REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

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PILIPINAS HINO, INCORPORATED,
Petitioner,

C.T.A. CASE NO. 6881

Members:

- versus -

ACOSTA, *Chairperson*
BAUTISTA, and
CASANOVA, *JJ.*

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
NOV 07 2005
[signature] Apolinario

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DECISION

BAUTISTA, L., J.:

This Petition for Review under Section 7 of Republic Act No. 1125 as amended by Republic Act No. 9282, seeks the refund of the amount of Five Hundred Twenty Nine Thousand Three Hundred Sixty Nine Pesos (P529,369.00) allegedly representing unutilized creditable withholding taxes for the calendar year ending December 31, 2001.

Pilipinas Hino Incorporated ("petitioner") is a corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines with office address at Pilipinas Hino Manufacturing Plant, Industrial Park Road, Canlubang Industrial Estate, Canlubang, Calamba City. It exclusively assembles and distributes Hino Buses in the Philippines.

The Commissioner of Internal Revenue ("respondent") is the duly designated authority to collect all taxes under the National Internal Revenue Code, grant refunds, issue and abate assessments, examine books of accounts, among others, with office address at BIR National Office Building, BIR Road, Diliman, Quezon City.

On April 15, 2002, petitioner filed its Annual Income Tax Return (ITR) covering the taxable year 2001.[1] On May 2, July 5 and December 12, 2002, it further amended said Annual ITR.[2] The amended tax return filed on December 12, 2002 reflects a gross income of P92,903,596, a net loss of P1,053,143.00 and Minimum Corporate Income Tax ("MCIT") due of P1,858,071.92. Petitioner applied the MCIT against the total tax credits of P2,387,441.00 resulting to an overpayment of P529,369.00, computed as follows:[3]

Sales	P 541,014,690.00
Cost of Sales	456,029,424.00
Gross Income from Operation	P 84,985,266.00
Add: Other Income	7,918,330.00
Total Gross Income	P 92,903,596.00
Less: Deductions	93,956,739.00
Taxable Income	P (1,053,143.00)
Minimum Corporate Income Tax (MCIT)	P 1,858,071.92
Less: Tax Credits	
Prior Year's Excess Credits	-
Creditable Tax W/held for the First Three Quarter	P 1,512,826.00
Creditable Tax W/held for the Fourth Quarter	874,615.00
Total Tax Credits/ Payments	P 2,387,441.00
Tax Payable/(Overpayment)	P (529,369.08)

Petitioner manifested its option to be issued a tax credit certificate of the excess tax credit in the amount of P529,369.00 by marking the appropriate box in the return.

In a letter addressed to BIR Deputy Commissioner Estelita C. Aguirre, petitioner requested for the issuance of a tax credit certificate of its unutilized income taxes withheld for taxable year 2001 in the amount of P529,369.00.[4]

Respondent's inaction on its claim prompted petitioner to file a Petition for Review before this Court on March 2, 2004 to toll the running of the prescriptive period.

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[1] Exhibit A
[2] Exhibits B, C & D
[3] Exhibit D
[4] Exhibit E

In his Answer filed on May 7, 2004, the respondent raised the following Special and Affirmative and Defenses:

> *"6. Petitioner's alleged claim for refund is subject to administrative routinary investigation/examination by the Bureau;*
> *7. The amount of P529,369.00 being claimed by petitioner as alleged excess creditable withholding taxes as of December 31, 2001 was not properly documented;*
> *8. In action for refund the burden of proof is on the taxpayer to establish its right to refund and failure to sustain the burden is fatal to the claim for refund/credit;*
> *9. Petitioner must show that it has complied with the provisions of Sections 204 (C) and 229 of the Tax Code on the prescriptive period for claiming tax refund/credit;*
> *10. Claims for refund are construed strictly against the claimant for the same partake the nature of exemption from taxation."*[5]

During trial, petitioner presented Ms. Visitacion A. Mejia as its witness and proffered the following documentary evidence:

1. *Income Tax Return for taxable year 2001 with amended returns*
2. *Letter dated December 10, 2003*
3. *Various Certificates of Creditable Tax Withheld for taxable year 2001*
4. *Summary/Breakdown of Creditable Tax Withheld at Source for the year ended December 31, 2001*[6]

After petitioner submitted its memorandum, the case was submitted for decision sans the memorandum of respondent.

