REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION
****

GOODYEAR PHILIPPINES, INC.,
Petitioner,

- versus - C.T.A. CASE NO. 6430

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
NOV 25 2004

x - x

DECISION

This case involves a claim for the issuance of a tax credit certificate of alleged excess creditable withholding taxes for the taxable year 2000 in the aggregate amount of Eleven Million One Hundred Forty Five Thousand and Two Pesos (P11,145,002.00).

The facts as disclosed by the records of the case:

Petitioner is a domestic corporation duly organized and existing under and by virtue of the Philippine laws, with principal office at Old National Road, Barangay Almanza, Las Piñas City.

On April 11, 2001, petitioner filed with the Bureau of Internal Revenue (BIR) its Annual Corporate Income Tax Return (AITR) for the Calendar Year ended December 31, 2000 *(Par. 3 of Joint Stipulation of Facts and Issues)*, showing a net loss of P339,776,628.00 and a Minimum Corporate Income Tax (MCIT) of P3,828,943.00. Also, petitioner reported the amount of P30,733,129.00 as total tax credits which consisted of the prior year's excess credits of P20,114,874.00 and creditable taxes withheld for the four quarters of 2000 of P10,618,255.00. These total tax credits of P30,733,129.00 were applied against the MCIT due of P3,828,943.00 resulting to an overpayment of P26,904,186.00 as of December 31, 2000, which petitioner marked in the return as "To be refunded" (*Exhibit E*), to wit:

302

Gross Income			P 191,447,138.00
Less: Deductions			531,223,766.00
Net Loss			P 339,776,628.00
Minimum Corporate Income Tax Due			P 3,828,943.00
Less: Tax Credits			
Prior year's excess credits		P 20,114,874.00	
Creditable Taxes Withheld			
for the first three quarters	P 6,706,051.00		
for the fourth quarter	3,912,204.00	10,618,255.00	30,733,129.00
Tax Overpayment			P 26,904,186.00

While petitioner's income tax return for the year 2000 which indicated its option to have the excess tax credits of P26,904,186.00 refunded already in itself operates as a formal application for refund pursuant to Section 2.58.3(C)(1) of Revenue Regulations No. 2-98, petitioner filed on March 13, 2002, with the Large Taxpayers Division, Revenue District Office (RDO) No. 116 of the Bureau of Internal Revenue (BIR), a formal letter in order to reiterate the said request for refund (*Exhibit G*).

Due to respondent's inaction on its claim, petitioner filed the instant Petition for Review with this Court on April 10, 2002 but this time praying for the issuance of a tax credit certificate instead of a cash refund of the amount of P26,904,186.00.

On May 9, 2002, petitioner filed an amended income tax return for the taxable year 2000 increasing its reported total tax credits from P30,733,129.00 to P31,540,874.00 or an increment of P807,745.00 which resulted to a higher amount of excess tax credits of P27,711,931.00 as of December 31, 2000 (*Exhibit D*), as shown below:

Gross Income			P191,447,138.00
Less: Deductions			531,223,766.00
Net Loss			P339,776,628.00
Minimum Corporate Income Tax Due			P 3,828,943.00
Less: Tax Credits			
Prior year's excess credits		P 20,395,872.00	
Creditable Taxes Withheld			
for the first three quarters	P6,726,051.00		
for the fourth quarter	4,418,951.00	11,145,002.00	31,540,874.00
Tax Overpayment			P 27,711,931.00

103

Petitioner again elected to have the aforesaid amount refunded (*Exhibit D-9*).

Accordingly, on June 7, 2002, petitioner filed a Motion for Leave of Court to Admit Attached Supplemental Petition for Review to include the additional claim of P807,745.00, which allegedly pertains to certificates of creditable withholding taxes which were received by petitioner only after it had already filed its original income tax return for taxable year 2000 (*page 90, CTA Records*).

In a Resolution dated July 1, 2002, this Court granted petitioner's motion and admitted the Supplemental Petition for Review which increased petitioner's claim from P26,904,186.00 to P27,711,931.00 (*page 104, CTA Records*).

