REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SECOND DIVISION

GOLDEN ARCHES DEVELOPMENT CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 6870

Members:

CASTAÑEDA, JR., *Chairperson*
UY, *and*
PALANCA-ENRIQUEZ, *JJ.*

Promulgated:

OCT 2 2 2007

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DECISION

UY, J.:

Before Us is a Petition for Review filed under Section 11 of Republic Act (R.A.) No. 1125, as amended by R.A. No. 9282, by petitioner Golden Arches Development Corporation against respondent Commissioner of Internal Revenue, seeking refund or issuance of a tax credit certificate in the amount of P62,360,564.00, representing excess and unutilized creditable withholding tax for taxable year 2001.

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THE FACTS

As admitted by the parties in their Joint Stipulation of Facts and Issues[1] and as borne by the records of the case, the facts are as follows:

Petitioner Golden Arches Development Corporation is a corporation duly organized and existing under and by virtue of Philippine laws, with principal office at the 17th Floor of Citibank Centre, Paseo de Roxas, Makati City, and registered with the Bureau of Internal Revenue (BIR) Revenue Region No. 8 – Large Taxpayers' District Office (LTDO). On the other hand, respondent Commissioner of Internal Revenue is the duly-appointed officer of the Bureau of Internal Revenue (BIR) vested by law with authority, among others, to approve and grant claims for credit or refund of overpaid or erroneously paid taxes pursuant to the provisions of the National Internal Revenue Code (NIRC) of 1997.

For the first, second, and third quarters of taxable year 2001, petitioner filed its Quarterly Corporate Income Tax Returns (ITRs) on May 29, August 29, and November 29, 2001, respectively, within the period required by law.

On April 15, 2002, petitioner filed with the BIR its Corporate Annual Income Tax Return (Annual ITR) for calendar year ending in December 31, 2001 showing an income tax overpayment of P62,360,564.00 for which petitioner opted "To be refunded".[2]

On February 13, 2004, petitioner filed with the BIR an administrative claim for refund/issuance of a tax credit certificate in the amount of

[1] Joint Stipulation of Facts and Issues; Docket, pp. 60-63.
[2] Exhibit "A".

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P62,360,564.00, representing unutilized creditable withholding taxes for taxable year 2001.

Due to respondent's alleged inaction on its claim, petitioner filed a Petition for Review with this Court on February 24, 2004.[3]

On March 16, 2004, respondent filed through registered mail his Answer alleging the following Special and Affirmative Defenses:

> "3. Assuming without admitting that petitioner filed a claim for refund, the same is subject to investigation by the Bureau of Internal Revenue.
>
> 4. Petitioner failed to demonstrate that the tax subject of the case at bar was erroneously or illegally collected.
>
> 5. Taxes paid and collected are presumed to have been made in accordance with law and regulations, hence, not refundable.
>
> 6. In an action for tax refund/credit, the burden of proof is on the taxpayer to establish its right to refund and failure to adduce sufficient proof is fatal to the action for tax refund/credit.
>
> 7. It is incumbent upon the petitioner to show that it has complied with the provisions of Section 204 in relation to Section 229 of the Tax Code, as amended.
>
> 8. Claims for refund are construed strictly against the claimant for the same partake the nature of exemption from taxation **(Commissioner of Internal Revenue vs. Ledesma, G.R. No. L-13509, January 30, 1970, 31 SCRA 95)** and as such, they are looked upon with disfavor **(Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 121).**"[4]

After trial, the parties were directed to file their respective Memorandum in the Resolution dated January 22, 2007.[5] Only petitioner filed

[3] Petition for Review; Docket, pp. 1-7.
[4] Answer; Docket, pp. 24 -25.
[5] Docket, pp. 281-282.

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its Memorandum on April 2, 2007[6] and this case was deemed submitted for decision on April 19, 2007 *sans* respondent's Memorandum despite due notice.[7]

Hence, this decision.

THE ISSUES

The issues for this Court's consideration, as jointly stipulated by the parties, are as follows:

> "(1) Whether or not petitioner has unutilized creditable withholding taxes in the amount of P62,360,564 as of December 31, 2001 arising from its rental income for the said year, which is a proper object of a claim for refund/tax credit certificate pursuant to Section 76 of the Tax Code.
>
> (2) Whether or not the said unutilized creditable withholding taxes of petitioner in the amount of P62,360,564 for the taxable year 2001 are duly substantiated by documentary evidence.
>
> (3) Whether or not the rental income of petitioner upon which the taxes were withheld were declared as part of petitioner's gross revenue in its 2001 income tax return.
>
> (4) Whether or not said unutilized creditable withholding taxes as of December 31, 2001 were not applied as tax credit against petitioner's tax liability in the succeeding taxable year/s.
>
> (5) Whether or not petitioner is entitled to a refund/issuance of a tax credit certificate in the amount of P62,360,564 representing unutilized creditable withholding taxes for calendar year ending December 31, 2001."[8]

As the issues are all intertwined, We shall discuss them simultaneously.

