**REPUBLIC OF THE PHILIPPINES**
**COURT OF TAX APPEALS**
**QUEZON CITY**

**LG COLLINS ELECTRONICS MANILA INCORPORATED,**
Petitioner,

- versus -

C.T.A. CASE NO. 6069

**COMMISSIONER OF INTERNAL REVENUE,**
Respondent.

**Promulgated:**
JUN 16 2003

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# DECISION

This Petition for Review involves a claim for refund or issuance of tax credit certificate in the amount of P28,249,864.95 allegedly representing unutilized creditable taxes withheld for the taxable years 1997 and 1998.

Based on the records of the case, the antecedent facts are as follows:

Petitioner is a corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines with principal office at No. 15 Francisco Legaspi Street, Barrio Maybunga, Pasig City *(par. 1, Joint Stipulation of Facts and Issues)*.

On April 15, 1998, petitioner filed with the Bureau of Internal Revenue (BIR) its Annual Corporate Income Tax Return for taxable year 1997 *(Exhibit A)* showing the following information:

| | |
|---|---|
| Gross income | P 328,489,638.00 |
| Less: Deductions | 363,236,161.00 |
| Net Loss | P (34,746,523.00) |

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| | | |
|---|---|---|
| Tax Due | | NIL |
| Less: Tax Credits/Payments | | |
| Prior year's excess credit | P 10,694,743.00 | |
| **Creditable tax withheld this year** | **28,612,922.00** | 39,307,665.00 |
| Total Amount Payable/(Refundable) | | P (39,307,665.00) |

Petitioner failed to indicate in the return whether to refund or apply as credit to next year its 1997 excess income tax payment.

In 1998, petitioner LG Collins Electronics Manila, Inc. merged with LG Collins Electronics Phils., Inc., with the former as the surviving corporation. The merger was approved by the Securities and Exchange Commission on March 30, 1998 as evidenced by the Certificate of Filing of the Articles of Merger *(Exhibit U)*. As a consequence, the entire assets and liabilities of the latter was transferred and absorbed by petitioner.

On April 15, 1999, petitioner filed its Tentative Annual Corporate Income Tax Return for taxable year 1998 *(Exhibit B)*, reflecting a refundable amount of P18,075,660.00 as of December 31, 1998, detailed as follows:

| | | |
|---|---|---|
| Gross income | | P 265,070,242.00 |
| Less: Deductions | | 585,056,312.00 |
| Net Loss | | P (319,986,070.00) |
| Minimum Corporate Income Tax Due | | P 4,330,447.00 |
| Less: Tax Credits/Payments | | |
| Prior year's excess credit | - | |
| Creditable tax withheld this year | P 21,768,177.00 | |
| Tax Paid in Return Previously Filed (*Exh. V*) | 637,930.00 | 22,406,107.00 |
| Total Amount Payable/(Refundable) | | P (18,075,660.00) |

Petitioner indicated two options for its 1998 excess tax credits, placing an "x" mark on the boxes which indicate "To be refunded" and "To be carried as tax credit next year".

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On May 28, 1999, petitioner filed its amended Annual Corporate Income Tax Return for taxable year 1998, showing a net loss of P319,986,070.00 *(Exhibit C)*. It also declared the prior year's excess tax credits (1997) in the aggregate amount of P39,307,665.00 which it failed to reflect in its original 1998 Income Tax Return, to wit:

| | | |
|---|---|---|
| Gross income | | P 265,070,242.00 |
| Less: Deductions | | 585,056,312.00 |
| Net Loss | | P (319,986,070.00) |
| | | |
| Minimum Corporate Income Tax Due | | P 4,330,447.00 |
| Less: Tax Credits/Payments | | |
| Prior year's excess credit | P 39,307,665.00 | |
| Creditable tax withheld this year | 21,768,177.00 | |
| Tax Paid in Return Previously Filed | 637,930.00 | 61,713,772.00 |
| Total Amount Payable/(Refundable) | | P (57,383,325.00) |

The amended return also showed that petitioner opted to refund its excess tax credits by marking the appropriate box.