However, on June 17, 2003, petitioner manifested that on June 12, 2003, it filed with the Revenue District Office (RDO) No. 116, Large Taxpayers' Division (LTD) of the BIR, a formal letter reducing the amount of its claim for refund from Twenty Seven Million Seven Hundred Eleven Thousand Nine Hundred Thirty One Pesos (P27,711,931.00) to Eleven Million One Hundred Forty Five Thousand and Two Pesos (P11,145,002.00) representing the excess or unutilized creditable income taxes withheld at source for the year 2000 *(pages 179-183, CTA Records).*

In his Answer filed on May 14, 2002, respondent pleaded by way of Special and Affirmative Defenses the following:

> "4. Petitioner alleged claim for refund is subject to administrative routinary investigation by the BIR;
>
> 5. Petitioner miserably failed to demonstrate that the taxes subject of the case at bar were erroneously or illegally collected;
>
> 6. The amount of P26,904,186.00 representing alleged excess creditable withholding taxes for the calendar year 2000 was not properly documented;
>
> 7. Taxes paid and collected are presumed to have been paid in accordance with law and regulations, hence, not refundable;

1509

8. In an 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. It is incumbent upon petitioner to 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. Well-settled is the rule that claims for tax refund/credit are construed in strictissimi juris against the taxpayer as they partake the nature of exemption from tax, and it is incumbent upon the petitioner to show that it is entitled thereto under the law.

The parties presented the following issues to be resolved by the Court in this case:

1. Whether or not petitioner's excess creditable withholding taxes for Calendar Year ended December 31, 2000 amounting to Twenty-Seven Million Seven Hundred Eleven Thousand Nine Hundred Thirty-One Pesos (P27,711,931.00) are duly supported by Certificates of Creditable Tax Withheld at Source;

2. Whether or not the income from which the creditable taxes were withheld were duly declared as part of petitioner's income in its Corporate Annual Income Tax Return for calendar year ended December 31, 2000;

3. Whether or not the excess creditable withholding taxes for calendar year ended December 31, 2000 were carried over to the succeeding calendar year and applied against its income tax liability of the petitioner for the said period; and

4. Whether or not the administrative and judicial claims for refund were duly filed with the respondent and this Honorable Court, respectively, within the two-year prescriptive period pursuant to Section 204 and 229 of the National Internal Revenue Code, as amended.

Petitioner anchors its claim on the provision of Section 76 of the National Internal Revenue Code of 1997, to wit:

> 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

TDT

C) Be credited or refunded with the excess amount paid, as the case may be.

xxx xxx xxx

Based on the aforesaid law, the corporate taxpayer's excess tax credits or overpaid income tax in a given taxable year may be refunded (either in the form of a cash refund or tax credit certificate) or applied against its income tax liabilities of the succeeding taxable years.

A perusal of petitioner's amended income tax return for taxable year 2000 (*Exhibit D*) shows that the excess tax credits of P27,711,931.00 as of December 31, 2000 consisted of the balance of the prior year's excess credits of P16,566,929.00 and creditable taxes withheld during the year 2000 of P11,145,002.00 as shown below:

Minimum Corporate Income Tax Due	P 3,828,943.00
Less: Prior Year's Excess Credits	20,395,872.00
Balance of Prior Year's Excess Credits	P 16,566,929.00
Add: Creditable Taxes Withheld - 2000	11,145,002.00
Excess Tax Credits as of December 31, 2000	P 27,711,931.00

Records disclose that petitioner opted to be refunded of the 2000 excess creditable taxes withheld in the sum of P11,145,002.00 by writing an "x" mark in the appropriate box of its original and amended income tax returns for taxable year 2000 (*Exhibits D & E*). And that the same was not carried-over by petitioner to the subsequent year 2001 (*Exhibits F-2 & K*). Further, the testimony of petitioner's witness buttressed its claim that indeed the excess creditable withholding taxes arising from the four (4) quarters of the taxably year 2000 were not carried over to the succeeding quarters or years, to quote:

ATTY. CELICIOUS:

Mr. Witness, please explain to this Court which portion of this 2001 ITR which shows that the Excess Creditable Withholding Taxes for 1998 and 1999 were carried over to the taxable year 2001?

