REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FAMILY MEDICARE SERVICES, INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 6453

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:

JUN 07 2004

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DECISION

This case involves a claim for refund or issuance of tax credit certificate in the amount of Five Hundred Eighty Three Thousand Five Hundred Forty Eight Pesos (P583,548.00) allegedly representing excess creditable withholding taxes covering taxable years 1999-2000.

The facts of the case as gathered from the records are as follows:

Petitioner is a domestic corporation organized and existing under the laws of the Republic of the Philippines with principal offices located at the 7th Floor, Ayala Life Building, 6786 Ayala Avenue, Makati City. It is a wholly owned subsidiary of Ayala Health Care, Inc. (*Petition for Review, par. 1*).

On April 17, 2000, petitioner filed its Annual Income Tax Return for taxable year 1999 (*Exhibits A to A-3*), showing the following information:

Sales/Revenues/Receipts/Fees	P52,808,332.00
Less: Cost of Sales/Services	32,352,867.00
Gross Income from Operation	P20,455,465.00
Less Deductions	21,663,123.00
Taxable Income	P(1,207,658.00)

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Income Tax		-
Less: Tax Credits/Payments		
Prior Year's Excess Credits	P561,535.00	
Creditable Tax Withheld for First 3 Quarters	276,249.00	
Creditable Tax Withheld for the Fourth Quarter	64,684.00	
Total Tax Credits/Payments		P902,468.00
Tax Payable/(Overpayment)		(902,468.00)

On April 16, 2001, petitioner filed its Annual Income Tax Return for taxable year 2000 (*Exhibits B to B-3*) with the following information:

Sales/Revenues/Receipts/Fees		P31,060,836.00
Less: Cost of Sales/Services		20,308,841.00
Gross Income from Operation		P10,751,995.00
Less Deductions		10,751,995.00
Taxable Income		P -
Income Tax		
Less: Tax Credits/Payments		
Prior Year's Excess Credits	P340,933.00	
Creditable Tax Withheld for First 3 Quarters	242,615.00	
Creditable Tax Withheld for the Fourth Quarter	-	
Total Tax Credits/Payments		P583,548.00
Tax Payable/(Overpayment)		(583,548.00)

On February 3, 2002, petitioner filed an administrative claim for refund with the Bureau of Internal Revenue in the amount of P583,547.97 as excess income tax payment covering taxable years 1999-2000 *(Joint Stipulation of Facts, par. 6)*. Without waiting for the decision of the Commissioner of Internal Revenue, it filed the instant petition for review on April 16, 2002.

In his Answer, the Commissioner of Internal Revenue averred the following by way of Special and Affirmative Defenses:

> 4. The 1999 claim for refund or tax credit certificate is no longer allowed because the option to carry over the excess tax credit for the said year being exercised by petitioner is irrevocable for that taxable period and no application for cash refund or issuance of tax credit certificate shall be allowed therefore pursuant to Section 76 of the Tax Code;

5. Claims for refund are construed strictly against the claimant, the same being in the nature of exemption from taxes (Commissioner of Internal Revenue v. Ledesma, 31 SCRA 95; Manila Electric Co. vs. Commissioner of Internal Revenue, 67 SCRA 35);

6. In an action for tax refund/credit, the burden of proof is on the taxpayer to establish its right to the refund and failure to sustain the burden is fatal to the action for tax refund;

7. Taxes paid and collected are presumed to have been made in accordance with law and regulations, hence, not refundable.

The counsel for the respondent submitted his case for decision sans his evidence *(CTA Records, page 127)*. This case was then submitted for decision on December 8, 2003 without respondent's memorandum.

The parties stipulated the issues to be resolved in the instant case as follows:

1. Whether or not petitioner is entitled to its claim for tax refund/tax credit certificate in the total amount of P583,548.00 as overpaid income tax for 1999-2000.

2. Whether or not petitioner had substantiated its creditable tax withheld for 1999; and

3. Whether or not petitioner was deemed to have exercised an irrevocable option to carry over its excess withholding tax in 1999 into taxable year 2000 and thus barred from claiming a tax refund/credit under Section 76 of the Tax Code.

In order to be entitled to the refund/issuance of tax credit certificate of the claimed unutilized creditable withholding taxes for the years 1999-2000, petitioner must comply with the following requirements, to wit:

1. That the claim is filed with the Commissioner of Internal Revenue within the two (2)-year period from the date of payment of the tax (Section 229, NIRC);

2. It must be not have opted to carry over and credit the excess income tax to the taxable quarters of the succeeding taxable years (Section 76, NIRC);

3. It must be shown in the return of the recipient that the income payment received was declared as part of the gross income; and

4. 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 the tax withhold therefrom (***Section 2.58.3(B) Revenue Regulations No. 2-98; Citybank N.A. vs. Court of Appeals and Commissioner of Internal Revenue, G.R. No. 107434, October 10, 1997; ACCRA Investments vs. Court of Appeals, 204 SCRA 957***).

As regards the claim for refund for the taxable year 1999, the same was filed on time. It must be noted that said 1999 claim involves excess creditable withholding taxes that were reflected in the 2000 Annual Income Tax Return, which was filed with the Bureau of Internal Revenue on April 17, 2000. The administrative claim was filed by the petitioner on February 3, 2002 while the instant petition was filed on April 16, 2002, thus, clearly within the two-year prescriptive period allowed by law.

As regards the second requisite, petitioner contends that although it had the intention to carry over the amount it overpaid in 1999 as prior year's tax

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credit for taxable year 2000, it was not realized because it incurred no taxable income for the said year. And so, it could not have deemed to have exercised the (irrevocable) option to carry over the utilization of its prior year's (1999) tax credit into the succeeding year's (2000) income tax liability wherein it incurred net loss.

