REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

ASIAWORLD PROPERTIES PHILIPPINE CORPORATION,
Petitioner,

- versus -

C.T.A. CASE NO. 6439

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:

SEP 1 1 2003

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DECISION

This is a judicial action for the refund of the amount of P18,477,144.00 allegedly representing unutilized creditable withholding taxes at source as of December 31, 2001.

Petitioner is a domestic corporation existing under and by virtue of Philippine laws with principal office at Asiaworld City, Aguinaldo Boulevard, Parañaque, Metro Manila (*par. 1, Facts Admitted*). It is engaged in the business of real estate development.

For the calendar year ended December 31, 2001, petitioner filed its Annual Income Tax Return on April 5, 2002, declaring a minimum corporate income tax (MCIT) due in the amount of P1,222,066.00 but with a refundable income tax payment in the sum of P6,473,959.00, computed as follows: *(Exhibit A, inclusive of submarkings)*.

Income:	
Realized Gross Profit	P49,234,453.00
Add: Other income	11,868,847.00
Gross Income	P61,103,300.00
Less: Deductions	58,148,630.00
Taxable Income	P 2,954,670.00
Tax Due (MCIT)	P 1,222,066.00
Less: Tax Credit/Payments	

a. Prior Year's Excess Credit	P7,468,061.00	
b. Quarterly Payments	-	
c. Creditable Tax Withheld for the First Three Quarters	160,000.00	
d. Creditable Tax Withheld for the Fourth Quarter	67,964.00	7,696,025.00
Total Amount Overpayment		P 6,473,959.00

In its 2001 return, petitioner indicated in its Prior Year's Excess Credits (*Exhibit A-3*) of P7,468,061.00 that the said amount is net of year 1999 Excess creditable withholding tax to be refunded in the amount of P18,477,144.00. Petitioner, however, opted to carry-over as tax credit next year/quarter the amount of P6,473,959.00.

Believing that it is entitled to refund of its unapplied creditable withholding taxes, petitioner, on April 9, 2002, filed with Revenue District Office No. 52, BIR Revenue Region No. 8, a letter claim for refund in the amount of P18,477,144.00 allegedly representing partial excess creditable tax withheld for the year 2001 *(paragraph 4, Joint Stipulation of Facts, page 80, CTA records; Annex "B", Petition for Review)*.

Without waiting for an action from the respondent, petitioner, on April 12, 2002, filed the instant petition for review in order to toll the running of the two-year prescriptive period in accordance with Section 229 of the Tax Code.

In his Answer filed on May 22, 2002, respondent raised the following Special and Affirmative Defenses:

> 4. Petitioner's alleged claim for refund/tax credit is subject to administrative routinary examination/investigation by the respondent's Bureau;
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> 5. Petitioner failed miserably to show that the total amount of Php18,477,144.00, allegedly representing excess/unutilized creditable withholding tax for taxable year 2001 was erroneously or illegally collected, or that the same was properly documented;
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> 6. Taxes paid and collected are presumed to have been paid in accordance with law; hence, not refundable;

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7. In an action for tax refund/credit, the taxpayer has the burden to establish its right to refund, and failure to sustain the burden is fatal to the claim for refund;

8. It is incumbent upon petitioner to show that it has complied with the provisions of Section 204(c) in relation to Section 229 of the Tax Code; and

9. Well-established is the rule that refunds/tax credits are construed strictly against the taxpayer as they partake the nature of exemption from tax.

The jointly stipulated issues to be resolved by this court are as follows:

1. Whether or not the petitioner has unutilized/excess creditable withholding tax in the amount of P18,477,144.00 for the year 2001;

2. Whether or not the income from which the taxes were withheld were included as part of the gross income in the petitioner's income tax return; and

3. Whether or not petitioner's claim for refund of the unutilized/excess creditable withholding tax is substantiated by documentary evidence.

Petitioner claims that it is entitled to the refund sought because it was able to comply with the three basic requirements laid down by this court in the cases of ***Citytrust Finance Corporation vs. Commissioner of Internal Revenue, CTA Case Nos. 4134 and 4046, dated November 11, 1991 and February 24, 1993, respectively***. According to petitioner the present claim for refund was filed within the two-year prescriptive period pursuant to Section 229 of the Tax Code in relation to Section 204 of the same code as admitted by the respondent in their Joint Stipulation of Facts; the income upon which the taxes were withheld were included in the return of the recipient; and the fact of withholding was duly established.

To bolster its judicial claim for refund, petitioner presented the following documentary exhibits:

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a. The Annual Income Tax Returns of petitioner for the calendar years ended December 31, 1988, 1990, 1991, 1994, 1995, 1996, 1997, 1998, 1999, 2000, 2001 and 2002 *(Exhibits A to K, GGG and HHH, inclusive of submarkings);*

b. Various Withholding Tax Remittance Returns for the years 1998, 1999 and 2000 *(Exhibits L to T, V to MM, inclusive of submarkings);*

c. Certificates of Creditable Tax Withheld at Source covering the calendar years 1998 and 2001 *(Exhibits U, NN, and OO, inclusive of submarkings);*

d. Summaries of creditable withholding taxes as of December 31, 2001 *(Exhibits PP and AAA, inclusive of submarkings)*;

e. Schedules of sales for the years 1988, 1990, 1991, 1994, 1995, 1996, 1997, 1998, 1999, and 2000 *(Exhibits QQ to ZZ, inclusive of submarkings);*

f. Certification of actual withholding tax remittances issued by Ms. Carmelita S.J. Pascual, Chief of the Revenue Accounting Division of the Bureau of Internal Revenue *(Exhibits BBB, BBB-1, and BBB-1A);*

g. Schedules of other income for calendar years 1998 and 2001 *(Exhibits CCC and DDD, inclusive of submarkings)* and realized gross profit on installment sales for calendar years 1988, 1990, 1991, 1994 to 2000 *(Exhibits EEE and EEE-1);* and

h. The report of the commissioned independent CPA discussing the audit procedures performed and the findings regarding petitioner's claim for refund *(Exhibit FFF, inclusive of submarkings).*

After a careful evaluation of the evidence and arguments raised in the case along with the applicable laws and jurisprudence, we find against the petitioner.