The parties jointly stipulate the following issues for the consideration of the Court:

> *"1. Whether or not petitioner is entitled to a refund in the amount of P529,369.00 representing excess or overpaid income tax for the year 2001; and*
>
> *2. Whether or not petitioner's claim for refund is properly substantiated."*[7]

Petitioner invokes its right to the issuance of a tax credit certificate pursuant to the provision of Section 76 of the 1997 National Internal Revenue Code ("NIRC") which reads:

> ***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 fiscal year. If the sum of the quarterly tax payments made during the said taxable***

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[5] Rollo, p. 101
[6] Rollo, pp. 133-261
[7] Rollo, p. 118

> ***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 the excess amount paid, as the case may be.***
>
> ***In the 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 tax credit certificate shall be allowed therefor.***

Thus, the law allows the taxpayer three (3) options if the sum of its quarterly tax payments made during the taxable year is not equal to the total tax due for that year: (a) pay the balance of the tax still due; (b) carry-over the excess credit; or (c) be credited or refunded the amount paid. If the taxpayer has paid excess quarterly income taxes, it may be entitled to a tax credit or refund as shown in its final adjustment return which may be carried over and applied against the estimated quarterly income tax liabilities for the taxable quarters of the succeeding taxable years.

In the present case, petitioner claims that it has excess or unutilized creditable withholding taxes amounting to P529,369.00 for taxable year 2001. Therefore, the onus in proving entitlement to excess tax credits in the sum of P529,369.00 rests on petitioner. It must first prove compliance with the following requisites:

> ***1. The claim for refund was filed within two (2) years as prescribed by Section 229 of the 1997 NIRC;***
> ***2. The fact of withholding is established by a copy of statement duly issued by the payor to the payee showing the amount paid and the amount of tax withheld therefrom;***
> ***3. That the income upon which the taxes were withheld were included in the return of the recipient.***[8]

Petitioner satisfied all the above requirements.

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[8] Citibank, N.A. vs. Court of Appeals, 280 SCRA 459; Revenue Regulation No. 2-98, as amended

The two-year period requirement for the filing administrative and judicial actions for refund is in consonance with the provisions of Sections 204 (C) and 229 of the 1997 NIRC which decree:

> ***SEC. 204. Authority of the Commissioner to Compromise, Abate, and Refund or Credit Taxes. – The Commissioner may –***
>
> ***x x x xxx xxx***
>
> ***(C) Credit or refund taxes erroneously or illegally received or penalties imposed without authority, xxx No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two (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 credit or refund.***
>
> ***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 of 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 for 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 proceeding shall be filed after the expiration of two (2) years from the date of the payment of the tax or penalty regardless of any supervening cause that may arise after payment. x x x***

Petitioner's administrative claim for refund and the Petition for Review filed with respondent and this Court on December 10, 2003 and March 2, 2004, respectively, were well within the two-year prescriptive period counted from April 15, 2002, the filing of the 2001 Annual ITR. The two-year prescriptive period for the filing of a claim for refund or issuance of a tax credit certificate is reckoned from the date of filing of the final adjustment return.[9] The rationale being that it is only at this period when it can be finally ascertained if the taxpayer has still to pay additional income tax or it is entitled to a refund of overpaid income tax.[10]

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[9] ACCRA Investments Corporation vs. Court of Appeals, 204 SCRA 957
[10] Commissioner of Internal Revenue vs. The American Life Insurance co., 244 SCRA 446

The fact of withholding was established by petitioner's presentation of Certificates of Creditable Tax Withheld at Source issued by various withholding agents for the year 2001. Thus, proving that the amount of P2,387,441.31 has been withheld, detailed as follows:

Withholding		I N C O M E	P A Y M E N T S			Tax
Agent	Exh.	Supplier of Goods	Payment to Contractors	Rental of Real Property	Payment to Professionals	Withheld
Abbott Laboratories	F	P 601,598.00	-	-	-	P 30,079.90
Abbott Laboratories	G	17,311.00	-	-	-	173.11
Abbott Laboratories	H	412,532.80	-	-	-	20,626.64
Abbott Laboratories	I	2,727.00	-	-	-	27.27
Asia Brewery	J	-	P 695,454.55	-	-	6,954.55
Asia Brewery	K	573,637.34	-	-	-	5,736.40
Asia Brewery	L	441,899.81	-	-	-	4,419.01
Asia Brewery	M	244,206.14	-	-	-	2,442.06
Asia Brewery	N	262,983.24	-	-	-	2,629.84
Cabanatuan City	O	209,486.00	-	-	-	2,094.86
Cabanatuan City	P	3,488.00	-	-	-	34.88
Cabanatuan City	Q	181,542.00	-	-	-	1,815.42
Cabanatuan City	R	127,533.00	-	-	-	1,275.33
Cabanatuan City	S	578,015.00	-	-	-	5,780.15
Cabanatuan City	T	681,918.00	-	-	-	6,819.18
Loc. Govt – Ozamis	U	6,050,000.00	-	-	-	60,500.00
Coca-Cola Bottlers	V	73,955.00	-	-	-	739.55
Coca-Cola Bottlers	W	43,894.00	-	-	-	438.94
Coca-Cola Bottlers	X	100,804.00	-	-	-	1,008.04
Dart Philippines	Y	-	110,270.00	-	-	1,102.70
Dart Philippines	Z	-	86,615.00	-	-	866.15
Dart Philippines	AA	-	103,540.00	-	-	1,035.40
Dart Philippines	BB	-	67,263.00	-	-	672.63
Dept. of Agriculture	CC	4,950,000.00	-	-	-	49,500.00
LBP Leasing Corp	DD	1,000,000.00	-	-	-	10,000.00
Mirant Pagbilao	EE	-	3,923.00	-	-	39.23
Mun. Govt of Balayan	FF	8,211.00	-	-	-	223.94
Pangasinan Five Star	GG	16,215.00	-	-	-	162.15
Pangasinan Five Star	HH	5,700,000.00	-	-	-	57,000.00
Pangasinan Five Star	II	26,885.00	-	-	-	268.85
Philippine Postal	JJ	28,595.70	-	-	-	259.96
Philippine Postal	KK	33,735.65	-	-	-	306.69
Philippine Postal	LL	4,901.95	-	-	-	44.56
Philippine Postal	MM	55,253.40	-	-	-	502.30
Philippine Postal	NN	41,958.55	-	-	-	381.44
Philippine Postal	OO	10,999.00	-	-	-	99.99
Philtranco	PP	175,334.00	-	-	-	1,753.34
Philtranco	QQ	687,735.00	-	-	-	6,877.35
Philtranco	RR	42,000.00	-	-	-	420.00
Pilhino Sales	SS	-	-	P 724,002.00	-	36,200.10
Pilhino Sales	SS	34,117,367.00	-	-	-	341,173.67
Pilhino Sales	TT	-	-	724,002.00	-	36,200.10
Pilhino Sales	TT	48,260,181.00	-	-	-	482,601.81