On April 14, 2000, petitioner, through its external auditor, Sycip Gorres Velayo and Company (SGV), filed with the Bureau of Internal Revenue an administrative claim for refund and/or tax credit of the amount of P28,249,864.95 representing its unutilized excess creditable income taxes withheld for taxable years 1997 and 1998 (*par. 7, Joint Stipulation of Facts and Issues*).

On the same date, petitioner filed the instant Petition for Review in order to toll the running of the two-year prescriptive period for filing a claim for refund in the amount of P28,249,864.95, broken down as follows:

| | |
|---|---|
| 1997 Creditable Taxes Withheld | P 10,174,204.95 |
| Less: 1998 Minimum Corporate Income Tax | 4,330,447.00 |
| 1997 Excess Creditable Taxes Withheld | P 5,843,757.95 |
| Add: 1998 Excess Creditable Taxes Withheld | 22,406,107.00 |
| Total Amount Refundable | P 28,249,864.95 |

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On April 06, 2001, while the petition was still pending with this court, petitioner again amended its 1998 Annual Income Tax Return (*Exhibit Z*) by declaring a reduced 1997 excess tax credit in the amount of P10,169,152.87, leaving a total refundable amount of P28,244,812.87 as of December 31, 1998, computed as follows:

| | | |
|---|---|---|
| Gross income | | P 265,070,242.00 |
| Less: Deductions | | 585,056,312.00 |
| Net Loss | | P (319,986,070.00) |
| | | |
| Minimum Corporate Income Tax Due | | P 4,330,447.00 |
| Less: Tax Credits/Payments | | |
| Prior year's excess credit | P 10,169,152.87 | |
| Creditable tax withheld this year | 21,768,177.00 | |
| Tax Paid in Return Previously Filed | 637,930.00 | 32,575,259.87 |
| Total Amount Payable/(Refundable) | | P (28,244,812.87) |

Petitioner again chose the options to be refunded and to be carried over as tax credit to next year/quarter.

On March 28, 2001, petitioner amended its 1997 Annual Income Tax Return *(Exhibit Y)* to conform with the details of 1997 excess tax credit. Thus:

| | | |
|---|---|---|
| Gross income | | P 328,489,638.00 |
| Less: Deductions | | 363,236,161.00 |
| Net Loss | | P (34,746,523.00) |
| | | |
| Tax Due | | NIL |
| Less: Tax Credits/Payments | | |
| Prior year's excess credit | P 10,694,743.00 | |
| **Creditable tax withheld this year** | **10,169,152.87** | 20,863,895.87 |
| Total Amount Payable/(Refundable) | | P (20,863,895.87) |

In the said return, petitioner chose the option "To be carried over as tax credit next year/quarter".

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The parties jointly stipulated on the following issues:

1. Whether the fact of withholding of petitioner's creditable taxes for the taxable years 1997 and 1998 in the aggregate amount of P28,249,864.95 is established and supported by a copy of the withholding tax statement duly issued by the withholding agent/payor of the income.

2. Whether the income payment upon which the creditable taxes were withheld were declared as part of petitioner's gross income for the taxable years 1997 and 1998.

3. Whether petitioner is entitled to the refund or the issuance of a tax credit certificate in the amount of P28,249,864.95 representing unutilized creditable income taxes withheld for the taxable years 1997 and 1998.

Petitioner anchored its claim for refund for the taxable year 1997 on Section 69 of the 1995 Tax Code and for the taxable year 1998 on Section 76 of the 1997 Tax Code. To support its claim for refund, petitioner presented the following documents:

| *DOCUMENTS* | *EXHIBITS* |
|---|---|
| 1) 1997 Tentative Annual Income Tax Return | A |
| 2) 1997 Amended Annual Income Tax Return | Y |
| 3) 1998 Tentative Annual Income Tax Return | B |
| 4) 1998 Amended Annual Income Tax Return | C |
| 5) 1998 Amended Annual Income Tax Return | Z |
| 6) 1998 Annual Income Tax Return of LG Collins Electronics Phils., Inc. | V |
| 7) 1999 Tentative Annual Income Tax Return | D |
| 8) 1999 Amended Annual Income Tax Return | AA |
| 9) 1997 Certificates of Creditable Tax Withheld at Source | E, F, G, I to R |
| 10) 1996 Certificate of Creditable Taxes Withheld at Source | H |
| 11) Schedule of Creditable Taxes Withheld for taxable year 1997 | S |
| 12) Schedule of Creditable Taxes Withheld for taxable year 1998 | T, T-1 & T-2 |
| 13) 1998 Certificates of Creditable Tax Withheld at Source | T-3 to T-8; T-10 to T-16; T-18 to T-42 |

