REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

WALDEN AB AYALA MANAGEMENT CO., INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE No. 7750

Members:

Acosta, *Chairperson.*
Bautista, *and*
Casanova, *JJ.*

Promulgated:

AUG 03 2009, 3:40pm

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DECISION

ACOSTA, *PJ:*

Before Us is a Petition for Review seeking for a refund in the amount of THREE MILLION TWO HUNDRED THOUSAND TWO HUNDRED FORTY SIX PESOS (P3,200,246.00), allegedly representing excess and unutilized creditable withholding tax for taxable year 2005.

THE FACTS

As stipulated by the parties in the Joint Stipulation of Facts and Issues and as borne by the records of this case, the following are the undisputed facts:

Petitioner is a domestic corporation organized and existing under the laws of the Philippines with principal office at Unit 1416 Tower One & Exchange Plaza, Ayala Triangle, Ayala Avenue, Makati City.[1]

Respondent is the duly appointed Commissioner of Internal Revenue with office address at BIR Building, Diliman, Quezon City, where he may be served summons and other legal processes.[2]

On 11 April 2006, petitioner filed its Annual Income Tax Return for the taxable year ending 2005 reflecting a taxable income of nil, computed as follows:[3]

Sales Revenues/Receipts	5,367,936
Less: Cost of Sales	3,438,209
Gross Income from Operations	1,929,727
Add: Non-Operating & Other Income	30,688
Total Gross Income	1,960,415
Less: Deductions	1,960,415
Taxable Income	-
Income Tax Due	Nil
Less: Tax Credits/Payments	
Prior Year's Excess Credits	2,663,452
Tax Payment for the First Three Quarters	-
Creditable Tax Withheld for the First Three Quarters	449,255
Creditable Tax WithheldPer BIR Form 2307 for the Fourth Quarter	87,539
Total Tax Credits/Payments	3,200,246
Tax Payable/(Overpayment)	(3,200,246)

On 3 October 2006, within two years from filing of its 2005 Annual Income Return on April 11, 2006, Petitioner filed a claim for refund with the Bureau of Internal Revenue, Revenue District Office No. 50.[4]

As of the date of filing of this petition, respondent has not granted petitioner's claim for refund.[5]

On April 4, 2008, petitioner filed the instant Petition for Review[6] praying that judgment be rendered declaring petitioner to be entitled to a tax refund for its excess and unused creditable withholding taxes in the amount of THREE

[1] Par. 1, Joint Stipulation of Facts and Issues (JSFI), Rollo, p. 80.
[2] Par. 2, *Ibid*, p. 80.
[3] Par 3, *Id*, p 81.
[4] Par. 4, *Id*, p. 81.
[5] Par. 5, *Id*, p. 81.
[6] Rollo, p. 1-56.

MILLION TWO HUNDRED THOUSAND TWO HUNDRED FORTY SIX PESOS (P3, 200,246.00) for the year 2005; and, ordering the Commissioner to issue a tax refund to petitioner in the same amount.

On April 22, 2008, respondent filed its Answer[7] raising the following special and affirmative defenses:[8]

> 4. Granting *arguendo* that Petitioner filed a claim for refund, the same is subject to investigation by the Bureau of Internal Revenue.
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> 5. Petitioner failed to demonstrate that the alleged tax sought for refund or tax credit has been erroneously or illegally collected in violation of the tax laws relied upon by the petitioner.
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> 6. Taxes paid and collected are presumed to be made in accordance with the laws and regulations, hence, not creditable or refundable.
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> 7. It is incumbent upon the petitioner to show that it has complied with the provisions of Sections 108 and 112 in relation to Section 229 of the 1997 Tax Code, as amended.
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> 8. In an action for tax credit or refund, the burden is upon the taxpayer to prove that he is entitled thereto, and failure to discharge the said burden is fatal to the claim (Emmanuel & Zenaida Aguilar v. Commissioner, CA-GR No. Sp. 16432, March 30, 1990 cited in Aban, Law of Basic Taxation in the Philippines, 1st Edition, p.206).
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> 9. Claims for refund are construed strictly against the claimant, the same partake the nature of exemption from taxation (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 May 6, 2008 and May 12, 2008, the respondent and petitioner submitted their respective Pre-trial briefs.