MR. MAGPARANGALAN:

As indicated in the item No. 27-A, the amount is P16,566,929.00.

rdc

ATTY. CELICIOUS:

So, I am showing with you (sic) Exhibit "D" which you previously identified during the hearing of October 3, 2002. Can you please identify how much was the total creditable withholding taxes which was reflected as of December 2000?

MR. MAGPARANGALAN:

In Item No. 31, the amount is P27,711,931.00.

ATTY. CELICIOUS:

So, Mr. Witness, you identified that the amount showed in 2000 ITR as Excess Creditable Withholding Taxes is P27,711,931.00. You also said that the amount carried over to the year 2001has prior years excess credit amounting to P16,566,929.00. how much then was not carried over to the taxable year 2001 from taxable year 2000?

MR. MAGPARANGALAN:

The amount that was not carried over was P11,145,002.00 which came from four (4) quarters of the year 2000.

ATTY. CELICIOUS:

So, where did the amount of P11,145,002.00 come from?

MR. MAGPARANGALAN:

From the four (4) quarters of 2000.

In view thereof, the amount of P11,145,002.00 appears to be unutilized and refundable pursuant to the provisions of Section 76 of the NIRC of 1997.

However, records reveal that no documentary evidence was submitted by petitioner such as certificates of creditable withholding taxes to prove the existence of the prior year's excess credits of P20,395,872.00. Correspondingly, the MCIT due of P3,828,943.00 shall be deducted in determining petitioner's refundable excess tax credits for the year 2000.

As laid down by jurisprudence and related rules and regulations the resolution of the claim for refund of excess unutilized creditable taxes withheld at source is dependent on three important considerations: ***first,*** is the timeliness of the refund in accordance with

107

Section 229 of the National Internal Revenue Code of 1997 (NIRC of 1997); ***second,*** is the fact of withholding of tax from the amount paid by the petitioner as established by a copy of a statement duly issued by the withholding agent; and ***third,*** the income upon which the taxes were withheld were included in the return of the receipt *(Revenue Regulations No. 2-98, as amended; Citibank, N.A. vs. Court of Appeals and CIR 280 SCRA 459; ACCRA Investments Corporation vs. Court of Appeals, 204 SCRA 957).*

Section 229 of the NIRC of 1997, states:

> ***"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 or credit has been duly filed with the Commissioner; but such suit or proceeding maybe 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 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."

The two-year prescriptive period for the filing of the claim for refund commences from the date of filing of the final adjustment return *(ACCRA Investments Corporation vs. Court of Appeals, supra).*

The claimed excess creditable withholding taxes pertain to taxable year 2000 for which petitioner filed its original income tax return on April 11, 2001 *(Exhibit E).* Counting from this date, petitioner's application for refund with the BIR filed on March 13, 2002 and the instant petition filed on April 10, 2002 fall well-within the two-year prescriptive period.

Concerning the fact of withholding of the reported unutilized tax credits in the amount of Eleven Million One Hundred Forty Five Thousand and Two Pesos

(P11,145,002.00), petitioner offered in evidence various Certificates of Creditable Income Tax Withheld at Source *(Exhibit I-465 to I-666)* which were summarized by the commissioned auditing firm, SGV & Co., in its initial report dated January 31, 2003 (*page 5 of Exhibit H*).