Pilhino Sales	UU	25,272,245.00	-	-	-	252,722.45
Pilhino Sales	VV	-	-	772,269.20	-	38,613.46
Pilhino Sales	WW	-	-	796,402.80	-	39,820.14
Pilhino Sales	XX	46,074,114.00	-	-	-	460,741.14
Pilipinas Automotive	YY	-	-	45,389.48	-	2,269.47
Pilipinas Automotive	ZZ	-	-	45,476.97	-	2,273.85
Pilipinas Automotive	AAA	-	-	34,321.48	-	1,716.08
Pilipinas Automotive	BBB	-	-	12,010.50	-	600.54
Pilipinas Transport	CCC	-	-	72,799.32	-	3,936.95
Pilipinas Transport	CCC	-	23,115,063.00	-	-	312,967.73
Pilipinas Transport	CCC	-	-	-	P10,692.36	1,425.62
Iloilo Prov. Govt	DDD	-	120,896.00	-	-	1,099.06
Iloilo Prov. Govt	EEE	-	444,652.00	-	-	4,042.30
Iloilo Prov. Govt	FFF	-	236,146.00	-	-	2,146.79
Iloilo Prov. Govt	GGG	-	386,104.00	-	-	3,512.77
Iloilo Prov. Govt	HHH	-	275,486.00	-	-	2,754.86
Radix Systems	III	-	-	250,268.48	-	12,513.42
Radix Systems	JJJ	-	-	375,402.72	-	18,770.13
Radix Systems	KKK	-	-	375,402.72	-	18,770.13
Radix Systems	LLL	-	-	500,536.96	-	25,026.84
Suzuki Phils.	MMM	-	-	4,545.48	-	227.27
Suzuki Phils.	MMM	-	20,282.00	-	-	202.82
TOTAL		P177,113,261.58	P25,665,694.55	P4,732,830.09	P10,692.36	P2,387,441.31

We have also ascertained that the income upon which the creditable taxes were withheld of P529,369.00 was reported in the 2001 Annual ITR. Moreover, the Certificates of Creditable Taxes Withheld at Source show that income payments in the gross amount of P177,113.261.58 which has corresponding creditable taxes withheld of P1,811,680.22 were declared by petitioner as part of sales of goods in its 2001 return.

Inasmuch as petitioner has already offset a portion of the P2,387,441.31 creditable taxes withheld in the amount of P1,858,071.92 as payment for its MCIT due for the year 2001, the remaining unutilized income tax payment of P529,369.39 (P2,387,441.31 less P1,858,07.92) is indeed excessive. It must be stressed also that petitioner did not carry over its 2001 excess creditable withholding taxes in the amount of P529,369.08[11] to the succeeding year 2002.[12] Therefore, the amount claimed should be refunded to the petitioner pursuant to Section 76 in relation to Section 229 of the National Internal Revenue Code of 1997 in a form of a tax credit

[11] The difference is due to the rounding off of figures
[12] Records, pages 283-285

certificate as per the option indicated in petitioner's 2001 income tax return and in its claim for refund with the respondent.

WHEREFORE, the Petition is hereby **GRANTED**. The respondent is **ORDERED to ISSUE** a Tax Credit Certificate in favor of the petitioner in the amount of P529,369.00 representing unutilized tax credits for taxable year 2001.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

CAESAR A. CASANOVA
Associate Justice

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
Chairperson, First Division
Presiding Justice