On May 21, 2008, the Joint Stipulation of Facts and Issues (JSFI)[9] were filed by the parties. A corresponding Resolution[10] dated March 23, 2008 approved said JSFI and thereafter terminated the pre-trial.

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[7] Rollo, p. 59-62.
[8] Answer, Rollo, p. 60-61.
[9] Rollo, p. 80-82.
[10] Rollo, p. 79.

During trial, the petitioner presented its testimonial and documentary evidence in support of its positions. On the other hand, respondent waived its right to present evidence on the hearing of February 17, 2009. In a Resolution[11] dated February 23, 2009, the parties were granted thirty (30) days to file their respective Memoranda.

On March 17, 2009, respondent filed a Motion for Extension of Time to File Respondent's Memorandum, to which the Court granted in an Order[12] dated March 24, 2009.

On April 24, 2009, the case was submitted for decision after petitioner and respondent submitted their Memoranda[13] on March 18, 2009 and April 20, 2009, respectively.

THE ISSUES

By agreement of the parties, the issues[14] to be tried and resolved in this case are the following:

I

Whether or not petitioner is entitled to a tax refund in the amount of THREE MILLION TWO HUNDRED THOUSAND TWO HUNDRED FORTY SIX PESOS (P3,200,246.00), representing excess and unutilized creditable withholding tax as of 31 December 2005.

II

Whether or not petitioner's excess and unused creditable withholding taxes have been unutilized against its income tax liability in the succeeding quarter.

III

Whether or not petitioner had timely filed its administrative and judicial claims for refund of excess and unused creditable withholding tax.

THE DECISION OF THE COURT

Since the issues are intertwined, We deem it practical to discuss them simultaneously. The issues ultimately boil down to whether the petitioner is

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[11] Rollo, p. 427.
[12] Rollo, p. 448.
[13] Rollo, p. 429-445 and 450-455.
[14] The Issues, Joint Stipulation of Facts and Issues (JSFI), Rollo, p. 81-82.

entitled to the refund of its alleged excess and unused creditable withholding tax in the amount of THREE MILLION TWO HUNDRED THOUSAND TWO HUNDRED FORTY SIX PESOS (P3,200,246.00) for taxable year 2005.

At the outset, the Supreme Court has already laid down in the case of *Citibank N.A. vs. Court of Appeals and Commissioner of Internal Revenue*[15] the basic requirements in order to validly avail the refund of excess creditable withholding taxes, viz:

> 1. The claim for refund must be filed within the two-year prescriptive period provided under Section 204 (C) in relation to Section 229 of the NIRC of 1997, as amended;
>
> 2. The fact of withholding is established by a copy of a statement issued by the payor (withholding agent) to the payee, showing the amount paid and the amount of tax withheld therefrom; and
>
> 3. The income upon which the taxes were withheld were included in the return of the recipient.[16]

In addition to these requirements, the taxpayer must not have opted to carry-over and credit the excess income tax to the taxable quarters of the succeeding taxable years if it wishes for said excess income tax to be refunded, as provided in Section 76 of the 1997 National Internal Revenue Code (NIRC), to wit:

> **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 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.
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> 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

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[15] GR No. 107434, October 10, 1997.
[16] Now incorporated in Section 2.58.3 (B) of Revenue Regulations No. 2-98.

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> 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)

Applying the foregoing, We shall now determine whether or not petitioner complied with the requirements set forth.

The Option to Refund

Under Section 76 of the 1997 NIRC, a corporation entitled to a tax credit or refund of the excess estimated quarterly income taxes paid has two options: (1) to carry over the excess credit, or (2) to apply for a refund of the same. However, said provision also states that once the option to carry-over has been made, such option becomes irrevocable for that taxable period and no application for cash refund or issuance of a tax credit certificate shall be allowed therefore.