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[6] Ibid., pp. 293-317.
[7] Id., p. 319.
[8] Id., pp. 60-61.

THE COURT'S RULING

We find the petition meritorious.

Based on petitioner's 2001 Annual ITR, it reported a total creditable withholding tax of P73,096,757.00 withheld by its income payors from their payments to petitioner for said year. After deducting from its withholding tax credits for taxable year 2001, the amount of P10,736,193.00 pertaining to its Minimum Corporate Income Tax (MCIT), an amount of P62,360,564.00 was left unutilized, computed as follows:

Sales/Revenues/Receipts/Fees	P 1,280,316,758.00
Less: Cost of Sales/Services	833,664,424.00
Gross Income from Operation	P 446,652,334.00
Add: Non-Operating & Other Income	90,157,327.00
Total Gross Income	P 536,809,661.00
Less: Deductions	536,809,661.00
Taxable Income	-
Minimum Corporate Income Tax (MCIT)	P 10,736,193.00
Less: Tax Credits/Payments	
Creditable Tax Withheld for the First Three Quarters	P 44,522,484.00
Creditable Tax Withheld Per BIR Form No. 2307 for the Fourth Quarter	28,574,273.00
Total Tax Credits/Payments	P 73,096,757.00
Tax Payable/(Overpayment)	(P 62,360,564.00)

As there was an overpayment or excess tax credits, petitioner marked the option "To be refunded."[9] Further, petitioner did not carry-over its excess tax credits as it left blank the space provided for "Prior year's Excess Credits" in its 2002 tentative and amended Annual ITRs.[10] Consequently, petitioner's excess tax credits for taxable year 2001 in the amount of P62,360,564.00 may be the proper subject of a claim for refund pursuant to the provisions of Section 76 of the NIRC of 1997 which reads:

[9] Exhibit "A-8".
[10] Exhibits "B" and "B-5".

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> "**SECTION 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 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 a tax credit certificate shall be allowed therefore."

Applying the aforequoted provision, petitioner, being entitled to a tax credit or refund, is allowed two (2) options, namely: (a) to carry-over the excess credit; or (b) to be credited or refunded with the excess amount paid (either in the form of cash or tax credit certificate).

In the instant case, petitioner chose the second option, that of being refunded with the excess amount paid. In so doing, petitioner must prove compliance with the following requirements in order to be entitled to the refund sought for:

> 1. The claim for refund (or issuance of a tax credit certificate) was filed within the two-year prescriptive period prescribed under Section 204(C), in relation to Section 229 of the NIRC of 1997;
>
> 2. The fact of withholding is established by a copy of a statement duly issued by the payor (withholding agent) to the

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payee, showing the amount paid and the amount of tax withheld therefrom; and

3. The income upon which the taxes were withheld was included in the return of the recipient.[11]

On the first requisite, the Court finds that petitioner's claim for refund was filed within the two-year prescriptive period. Records show that petitioner filed its 2001 Annual ITR on April 15, 2002; thus, it had until April 14, 2004[12] within which to file its administrative and judicial claims. Petitioner filed its administrative claim for refund on February 13, 2004[13] and its Petition for Review on February 24, 2004, both of which are well within the two-year prescriptive period, pursuant to Section 204 (C), in relation to Section 229 of the NIRC of 1997.

As to the second requisite, petitioner presented *Certificates of Creditable Taxes Withheld at Source* (Certificates)[14] duly issued to it by various withholding agents for taxable year 2001 and its "Summary of Withholding Tax Certificate For the Year 2001"[15] to prove that the amount of P73,096,757.00 as creditable income taxes were withheld from petitioner. A perusal, however, of petitioner's aforesaid Summary shows that the total amount of tax withheld is reflected as P73,498,472.87 which is different from the reported total in petitioner's Annual ITR for the taxable year 2001.

[11] Banco Filipino Savings and Mortgage Bank vs. Court of Appeals, 519 SCRA 93 (2007), citing Jose C. Vitug and Ernesto D. Acosta, Tax Law and Jurisprudence, 2006 ed., p.329, Calamba Steel Center, Inc. vs. Commissioner of Internal Revenue, 457 SCRA 482 (2005), and Section 10 of Revenue Regulations No. 6-85, as amended.
[12] 2004 being a leap year.
[13] Exhibits "C" and "D".
[14] Exhibits "E-1" to "E-14", "E-16", "F-1" to "F-49", "F-51", "F-53" to "F-67", "G-1" to "G-54", "H-1" to "H-35", "H-39" to "H-62", "H-75" to "H-123", "O" to "Z", "AA" to "CC" and "EE".
[15] Exhibits "M-1" and "N-1".

