REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

AYALA LIFE ASSURANCE, INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 4596

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
JAN 06 1995

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DECISION

This is a judicial action for the issuance of a tax credit certificate in the sum of P204,254.86, representing overpaid creditable withholding taxes for year ended December 31, 1988.

Petitioner Ayala Life Assurance, Inc. (formerly Filipinas Life Assurance Co.) is a domestic corporation duly organized and existing under the laws of the Philippines.

On April 14, 1989, petitioner filed its 1988 annual income tax return reflecting a net loss from operation in the amount of P17,420,014.76, a nil income tax liability and a creditable withholding tax payments in the amount of P204,254.86 arising from rentals and other income (Exh. "A").

Petitioner cannot apply said tax payments in 1988 or in 1989, as an automatic tax credit, because in both years, the business operation is unfruitful.

On April 3, 1991, petitioner requested the respondent Commissioner of Internal Revenue for the issuance of a tax credit memo in the amount of P204,254.86 so that it can credit the tax payments against current internal revenue tax liabilities (Exh. "F").

On April 11, 1991, petitioner filed the instant petition as a way of tolling the running of the prescriptive period under Sec. 230 of the National Internal Revenue Code, as amended.

Upon these facts, respondent raised as special and affirmative defenses that petitioner's claim for refund is still under investigation. The provisions on tax refund and credit are construed strictly against the taxpayer as they are in the nature of tax exemption. The taxpayer has the burden to show that the taxes paid were erroneously or illegally paid and failure to sustain said burden is fatal to the action for refund or credit. It is incumbent upon the petitioner to show that the claim for tax credit has been filed on time. The judicial action taken by petitioner is already barred by prescription.

The issues to be decided by this Court are:

1. whether or not petitioner's claim for refund has prescribed; and

2. whether or not petitioner was able to substantiate with sufficient evidence its claim for refund.

Respondent contended that the instant case is filed out of time. The judicial action having been filed beyond the two-year prescriptive period allowed under Sec. 230 (formerly 292) of the National Internal Revenue Code, as amended, which reads:

> **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, <u>no such suit or proceeding shall be begun after the expiration of two years from the date of payment of the tax</u> or penalty regardless of any supervening cause that may arise after payment: **Provided, however,** that the Commissioner may, even without a written claim therefor, refund or credit any tax, where on face of the return upon which payment was made, such payment appears clearly to have been erroneously paid. (Underlining supplied)

She stressed that the last day for filing judicial action ends on December 31, 1990, counting from December 31, 1988, as point of reference in computing the two-year period citing the case of **Pacific Procon Limited v. Commissioner of Internal Revenue** (G.R. No. 68013, November 12, 1984) in support of her allegation. Thus, the instant petition having been filed on April 11, 1991, has prescribed.

However, the Pacific Procon ruling was reversed in a recent case of the Supreme Court entitled, **Commissioner of Internal Revenue v. TMX Sales, Inc., et al., G.R. No. 83736, January 15, 1992,** where the High Court held:

> xxx xxx xxx
>
> A re-examination of the aforesaid minute resolution of the Court in the Pacific Procon case is warranted under the circumstances to lay down a categorical pronouncement on the question as to when the two-year prescriptive period in cases of quarterly corporate income tax commences to run. A full-blown decision in this regard is rendered more imperative in the light of the reversal by the Court of Tax Appeals in the instant case of its previous ruling in the Pacific Procon case.
>
> xxx xxx xxx
>
> (C)onsequently, the two-year prescriptive period provided in Section 292 (now 230) of the Tax Code should be computed from the time of filing of the Adjustment Return or Annual Income Tax Return and final payment of the income tax.

Applying the above ruling in the instant case, the two-year prescriptive period is counted from the filing of the Adjustment Return on April 14, 1989. Therefore, petitioner is not yet barred by prescription when the petition was filed on April 11, 1991.

As to the second issue, petitioner, in claiming for the excess creditable withholding tax payments, must show compliance with the following requisites:

> 1. that it filed a claim for refund within the two (2) year period as prescribed under Section 299 (now 230) of the National Internal Revenue Code;
>
> 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. (**Sec. 10, Rev. Reg. 6-85; see Citytrust Finance Corporation vs. The Commissioner of Internal Revenue**, CTA Case No. 4134, November 11, 1991; and **Citytrust Finance Corporation (Formerly Investor's Finance Corporation/FNCB Finance) vs. Commissioner of Internal Revenue**, CTA Case No. 4046, February 24, 1993.)

Based on the previous discussion, petitioner was able to comply with the first requirement when it filed within two years the claim for refund. The second was complied with by petitioner when it declared the rental income of P5,091,416.82 and other income of P560,010.31 in its 1988 income tax return (Schedules 2 and 4, Exh.

"A"). However, some evidence, which will establish the fact of withholding, were denied by the Court in its resolution dated May 21, 1993. These are Exhs. "H-6" and "H-7". Hence, cannot be considered in granting for the refund. Likewise, Exhs. "H-2", "H-3", "H-5", "H-12", "H-13", "H-14", "H-15", and "H-16" which were in the name of First Makati Condominium Corporation and bearing a different tax account number with that of petitioner cannot be considered in the computation. Further, the amount specified in Exh. "I" is disallowed because the taxes withheld as listed therein were not established by an appropriate document required by law (BIR Form 1743.1) and was certified only by petitioner's witness, Mr. Manlincon, thus self-serving.

Well settled is the rule that tax refunds are strictly construed against the taxpayer for they are in the nature of tax exemption.

It is noteworthy to point, at this juncture, that the income tax returns of petitioner for the years 1988 and 1989 were already examined by the respondent and the deficiency taxes found thereat were already settled by petitioner (Exh. "G").

Therefore, the Court finds petitioner entitled to the refund of creditable withholding taxes only as follows:

Withholding Agent	Exh.	Amount of Income Payment	Amount of Tax Withheld
Airoh Media Services, Inc.	H	P 29,050.60	P 1,452.53
Borden International Phils., Inc.	H-1	437,872.20	21,893.61
Crown Philippines	H-4	103,640.00	5,182.00
J.P. Tolentino & Co., CPAs	H-8	52,032.38	2,624.38
Lolita S. Dizon Dental Office	H-9	35,235.40	1,761.76
Management Asso. of the Phils.	H-10	52,032.40	2,601.68
Murray Fishet Group	H-11	116,447.65	5,822.38
TOTAL			P41,338.34

WHEREFORE, finding the petition for review meritorious, respondent is hereby ordered to issue a tax credit certificate in favor of petitioner in the sum of P41,338.34 representing overpaid creditable withholding taxes for the year 1988. No cost.

SO ORDERED.

MANUEL K. GRUBA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

RAMON O. DE VEYRA
Associate Judge

CERTIFICATION

I hereby certify that this decision was reached after due consultation between 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