A careful scrutiny of petitioner's 2005 Annual Income Tax Return[17] filed on April 11, 2006 show that petitioner reflected an income overpayment of P3,200,246.00[18] which it marked as "To be refunded"[19]. The overpayment of P3,200,246.00 consisted of the unutilized prior years' excess credits in the amount of P2,663,452.00[20] and creditable taxes withheld during the year 2005 in the amount of P536,794.00[21], as shown below:

Income Tax Due	P -
Less: Prior Years' Excess Credits (2001-2004)	2,663,452.00
Unutilized Prior Years' Excess Credits (2001-2004)	P 2,663,452.00
Add: Creditable Taxes Withheld During the Year	536,794.00
Excess Tax Credits	P 3,200,246.00

[17] Exhibit "JJ".
[18] Exhibit "JJ-3".
[19] Exhibit "JJ-4".
[20] Exhibit "JJ", line 24A.
[21] Exhibit "JJ", line 27C & 27D.

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While it appears that petitioner was unable to utilize the prior years' (2001-2004) excess tax credits in the year 2005, the refund of the same must be denied outright pursuant to Section 76 of the 1997 NIRC, as quoted earlier. Since petitioner has exercised its option to carry over with regard the prior years' excess credits of P2,663,452.00, the same is irrevocable and petitioner cannot claim a refund therefrom. Petitioner's only recourse is to carry-over the unutilized credits of P2,663,452.00 to the succeeding taxable years until the same is fully utilized.[22]

However, owing to the peculiar circumstance in this case, i.e. petitioner's cessation of its term existence on January 12, 2006, pursuant to Article 4 of its Articles of Incorporation[23], petitioner contends that there is no more opportunity for it to utilize such excess credits.

Notably, when the corporate life of the corporation, as stated in its articles of incorporation, is allowed to expire, without extension, then the corporation is deemed dissolved by such expiration without need of further action on the part of the corporation or the State.[24]

Nonetheless, pertinent to quote the provisions of Section 52 (C) and 235 of the 1997 NIRC which discuss the requirements set forth by law for a dissolving company, to wit:

> **Section 52.** *Corporation Returns.* –
>
> XXX XXX XXX
>
> (C) *Return of Corporation Contemplating Dissolution or Reorganization.* - Every corporation shall, within thirty (30) days after the adoption by the corporation of a resolution or plan for its dissolution, or for the liquidation of the whole or any part of its capital stock, including a corporation which has been notified of possible involuntary dissolution by the Securities and Exchange Commission, or for its reorganization, render a correct return to the Commissioner, verified under oath, setting forth the terms of such resolution or plan and such other information as the Secretary of Finance, upon recommendation of the commissioner, shall, by rules and regulations, prescribe.

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[22] *Subic Bay Distribution, Inc. vs Commissioner of Internal Revenue*, CTA Case No. 6640, November 3, 2004.
[23] Exhibit "A-3".
[24] Section 11, Corporation Code. Philippine *National Bank vs. Court of First Instance of Rizal, Pasig*, 209 SCRA 294 (1992).

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> **The dissolving or reorganizing corporation shall**, prior to the issuance by the Securities and Exchange Commission of the Certificate of Dissolution or Reorganization, as may be defined by rules and regulations prescribed by the Secretary of Finance, upon recommendation of the Commissioner, **secure a certificate of tax clearance from the Bureau of Internal Revenue which certificate shall be submitted to the Securities and Exchange Commission.**
>
> **Section 235.** *Preservation of Books and Accounts and Other Accounting Records. –*
>
> xxx xxx xxx
>
> (e) In the exercise of the Commissioner's power under Section 5(B) to obtain information from other persons in which case, another or separate examination and inspection may be made. Examination and inspection of books of accounts and other accounting records shall be done in the taxpayer's office or place of business or in the office of the Bureau of Internal Revenue. All corporations, partnerships or persons that retire from business shall, within ten (10) days from the date of retirement or within such period of time as may be allowed by the Commissioner in special cases, submit their books of accounts, including the subsidiary books and other accounting records to the Commissioner or any of his deputies for examination, after which they shall be returned. **Corporations and partnerships contemplating dissolution must notify the Commissioner and shall not be dissolved until cleared of any tax liability.** (Emphasis Ours)