| | |
|---|---|
| 14) 1997 Certificates of Creditable Tax Withheld at Source | T-9; T-17 |
| 15) Certificate of Filing of The Articles of Merger | U |
| 16) Schedule of Creditable Taxes Withheld of LG Collins Electronics Phils., Inc. for the first Quarter of 1998 | W |
| 17) 1998 Certificates of Creditable Taxes Withheld at Source of LG Collins Electronics Phils., Inc. | W-1 to W-16 |
| 18) 2000 Annual Income Tax Return | X |

Respondent, on his part, submitted his case for decision sans his evidence.

We shall discuss first the claim for refund for the taxable year 1998. Section 76 of the 1997 Tax Code provides, thus:

> "**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.
>
> 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. <u>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."</u> (emphasis supplied).

From the above provision, it is clear that once the option to carry-over has been made, it is already irrevocable. After a scrutiny of the relevant documents, the court

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found that petitioner is already barred in claiming for the refund of its 1998 unutilized creditable taxes withheld. While in its original 1998 Annual Income Tax Return petitioner marked the options "To be carried as tax credit next year" and "To be refunded," it is, however, shown in its 1999 Annual Income Tax Return *(Exhibit D)* that it exercised the option to carry over the prior year's excess tax credits. Thus, the return reflected the following details:

| | | |
|---|---|---|
| Gross Income | P | 263,741,277.00 |
| Less: Deductions | | 371,424,310.00 |
| Net Loss | P | (107,683,033.00) |
| | | |
| Minimum Corporate Income Tax Due | P | 5,274,826.00 |
| Less: Tax Credits/Payments | | |
| Prior Year's Excess Credits | P | 38,603,325.00 |
| Creditable Taxes Withheld | | 2,739,723.00 |
| Total Tax Credits/Payments | P | 41,343,048.00 |
| Total Amount Payable/(Overpayment) | P | (36,068,222.00) |

In a litany of cases, we have ruled that once the option to carry over the excess tax credits to the succeeding years has been made, such option is considered irrevocable and therefore a subsequent claim for refund must fail. *(Bank of the Philippine Islands vs. Commissioner of Internal Revenue, CTA Case No. 6276, March 12, 2003; United International Pictures AB vs. Commissioner of Internal Revenue, CTA Case No. 6240, September 12, 2002; Cebu Holdings, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 6062, September 10, 2002; Pilipinas Hino, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 6074, April 19, 2002 and Pilipinas Transport Industries, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 6073, March 1, 2002).*

Let us now proceed to petitioner's claim for refund or issuance of tax credit certificate for the taxable year 1997.

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After a careful examination of the evidence adduced solely by petitioner, we rule in its favor.

Petitioner's 1997 original Annual Income Tax Return showed that petitioner failed to indicate its option either to refund or to credit its unutilized prior year's excess credit. In the succeeding taxable year, no amount was indicated in the return as Prior Year's Excess Credits.

However, petitioner amended its 1997 and 1998 Annual Income Tax Returns *(Exhibits Y and Z, respectively)*, which show that it carried over its 1997 prior year's excess credit of P10,169,152.87. Even so, we still find petitioner entitled to a refund because the 1998 return shows that it has a total of P32,575,259.87 tax credits as against corporate minimum tax of P4,330,447.00. More so, Section 69 of the 1995 Tax Code does not provide for the irrevocability of option to carry over. For easy reference, we quote:

> "**Section 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 net 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."