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Its witness, petitioner's Senior Accounting Manager, Cornelia Naguit, explained the reason for the discrepancy in the total amount of P401,715.87 during the hearing held on February 9, 2005[16] wherein she testified by way of a judicial affidavit,[17] as follows:

"A: After we filed GADC's Annual Income Tax Return for CY 2001 with the BIR on April 15, 2001, we reviewed the company's records and found out that a portion of the creditable withholding taxes withheld by Golden Arches Realty Corporation from its payments to GADC for the purchase of eight (8) real properties was not covered by Certificate of Creditable Withholding Tax. The three (3) Certificates they earlier issued to us amounted only to P9,961,161.68 (**Exhibits 'H-36', 'H-37' and 'H-38'**). However, Golden Arches Realty Corporation actually withheld P10,362,877.50 from its income payments in the total amount of P138,171,700.00 to GADC in CY 2001.

So, we requested Golden Arches Realty Corporation to issue to us a Certificate of Creditable Withholding Tax for the remaining P401,715.82 which was not covered by the three Certificates they issued.

However, Golden Arches Realty Corporation issued an amended Certificate of Creditable Withholding Tax for the full amount of P10,362,877.50, instead only of the remaining P401,715.82. Thus, we considered the first three Certificates issued by Golden Arches Realty Corporation in the total amount of P9,961,161.68 (**Exhibits 'H-36', 'H-37' and 'H-38'**) as being superseded by the amended Certificate we belatedly received (**Exhibit 'EE'**).

Q: Ms. Witness, if I show you a copy of this amended Certificate of Creditable Withholding Tax issued to GADC for CY 2001, would you be able to identify the same?

A: Yes.

Q: Ms. Witness, I as showing to you a one-paged document marked as **Exhibit "EE"**. What is the relation of this document to you previous statement?

[16] Minutes for the hearing held on February 9, 2005; Docket, p. 133.
[17] Exhibit "OO-1", p. 3.

A: This is the amended Certificate we received from Golden Arches Realty Corporation after we filed our Annual Income Tax Return for CY 2001 with the BIR.

Q: What did the company do with the said 'additional' withholding tax credit in the amount of P401,715.82?

A: We were unable to report this withholding tax credit in our Annual Income Tax Return for CY 2001, that's why it remains unutilized up to this date."

Relying on this explanation, petitioner prays for the refund of a higher amount of P62,762,279.82, as stated in its Memorandum dated March 30, 2007, in order that the creditable tax withheld in the amount of P401,715.82 on the real properties sold to Golden Arches Realty Corporation in 2001 may be included.

However, without the need of looking into the merits of petitioner's additional claim for the discrepancy not alleged in the instant petition, We find that said claim will not prosper.

As explicitly stated in Section 76 of the NIRC of 1997, only the excess credits as shown on its final adjustment return can be claimed as refund or tax credit or carried-over to the succeeding taxable quarters. Accordingly, the Court denies petitioner's prayer for the refund of that alleged portion of the creditable tax withheld amounting to P401,715.82 because petitioner cannot claim an amount in excess of what was prayed for in the Petition for Review.

The Court likewise disallows petitioner's creditable withholding tax of P33,082.53[18] because the Certificate of Creditable Tax Withheld did not indicate the date or period when the creditable taxes of P33,082.53 were

[18] Exhibit "H-122".

withheld. Correspondingly, the Court finds that only the amount of P73,063,674.47[19] was properly supported by withholding tax certificates.

Finally, as to the third requisite, the Court finds that petitioner declared the income related to the substantiated creditable withholding taxes of P73,063,674.47 in its 2001 Annual ITR, as duly supported by the following:

a) The examination of petitioner's books of accounts for taxable year 2001 is closed and terminated. Any question as to the veracity of petitioner's declaration of income is now moot because under the Manifestation filed by petitioner on January 4, 2007,[20] petitioner revealed that it paid deficiency income tax, documentary stamp tax, expanded withholding tax, withholding tax on compensation, fringe benefits tax, and value-added tax liabilities assessed against it for taxable year 2001 in the sum of P9,553,014.74 (inclusive of increments); and

b) During the hearing conducted on July 10, 2006,[21] respondent's witness, Revenue Officer Rene Vicente S. De Vera, confirmed that petitioner declared all the income upon which the creditable taxes were withheld.

In conclusion, the Court finds petitioner entitled to a refund representing excess and unutilized creditable withholding taxes for taxable year 2001 in the reduced amount of P62,327,481.47, computed as follows:

Validly supported creditable withholding taxes	P73,063,674.47
Less: Minimum Corporate Income Tax	10,736,193.00
Amount Refundable	**P62,327,481.47**

[19] P73,096,757.00 less P33,082.53.
[20] Docket, p. 256.
[21] Transcript of Stenographic Notes, July 10, 2006 hearing, p. 15.

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WHEREFORE, premises considered, the instant Petition for Review is **PARTIALLY GRANTED**. Accordingly, respondent is hereby **ORDERED TO REFUND or ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner the reduced amount of **SIXTY TWO MILLION THREE HUNDRED TWENTY SEVEN THOUSAND FOUR HUNDRED EIGHTY ONE PESOS and 47/100 (P62,327,481.47)**, representing excess and unutilized creditable withholding tax for taxable year 2001.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

ATTESTATION

I attest 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.

JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson's Attestation, 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.

ERNESTO D. ACOSTA
Presiding Justice

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