In other words, a corporation seeking dissolution must first notify the respondent of its intention and settle all its tax liabilities in order to secure a tax clearance. The rationale behind these Sections is to ensure that no corporation may escape payment of taxes and other liabilities to the government simply by opting to dissolve the corporation and retire from business or reorganize its business.[25]

In this case, petitioner's Amended Articles of Incorporation[26] dated January 13, 2005 indicates the term for which petitioner is to exist which is up to January 12, 2006 only, per its amendment in the Regular Meeting of the Board of Directors and Special Stockholders' Meeting held on October 28, 2004, hence, proving that there is no other remedy available for petitioner to

[25] SMI-ED Philippines Landholdings, Inc. vs. Commissioner of Internal Revenue, CTA Case No 6649, April 4,2006; Lotus Software (Philippines), Inc. vs. Commissioner of Internal Revenue, CTA Case No. 6673, May 18, 2005.
[26] Exhibit "A".

seek a refund of its overpaid income tax as of December 31, 2005 in the amount of P3,200,246.00.

Inasmuch as petitioner was cleared of any tax liability as evidenced by the Letter of Request for Tax Clearance[27] filed by the petitioner with the BIR Regional District Office (RDO) No. 50 on October 3, 2006 and the Certificate of No Outstanding Liability[28] issued by the same RDO on October 16, 2008, the subject claim of P3,200,245.00 is qualified as refundable.

Two Year Prescriptive Period

The requirement of filing the claim for refund within the two-year prescriptive period is set forth by Section 204 (C) in relation to Section 229 of the 1997 NIRC, as amended, to wit:

> **"Sec. 204. Authority of the Commissioner to compromise, abate and refund/credit taxes. — The Commissioner may —**
>
> (C) Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. **No credit or refund or taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for tax credit or refund within 2 years after the payment of the tax or penalty**: Provided, however, That a return filed showing an overpayment shall be considered as a written claim for refund."
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> XXX XXX XXX
>
> **"Sec. 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 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 filed after the expiration of two (2) years from the date of**

[27] Exhibit "NN".
[28] Exhibit "SS".

> **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 therefore, 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." (Emphasis provided)

Accordingly, it is already well-settled that the reckoning point of the two-year prescriptive period for the filing of a claim for refund of excess income tax paid/withheld commences from the date of filing of the annual income tax return[29] because it is only from this time that the refund is ascertained.[30]

In the present case, as stated earlier, the instant claim of P3,200,246.00 covers unutilized prior years' excess credits carried over from 2001 to 2004 in the amount of P2,663,452.00 and creditable taxes withheld for the year 2005 in the amount of P536,794.00. Reckoned from the dates when petitioner filed its annual income tax returns for taxable years 2001, 2002, 2003, 2004 and 2005, particularly on April 12, 2002, April 11, 2003 , April 14, 2004, April 15, 2005 and April 11, 2006[31], respectively, petitioner has until April 12, 2004, as the earliest, within which to file its claim for refund in both administrative and judicial levels. A table summarizing the corresponding dates of prescription for each of the date of filing of the annual income tax returns is provided herein:

<table>
<tr><th></th><th>Year</th><th>Date of Payment of the Tax</th><th>End of two (2) year period</th><th>Date of Filing Administrative Claim</th><th>Date of Filing Judicial Claim</th><th>Excess Tax Credits</th></tr>
<tr><td rowspan="4">Unutilized Prior Year's Excess Credits</td><td>2001</td><td>04/12/02</td><td>04/12/04</td><td rowspan="5">10/03/06[32]</td><td rowspan="5">04/04/08</td><td rowspan="4">P 2,663,452.00</td></tr>
<tr><td>2002</td><td>04/11/03</td><td>04/11/05</td></tr>
<tr><td>2003</td><td>04/14/04</td><td>04/14/06</td></tr>
<tr><td>2004</td><td>04/15/05</td><td>04/16/07[33]</td></tr>
<tr><td>Add: Creditable Taxes Withheld During the Year</td><td>2005</td><td>04/11/06</td><td>04/11/08</td><td>536,794.00</td></tr>
</table>

