THE PETITIONER WITH THE BUREAU OF INTERNAL REVENUE.

III

WHETHER OR NOT THE SAID UNUTILIZED CREDITABLE WITHHOLDING TAX WAS NOT APPLIED AGAINST PETITIONER'S TAX LIABLITIES OR WAS CARRIED FORWARD TO THE SUCCEEDING YEAR OR YEARS.

IV

WHETHER OR NOT THE CLAIM FOR REFUND OF PETITIONER HAS ALREADY PRESCRIBED.

164

V

WHETHER OR NOT THE PETITIONER IS ENTITLED TO BE GRANTED ITS REFUND OF EXCESS OR UNUTILIZED CREDITABLE WITHHOLDING TAX IN THE AMOUNT OF P4,452,728.00.

The foregoing issues boil down to the principal issue of whether or not petitioner is entitled to a refund of its creditable withholding taxes for taxable years 1998 to 2001 amounting to P4,452,728.00.

THE COURT'S RULING

The Petition is without merit.

On the principal issue, petitioner claims that the unutilized creditable withholding taxes as of the taxable year 2001 amounting to P4,452,728.00 was no longer carried over to the succeeding year. However, upon a careful scrutiny of the evidence at hand, it should be noted that from the year 1998 up to 2001 petitioner obstinately filled out the portion "Prior Year's Excess Credits" in its Final Adjustment Return which means it categorically availed itself of the carry-over option. Undeniably, petitioner opted to carry-over the alleged excess withholding tax and automatically applied the same amount against the estimated tax liabilities for the taxable quarter or quarters of the succeeding taxable years.

165

In this regard, *Section 76 of the NIRC of 1997, as amended*, provides:

> ***"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 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 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."

The above provision offers two options to a taxable corporation whose total quarterly income tax payment in a given taxable year exceeds its total income tax due. These options are (1) filing for a tax refund; or (2) availing of a tax credit *(San Carlos Milling Co., Inc. v. Commissioner of Internal Revenue, 228 SCRA 135, 142)*.

166

The first option works simply by applying for a cash refund from the Bureau of Internal Revenue for any tax on income that is paid in excess of the amount due the government. The second option, on the other hand, works by applying the refundable amount as shown on the Final Adjustment Return of the given taxable year, against the estimated quarterly income tax liabilities of the succeeding taxable year.

The two options under *Section 76* are alternative in nature (*Paseo Realty & Development Corp. v. Court of Appeals, 440 SCRA 235, 250-251*). The choice of one precludes the other. Again, once the choice is made it shall be considered irrevocable for that taxable period, and no application for a tax refund or issuance of a tax credit certificate shall then be allowed regardless of whether or not the excess tax credit is actually utilized.

Petitioner in this case is precluded from claiming a refund as it had already chosen, and in fact, had exercised the option of carry-over. Petitioner's only recourse is to apply the 2001 unutilized tax credit to the succeeding taxable years until the same is fully utilized. The attempt on the part of petitioner to withdraw the application of the excess creditable withholding tax to its 2002 Annual Income Tax Return by filing an Amended Annual Income Tax Return is futile. Such amended return cannot be used to circumvent the law. Otherwise, there will be no sense

167

in filing a Final Adjustment Return. The original return filed on March 27, 2003 *(Exhibit "Q")* by petitioner for the year 2002 clearly manifests its intention to carry-over the excess credits to its tax liability for that taxable year, thus rendering their written claim for refund dated September 11, 2002 nugatory.

Furthermore, it cannot be said that it was just plain oversight or simple negligence since the amended return was filed only on May 8, 2003 *(Exhibit "R")*, barely a day before petitioner filed the present Petition for Review before this Court, giving more doubt on its intention to revise the said return.

It should again be emphasized that claim for refund is in the nature of tax exemption. Statutes granting tax exemption are construed *strictissimi juris* against the taxpayer and liberally in favor of the taxing authority. Taxation is the rule and exemption is the exception. The law does not look with favor on tax exemptions and he who thus seeks to be privileged must justify it by words too plain to be mistaken and too categorical to be misinterpreted (*SeaLand Services, Inc. vs. Court of Appeals, 359 SCRA 441).*

Having definitively disposed of the case through the resolution of the principal issue, We find no more need to pass upon the other incidental issues raised in the Petition.

WHEREFORE, premises considered, the present Petition for Review is hereby **DENIED DUE COURSE**, and, accordingly, **DISMISSED** for lack of merit.

SO ORDERED.

OLGA PALANCA-ENRIQUEZ
Associate Justice

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision were reached in consultation before the cases were assigned to the writer of the opinion of the Court's Division.

JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairman, Second Division

C E R T I F I C A T I O N

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairman's Attestation, it is hereby certified that the conclusions in the above Decision were reached in consultation before the cases were assigned to the writer of the opinion of the Court's Division.

ERNESTO D. ACOSTA
Presiding Justice

(170)