However, upon judicious scrutiny, some of the certificates of Creditable Tax Withheld at Source were not pre-marked thus, were not formally offered in evidence. Hence, the taxes withheld therefrom are disallowed, to wit:

WITHHOLDING AGENT	PERIOD	INVOLVED	INCOME PAYMENT	TAX WITHHELD
SUN MASTER SALES CORPORATION	04/01/00	06/30/00	27,760,985.00	277,609.85
SUN MASTER SALES CORPORATION	04/01/00	06/30/00	3,383,948.00	33,839.48
SUN MASTER SALES CORPORATION	07/01/00	09/30/00	20,603,827.00	206,038.27
SUN MASTER SALES CORPORATION	07/01/00	09/30/00	2,486,331.85	24,863.32
TIRE KING & RUBBER PRODUCTS, INC.	04/01/00	06/30/00	6,290,961.00	62,909.61
ORIENTAL & MOTOLITE	01/01/00	12/31/00	5,393,616.00	53,936.16
TOTAL			**P 65,919,668.85**	**P 659,196.69**

Well-settled is the rule that evidence not formally offered, even if identified during trial, is of no value and cannot be considered by the court pursuant to Section 35 Rule 132 of The Rules of Court *(Veran vs. Court of Appeals, No. L-41154, January 29, 1988)*. Under this rule, evidence not formally offered in court will not be taken into consideration by the court in disposing of the issues of a case *(Martin, Revised Rules on Evidence, Vol. IV, page 589)*. This was emphasized by us in the case of *PBC Capital Investment Corporation vs. Commissioner of Internal Revenue, CTA Case No. 6068, promulgated on May 23, 2002,* wherein we ruled:

> "Central to the dispute is Section 34, Rule 132 of the Revised Rules of Court which provides:
>
> > "Section 34. Offer of Evidence. — The Court shall consider no evidence which has not been offered. The purpose for which the evidence is offered must be specified."

> Under the aforesaid rule, it is quite clear that an evidence not formally offered even if identified during the trial is of no value and cannot be considered by the Court.

Mr. Justice Ricardo Francisco, in his book "Rules on Evidence" (1996, Third Edition, pages 537–538), discussed the rationale behind the rule in this wise:

> "Any evidence which a party desires to submit for the consideration of the court must formally be offered by him. Such a formal offer is necessary because it is the duty of the judge to rest his findings of facts and his judgment only and strictly upon the evidence offered by the parties at the trial. The offer may be made in any form sufficient to show that the party is ready and willing to submit the evidence to the court."

Anent the issue of whether or not petitioner declared in its 2000 income tax return the income upon which the creditable taxes in the amount of Eleven Million One Hundred Forty Five Thousand and Two Pesos (P11,145,002.00) were withheld, the answer is in the affirmative.

The various Certificates of Creditable Tax Withheld at Source submitted by petitioner showed that the creditable taxes of P11,145,002.00 were withheld from petitioner's income from sale of goods in the amount of P1,113,636,241.00 and rental income of P172,800.00 or in the sum of P1,113,809,041.00 (*Exhibit S-1*) for taxable year 2000. Per SGV & Co.'s addendum report dated August 11, 2003 (*Exhibit M*), the amount of P1,113,809,041.00 formed part of the income amount of P2,812,964,164.00 declared by petitioner in its amended income tax return for taxable year 2000 (*Exhibit D-10*). Upon verification, the court finds the said report to be in order.

In fine, petitioner sufficiently complied with all the requirements for the issuance of a tax credit certificate in the amount of P6,656,862.31 representing excess creditable withholding taxes for the taxable year 2000, computed as follows:

Minimum Corporate Income Tax Due			P 3,828,943.00
Less:	Creditable Taxes Withheld during the year	P11,145,002.00	
	Less: Creditable taxes the corresponding certificates of which were not pre-marked/formally offered	659,196.69	10,485,805.31
Refundable Excess Tax Credits			P 6,656,862.31

IN VIEW OF THE FOREGOING, the instant petition for review is hereby PARTIALLY GRANTED. Respondent Commissioner of Internal Revenue is hereby ORDERED to ISSUE A TAX CREDIT CERTIFICATE in favor of the petitioner in the amount of P6,656,862.31 representing excess creditable withholding taxes for the taxable year 2000.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Justice

WE CONCUR:

LOVELL R. BAUTISTA
Associate Justice

CEASAR A. CASANOVA
Associate Justice

CERTIFICATION

I hereby certify that the above decision was reached after due consultation with the members of the Division of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

ERNESTO D. ACOSTA
Presiding Justice
Chairman, First Division