Based on the table above, the petitioner's administrative and judicial claims for refund of excess creditable tax for the year 2005 fall within the two-year prescriptive period. The administrative and judicial claims, however, for

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[29] ACCRA Investment Corporation vs. Court of Appeals, 204 SCRA 957.
[30] Commissioner of Internal Revenue vs. The American Life Insurance Co., 244 SCRA 446.
[31] Exhibit "JJ-1".
[32] Exhibit "MM-1"
[33] April 15,2007 fell on a Sunday.

the prior years' credits, particularly years 2001 to 2003, have all prescribed. As to the prior years' credits for the year 2004, the administrative claim may have been within the two-year prescriptive period but the judicial claim was filed out of time. In summary, therefore, only the excess creditable taxes withheld for the year 2005 in the amount of P536,794.00 shall be allowed to be refunded and the unutilized prior years' excess credits in the amount of P2,663,452.00 are denied outright for having prescribed.

Proof of Withholding and Inclusion of Income in the Return

Arriving at the second and third requirements enumerated in the *Citibank N.A*[34] case, the fact of withholding was proven by petitioner's submission of the Certification of the Revenue Accounting Division (RAD) of the BIR[35], Monthly Remittance Return of Creditable Income Taxes Withheld (Expanded)[36] and Certificates of Creditable Tax Withheld at Source[37] [BIR Form 2307] showing that the creditable taxes in the amount of P536,793.58 were withheld from income payments it received for the year 2005 from its sole client, Walden AB Ayala Ventures Co., Inc. (WAAVCI). Provided herewith is the breakdown of the P536,793.58 creditable taxes withheld:

				Total Per Certificate		Total Per Year	
Exhibit	**Payor**	**Period Covered**		**Income Payments**	**Tax Withheld**	**Income Payments**	**Tax Withheld**
FF	WAAVCI	04/30/05	06/30/05	P 2,995,030.00	P 299,503.00		
GG	WAAVCI	07/31/05	09/30/05	1,497,515.00	149,751.50		
HH	WAAVCI	10/31/05	12/31/05	875,390.77	87,539.08	P 5,367,935.77	P 536,793.58
Total				**P 5,367,935.77**	**P 536,793.58**	**P 5,367,935.77**	**P 536,793.58**

Likewise, verification of the evidence presented by petitioner shows that that the income payment of P5,367,935.77 upon which the subject creditable taxes were withheld was the very same figure declared by

[34] *supra.*
[35] Exhibit "II".
[36] Exhibits "PP", "D to R".
[37] Exhibits "S" to "HH".

petitioner in its income tax return/audited statements for the taxable year 2005.[38]

In sum, petitioner has complied with the three (3) aforementioned substantiation requirements as provided in the *Citibank N.A* case but only to the extent of P536,793.58 out of the total claim amounting to P3,200,246.00.

Lastly, to be entitled to the full refundable amount of P536,793.58, it must be shown by petitioner that the creditable taxes withheld were indeed unutilized. Accordingly, petitioner proved that the subject claim remained unutilized even in the succeeding first quarter of 2006, the period covering the last day of its corporate existence, by presenting its income tax for the said quarter[39] which reflected a net loss of P991,184.89[40] resulting to no income tax due.[41] Clearly, petitioner was unable to utilize or apply its excess and unutilized creditable withholding tax as of December 31, 2005 against any income tax liability in the succeeding first quarter of 2006.

WHEREFORE, the Petition for Review is hereby **PARTIALLY GRANTED.** Accordingly, respondent is hereby **ORDERED** to refund to petitioner the reduced amount of FIVE HUNDRED THIRTY SIX THOUSAND SEVEN HUNDRED NINETY THREE PESOS AND 38/100 CENTAVOS (P536,793.38).

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Justice

WE CONCUR:

LOVELL R. BAUTISTA
Associate Justice

CAESAR A. CASANOVA
Associate Justice

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[38] Exhibit "JJ", P5,367,936.00 and Exhibit "KK".
[39] Exhibit "LL".
[40] Exhibit "LL", line 23B.
[41] Exhibit "LL", line 28.

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