We do not agree.

It was clearly shown in the petitioner's 2000 income tax return that it carried-over the 1999 excess creditable taxes withheld in the amount of P340,933.00 (P276,249.00 + P64,684.00) to taxable year 2000. Hence, by exercising the option to carry over, petitioner is now barred from claiming refund or issuance of a tax credit certificate of its excess and unutilized creditable withholding taxes for taxable year 1999 pursuant to Section 76 of the 1997 National Internal Revenue Code, *viz:*

> "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
> (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 or 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</u>

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> 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 application for cash refund or issuance of a tax credit certificate shall be allowed therefor." (Underscoring ours)

In the case of ***BANK OF THE PHILIPPINE ISLANDS vs. COMMISSIONER OF INTERNAL REVENUE, CTA Case No. 6276, March 12, 2003,*** the court held:

> "This court already categorically ruled in a number of cases that once the option to carry-over and apply the excess quarterly income tax against the income tax due for the taxable quarters of the succeeding taxable years has been made, such option shall be considered irrevocable and no application for cash refund or issuance of a tax credit certificate shall be allowed therefor (**Pilipinas Transport Industries vs. Commissioner of Internal Revenue, CTA Case No. 6073, March 1, 2002; Pilipinas Hino, Inc. vs. Commissioner of Internal Revenue, CTA Case No 6074, April 19, 2002; Philam Asset Management, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 6210, May 2, 2002; The Philippine Banking Corporation (now known as Global Business Bank, Inc.) vs. Commissioner of Internal Revenue, CTA Case No 6280, August 16, 2001**). Since petitioner already exercised the irrevocable option to carry over its excess tax credits for the year 1998 to the succeeding years 1999 and 2000, it is, therefore, no longer entitled to claim for refund or issuance of tax credit certificate."

The Court of Appeals has in fact affirmed this pronouncement in the case of ***Commissioner of Internal Revenue vs. Honda Phil., Inc., CA-GR SP No. 68141, October 25, 2002,*** wherein it ruled that "since the rule of irrevocability of the option to carry over the tax credit applies to respondent, it cannot file a claim for cash refund for its unutilized tax credit."

For the taxable year 2000, however, the petitioner may still claim a refund or seek the issuance of tax credit certificate of unutilized creditable withholding

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tax in the amount of Php242,615.00 subject to compliance with the requisites as already mentioned.

Records show that petitioner complied with the first requirement. Petitioner filed its claim for refund with the Bureau of Internal Revenue on February 3, 2002 and the instant petition for review with this court on April 16, 2002. Both dates of filing were within the two-year reglementary period reckoned from April 16, 2001, the date when the 2000 final adjustment return was filed.

As to the second requirement, petitioner's 2001 income tax return showed that petitioner did not carry over any prior year's excess credits *(Exhibit "C-2")*. Hence, a claim for refund may be appropriate. Out of the total creditable withholding taxes for the year 2000 in the amount of P242,615.00, only the sum of P218,025.37 was supported by the following Certificates of Creditable Tax Withheld at Source, to wit:

Withholding Agent	Exhibit	Pd Covered	Income Payment	Tax Withheld
DOLE PHILIPPINES,INC	H	1/2/00-3/25/00	P 5,579,209.70	P 55,792.12
DOLE PHILIPPINES,INC	I	4/2/00-6/17/00	7,776,273.87	77,762.72
DOLE PHILIPPINES,INC	J	6/18/00-10/7/00	8,447,049.37	84,470.53
			P21,802,532.94	P218,025.37

Nonetheless, petitioner may still claim for the refund of the reduced amount of P218,025.37 if the final requisite has been complied with.

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Based on the documents on record, we cannot ascertain if the income of the petitioner in the amount of P21,802,532.94 corresponding to the creditable taxes withheld in the amount of P218,025.37, as reflected in the Certificates of Creditable Tax Withheld at Source, is included as part of the total sales of petitioner in the amount of P31,060,836.00 as reported in its 2000 income tax return. Based on the certificates, the nature of income of the creditable withholding tax is "Payment to Contractors". This income payment falls under the category of sale of services.

In the 2000 income tax return, the income declared by the petitioner was broken down in Schedule A Section 1 as follows:

	Taxable Amount
Sale of Goods/Properties	P 18,886,665.00
Sale of Services	12,174,171.00
Lease of Properties	-
Total	31,060,836.00
Less: Sales Return/Discounts	-
Net Sales/Revenues/Receipts/Fees	P 31,060,836.00

From the above data, the total amount declared as sales of services is P12,174,171.00. This amount is lesser than the sum of P21,802,532.94 reflected as Payment to Contractors in the Certificates of Creditable Tax Withheld at Source. Without an explanation on the part of petitioner, we cannot verify if the income payments reflected in the certificates were included (partly declared) as part of income declared by petitioner in its 2000 income tax return.

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Thus, petitioner's failure to comply with all the requisites earlier mentioned is fatal to its claim.

Tax refunds are in the nature of tax exemptions. As such, they are regarded as in derogation of sovereign authority and to be construed in *strictissimi juris* against the person or entity claiming the exemption (***Commissioner of Internal Revenue vs. Procter and Gamble Phil.Mfg. Corp., 204 SCRA 377; Commissioner of Internal Revenue vs. S. C. Johnson & Son, Inc., 309 SCRA 87***).

WHEREFORE, in the light of the foregoing, the instant petition is hereby DENIED for lack of merit.

SO ORDERED.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

LOVELL R. BAUTISTA
Associate Justice

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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
Presiding Justice