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While we agree with the findings of the commissioned independent CPA that petitioner has unapplied creditable withholding taxes at source as of the December 31, 2001, still the excess income tax payment cannot be refunded.

Upon scrutiny of the records of the case, this court noted that the amount sought to be refunded of P18,477,144.00 actually represents petitioner's excess creditable withholding taxes *for the year 1999* which petitioner opted to apply as tax credit to the succeeding taxable year as evidenced by its 1999 income tax return (*Exhibit K*). Under Section 76 of the Tax Code, petitioner is precluded to claim the refund or credit of the excess income tax payment once it has chosen 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.

For easy reference Section 76 of the Tax Code is hereby quoted as follows:

> 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 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**. (Underlining supplied).

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Based on the aforequoted law, when after the filing of the Annual Income Tax Return for a particular taxable year, there appears to be an excess income tax payment in the form of withheld taxes vis-à-vis income taxes actually paid, the corporate taxpayer has the option to either (1) carry-over the excess credit to the succeeding taxable years; or (2) ask for tax credit or refund of the excess income taxes paid. In such a case, however, the taxpayer may only avail of one of these two remedies, as they are alternative, not cumulative remedies.

In the case of ***Philippine Bank of Communications vs. Commissioner of Internal Revenue, 302 SCRA 241***, the Supreme Court had the occasion to discuss the remedies afforded to a corporate taxpayer in case of excess income tax payment, thus:

> "Sec. 69 of the 1977 NIRC (now Sec. 76 of the 1997 NIRC) provides that any excess of the total quarterly payments over the actual income tax computed in the adjustment or final corporate income tax return, shall either (a) be refunded to the corporation, or (b) may be credited against the estimated quarterly income tax liabilities for the quarters of the succeeding taxable year.
>
> The corporation must signify in its annual corporate adjustment return (by marking the option box provided in the BIR form) its intention, whether to request for a refund or claim for an automatic tax credit for the succeeding taxable year. **To ease the administration of tax collection, these remedies are in the alternative, and the choice of one precludes the other** (*Emphasis supplied*)."

The ruling in the above case is applicable to the case at bar. Petitioner's choice of automatic carry-over of the alleged tax credit precludes it from claiming for a cash refund or tax credit of the said excess income tax payment. Even under Section 69 of the 1977 NIRC, the option to claim for cash refund or tax credit was recognized as an alternative remedy, the availment of one precludes the other. The exercise of the option to avail of these alternative remedies was further made **stricter** under the Tax Reform Act of 1997 wherein it was declared that once the option to claim for cash refund or tax credit carry-

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over is exercised, the choice becomes irrevocable for that taxable period ***(Commissioner of Internal Revenue vs. Honda Philippines, Inc. CA-G.R. SP No. 68141, October 25, 2002)***.

We have already ruled in a number of cases that once the option to carry-over has been made, the same becomes irrevocable for that taxable period and the taxpayer can no longer claim for a cash refund or issuance of a tax credit certificate of any overpaid income tax payment for the said year ***(Pilipinas Transport Industries, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 6073, March 1, 2002; Pilipinas Hino, Inc. vs. Commissioner Internal Revenue, CTA Case No. 6074, April 19, 2002; Philam Asset Management, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 6210, May 2, 2002; Roxas Land Corp. vs. Commissioner of Internal Revenue, CTA Case No. 6063, August 29, 2002; Sithe Philippines Holdings, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 6274, dated April 4, 2003; Banco Filipino Savings & Mortgage Bank vs. Commissioner of Internal Revenue, CTA Case No. 6374, dated April 3, 2003; Philippine Airlines, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 6134, dated May 16, 2003)***.

Therefore, petitioner is precluded to claim for the refund of the subject 1999 excess creditable taxes withheld because it has chosen the option to carry over and apply the same as tax credit to the succeeding taxable years. However, as an alternative, petitioner can utilize the excess income tax payment for the year 1999 as an automatic tax credit to be applied against petitioner's succeeding years income tax liabilities. In fact, petitioner should have applied the same against its income tax liabilities for the years 2000 and 2001 until fully utilized ***(Prodigy Distributors, Inc. (Currently HAVI Food***

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Services Philippines, Inc.) vs. Commissioner of Internal Revenue, CTA Case No. 5344, Resolution dated August 6, 1998).

Well-settled is the rule that tax refunds are in the nature of tax exemptions, and as such they are regarded as in derogation of sovereign authority and to be construed in *strictissimi juris* against the person or entity claiming it (***Commissioner of Internal Revenue vs. S.C. Johnson and Son, Inc., 309 SCRA 87; Commissioner of Internal Revenue vs. Tokyo Shipping Co., Ltd., 244 SCRA 332; and Commissioner of Customs vs. Court of Tax Appeals, 328 SCRA 822***).

In view of the foregoing, the court finds it unnecessary to dwell on the main issues posed.

WHEREFORE, the petition for review is hereby ***DENIED*** for lack of merit.

SO ORDERED.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

LOVELL R. BAUTISTA
Associate Judge

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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

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