REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

PRODIGY DISTRIBUTORS, INC.
(Currently HAVI Food Services
Philippines, Inc.)
Petitioner,

- versus - **C.T.A. CASE NO. 5344**

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
JUN 01 1998

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DECISION

This case involves a claim for refund or issuance of tax credit certificate in the amount of P656,263.93 allegedly representing unutilized excess creditable income taxes withheld at source for the calendar year 1993.

The antecedent facts of the case are simple.

Petitioner is a corporation duly organized and existing under and by virtue of the laws of the Philippines and is engaged in the cold and warm storage of perishable goods.

On April 15, 1994, petitioner filed its Annual Corporate Income Tax Return for the calendar year ended December 31, 1993 (Exh. "A") reflecting a refundable amount of P964,653.97 which was computed as follows:

Tax Due		P 94,919.00
Less: Prior Year's Excess Credit	P125,380.00	
Creditable Tax Withheld - 1992	183,010.04	
Creditable Tax Withheld - 1993	751,182.93	1,059,572.97
Tax Refundable		P 964,653.97

Petitioner alleged that it was not able to fully utilize its creditable withholding tax of P751,182.93 against its P94,919.00 tax due, thus an unapplied difference of P656,263.93 for the year 1993 remains.

On April 15, 1995, petitioner filed its Annual Corporate Income Tax Return for the calendar year ended December 31, 1994 (Exh. "CC") reflecting a refundable amount of P2,111,166.00 which was computed as follows:

Tax Due		P 527,045.00
Less: Prior Year's Excess Credit	P 964,654.00	
Creditable Tax Withheld	1,673,557.00	2,638,211.00
Tax Refundable		P 2,111,166.00

On March 29, 1996, petitioner filed with the Bureau of Internal Revenue an administrative claim for refund in the amount of P656,263.93 representing unutilized creditable income taxes for taxable year ended December 31, 1993 (Exh. "EE").

The inaction of the respondent on the aforementioned claim compelled the petitioner to file the instant petition for review on April 3, 1996 in order to toll the running of the two-year prescriptive period mandated by Sections 204 and 230 of the Tax Code, as amended.

Petitioner formally offered in evidence the following documents which were properly identified by its witness:

1. HAVI Food Services Philippines, Inc.'s Annual Income Tax Returns for the years 1993, 1994 and 1995 (Exhs. "A", "CC" and "DD"), together with its corresponding auditor's report as an attachment;

2. Certificate of Filing of Amended Articles of Incorporation of the petitioner (Exh. "B");

3. Letter of the petitioner to the BIR dated November 2, 1995, informing the BIR of petitioner's change of corporate name (Exh. "C");

4. Various Certificates of Creditable Income Tax Withheld at Source [BIR Forms No. 1743-750 and 1743-1] (Exhs. "D" to "BB");

5. Administrative Claim for Refund (Exh. "EE").

6. Summary of Creditable Withholding Taxes of HAVI Foods Philippines, Inc. (Exh. "FF").

Respondent failed to present any evidence to substantiate the denials and affirmative defenses raised in her Answer. Consequently, this Court in its Resolution, dated March 12, 1997, declared that respondent had waived her right to present her evidence.

The sole issue to be resolved in this case is whether or not petitioner is entitled to the refund sought.

We hold affirmatively in favor of the petitioner.

This Court, in a long line of cases of similar nature and issue, has already laid down three (3) basic requirements for the granting of a claim for refund of excess withholding tax payments, to wit:

1. That the claim for refund is filed within the two (2) year period prescribed under Sections 204 and 230 of the Tax 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 the 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. Regs. 6-85; Citytrust Finance Corporation vs. Commissioner of Internal Revenue, CTA Case No. 4134, November 11, 1991, affirmed by the Court of Appeals in CA-G.R. SP No. 28239, March 14, 1994; Citytrust Finance Corporation (formerly Investor's Finance Corporation/FNCB Finance) vs. Commissioner of Internal Revenue, CTA Case No. 4046, February 24, 1993, affirmed by the Court of Appeals in CA-G.R. SP No. 31104, April 18, 1994; and Paseo***

Realty and Development Corporation vs. Commissioner of Internal Revenue, CTA Case No. 4254, August 10, 1993, affirmed by the Court of Appeals in CA-G.R. SP No. 32927, February 28, 1994).

Petitioner satisfactorily complied with the first requirement when it filed its administrative claim for refund with the Bureau of Internal Revenue on March 29, 1996. Said claim was filed within the two-year prescriptive period required under Sections 204 and 230 of the Tax Code since the taxes sought to be refunded were considered paid on April 15, 1994, the date the Corporate Annual Income Tax Return for 1993 was filed **(Ayala Life Assurance, Inc. vs. Commissioner of Internal Revenue, CTA Case No 4596, January 6, 1995).**

The second requirement was also met by the petitioner when it offered in evidence its Corporate Annual Income Tax Returns for 1993 (Exh. "A") showing as part of its gross income its income from lease of real property, services and contractor's fees from which the creditable tax was withheld and is now the subject of this claim for refund.

And lastly, the third requirement was sufficiently complied with by the petitioner when it presented as evidence the Certificates of Creditable Income Tax Withheld at Source (Exhs. "D" to "BB") for the year 1993.

Evidently, the petitioner may validly claim for a refund of unutilized creditable withholding tax for the year 1993 but contrary to the amount of its claim, it is only entitled to the amount of P224,137.93 computed as follows:

Tax Due for 1993		P 94,919.00
Less: Prior Year's Excess Credit	P125,380.00	
Creditable Tax Withheld - 1992	183,010.04	308,390.04
Unutilized 1992 Creditable Tax (not claimed for refund)		(P 213,471.04)

Tax Due for 1994	P527,045.00
Less: Creditable Tax Withheld - 1993	751,182.93
Refundable Tax for 1993	(P224,137.93)

Petitioner erroneously thought that the mere difference between its tax liability for 1993 amounting to P94,919.00 and its creditable tax withheld for 1993 amounting to P751,182.93 represented its unutilized creditable withholding tax for the same year. It completely ignored the fact that in 1993, petitioner had prior year's (1992) creditable tax withheld which it credited against its tax liability for the year 1993 as reflected in its Annual Corporate Income Tax Return (Exh. "A").

For taxable year 1994, petitioner inadvertently made the mistake of carrying over its total excess creditable tax for 1993 amounting to P964,653.97 which actually consists of petitioner's excess creditable tax for the years 1992 and 1993. Petitioner is reminded that under Section 69 of the National Internal Revenue Code, excess creditable tax may be credited against the taxpayer's tax liability for the succeeding taxable year only, thus:

> "Section 69. ***Final Adjustment Return*** - Every corporation liable to tax under Section 24 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 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.") (Underscoring supplied)

Hence, only the amount of P751,182.93 representing unutilized 1993 creditable tax may be properly carried over in 1994 and deducted from its 1994 tax liability amounting to P527,045.00, thus, resulting to a net refundable amount of P224,137.93.

WHEREFORE, in view of all the foregoing, respondent is hereby **ORDERED** to **REFUND** or in the alternative issue a Tax Credit Certificate in favor of the petitioner in the amount of P224,137.93 representing petitioner's excess creditable tax withheld for the year 1993.

SO ORDERED.

RAMON O. DE VEYRA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

AMANCIO Q. SAGA
Associate Judge

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