Clearly, petitioner may legally claim for the refund of its 1997 unutilized tax credits. However, it must comply with the following basic requirements provided under

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Revenue Regulations No. 12-94 (*amending Revenue Regulations No. 6-85*), as affirmed by jurisprudence:

1. That the claim for refund is filed within the two-year reglementary period provided under Section 204(C) in relation to Section 230 of the Tax Code, as amended;

2. That the income upon which the taxes were withheld were included as part of the gross income declared in the income tax return of the recipient; and

3. That the fact of withholding is established by a copy of the statement duly issued by the payor to the payee showing the amount paid and the amount of tax withheld therefrom ***(Citytrust Finance Corporation vs. The Commissioner of Internal Revenue, CTA Case No. 4134, November 11, 1991, affirmed by the Court of Appeals in Citytrust Finance Corporation vs. Court of Tax Appeals and the Commissioner of Internal Revenue, C.A. G.R.. SP No. 28239, March 14, 1994; Citytrust Finance Corporation (formerly Investors Finance Corporation/FNCB Finance) vs. Commissioner of Internal Revenue, CTA Case No. 4046, February 24, 1993, affirmed by the Court of Appeals in Commissioner of Internal Revenue vs. Citytrust Finance Corporation (formerly Investors Finance Corp./FNCB Finance) and the Court of Tax Appeals, CA G.R. SP No. 31104, April 18, 1994; Ayala Life Assurance, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 5631, dated May 11, 2000; Stock Transfer Service, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 5796, dated May 3, 2000; Union Bank of the Philippines vs. Commissioner of Internal Revenue, CTA Case No. 5623, dated April 12, 2000; Citibank, N.A. vs. Court of Appeals and Commissioner of Internal Revenue, 280 SCRA 459; ACCRA Investments Corporation vs. Court of Appeals, 204 SCRA 957).***

As regards the first requirement, petitioner filed both its administrative and judicial claims for refund with the Bureau of Internal Revenue and with this court on April 14, 2000. Reckoned from April 15, 1998, the date of filing of the 1997 final adjustment return, both the administrative and judicial claims for refund were filed well within the two-year prescriptive period.

Petitioner also complied with the second requirement. As declared in the Schedule of Creditable Taxes Withheld for the taxable year 1997 (*Exhibit S*), petitioner

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has a total income of P1,017,416,350.00, which was reported as part of the gross sales for taxable year 1997 as shown in its 1997 amended Annual Corporate Income Tax Return (*Exhibit Y*). This was also testified to by petitioner's witness, Ms. Rose Jimena, Accounting Senior Supervisor, as follows:

Q So, based on this Schedule of Creditable Taxes for 1997 marked as Exhibit S, how much is the total amount of income payment covered by the Certificates of Creditable Taxes Withheld for 1997?

A. As per Summary which I prepared, this is almost P1,017,416,350.00.

Q And as per the Amended 1997 Annual Income Tax Return of the petitioner company marked as Exhibit Y, how much is the Gross Sales for the year of the petitioner company?

A From our Corporate Income Tax Return, it shows that there is P1,177,926,877.00

Q Ms. Witness, is the amount of the total income payment as indicated in the Schedule of Creditable Taxes Withheld or Exhibit S amounting to P1,017,416,350.00 included in the Gross Sales of the Petitioner company for 1997 amounting to P1,177,926,877.00?

A Yes, sir.

(*TSN, July 23, 2001, pp. 15-16*)

On the third requirement, petitioner was able to substantiate its 1997 creditable taxes withheld in the total amount of P10,169,152.87 by presenting various Certificates of Creditable Taxes Withheld at Source (*Exhibits E to P*).

Lastly, as reflected in petitioner's 1999 amended Annual Income Tax Return (*Exhibit AA*), the 1997 unutilized tax credits claimed by petitioner in the amount of P10,169,152.87 was no longer carried over to the succeeding year.

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**WHEREFORE**, petitioner's claim for refund or issuance of tax credit certificate of its excess creditable taxes withheld for the taxable year 1998 is hereby **DENIED** for lack of merit, while petitioner's claim for refund or issuance of a tax credit certificate for the taxable year 1997 is hereby granted in the amount of P5,838,705.87, computed as follows:

| | |
|---|---|
| **1997 Creditable Taxes Withheld** | **P 10,169,152.87** |
| Less: 1998 Minimum Corporate Income Tax Due | 4,330,447.00 |
| **Amount Refundable** | **P 5,838,705.87** |

**SO ORDERED.**

**LOVELL R. BAUTISTA**
Associate Judge

**WE CONCUR:**

**ERNESTO D. ACOSTA**
Associate Judge

**JUANITO C. CASTAÑEDA, JR.**
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**
Associate Judge

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