REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION
****

STAR PERFORMANCE, INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 6434

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
NOV 17 2004

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DECISION

This case involves a claim for refund or issuance of a tax credit certificate in the amount of P3,210,597.00 allegedly representing excess/unutilized creditable withholding taxes for the calendar year ended December 31, 1999.

The antecedent facts of the case are as follows:

Petitioner is a domestic corporation duly organized and existing under the laws of the Republic of the Philippines, with principal address at J.Y. & Sons Industrial Compound, Phividec Industrial Complex, Taguig, Metro Manila *(Paragraph 1, Joint Stipulation of Facts and Issues)*. It is primarily engaged in manufacturing services from which it derives its revenues *(Background, Exhibit "C")*.

On April 17, 2000, petitioner filed its Annual Income Tax Return for the calendar year ended December 31, 1999 *(Paragraph 6, Joint Stipulation of Facts and*

Issues;Exhibit "A") wherein it declared a gross income of P50,846,981.00 and a total deduction of P44,999,545.00 resulting to a taxable income of P5,847,436.00 and a tax due of P1,929,654.00. Likewise, petitioner reported the amount of P1,030,016.00 as excess/unutilized Minimum Corporate Income Taxes (MCIT) for the prior taxable year 1998 and applied the same to the aforesaid tax due, thereby leaving a balance of P899,638.00 as Aggregate Income Tax Due for taxable year 1999. Furthermore, petitioner applied its prior year's excess credits amounting to P6,667,491.00 against the said Aggregate Income Tax Due. Petitioner reported in the same return creditable taxes withheld for the first three quarters of taxable year 1999 the amount of P2,507,796.00 and for the fourth quarter, the amount of P702,801.00, or a total creditable taxes withheld of P3,210,597.00.

On April 6, 2001 and April 9, 2002, petitioner filed with the Bureau of Internal Revenue (BIR) its administrative claim and supplemental claim *(Exhibits "B" and "C", respectively)*, for refund and/or tax credit of the total amount of P3,210,597.00 allegedly representing its excess/unutilized creditable withholding taxes for the calendar year ended December 31, 1999.

In order to stop the running of the two-year prescriptive period, petitioner elevated the case through a Petition for Review with this court on April 11, 2002.

In his Answer, respondent raised the following as Special and Affirmative Defenses, to wit:

> 4. Petitioner has not shown proof that the amount claimed was not utilized in the succeeding quarters or years;

5. Petitioner has not shown proof that it actually earned excess minimum corporate income tax (MCIT) for the year 1998;

6. Petitioner has not shown proof that the income from which the alleged creditable tax withheld subject matter of the instant petition was reported in the income tax return for the year 1999 and that the alleged excess withholding taxes were duly supported by certificates of withholding;

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

8. In an action for tax refund/credit, the burden is upon the taxpayer to prove that he is entitled thereto, and failure to sustain the same is fatal to the action for tax refund;

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

After trial on the merits, the court considered the case submitted for decision sans memorandum of respondent.

In their Joint Stipulation of Facts and Issues filed on November 14, 2002, the parties submitted the following issues for this court's resolution:

1. Whether or not the income upon which creditable withholding taxes were withheld by the income payors were included in and reported as part of Petitioner's revenues in its income tax return taxable year 1999;

2. Whether or not the amount of P3,210,597.00 representing unutilized withholding tax credits for taxable year 1999 was utilized or applied against its income tax liability for the subsequent taxable year;

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3. Whether or not the Petitioner is entitled to a refund or issuance of a tax credit certificate in the amount of P3,210,597.00 representing unutilized/excess creditable withholding taxes for calendar year ended December 31, 1999; and

4. Whether or not there was a valid application of Petitioner's Minimum Corporate Income Tax (MCIT) to its 1999 taxable income.

The issues above stipulated are interrelated or intertwined, hence, the same will be tackled jointly for convenience and brevity.

Petitioner basically anchored its claim on Section 76, in relation to Sections 204 (C) and 229 of the 1997 National Internal Revenue Code, 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
> (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 therefor.

SEC. 204. Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes. -- The Commissioner may --

xxx xxx xxx

(C) Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. 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: x x x

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 may be 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: x x x

As repeatedly held by this court in a number of similar cases, the claim for refund/tax credits of excess creditable withholding taxes is dependent on claimant's compliance with the following three (3) basic requirements:

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

2. That the fact of withholding is established by a copy of a statement duly issued by the payor (withholding agent) to the payee, showing the amount paid and the amount of tax withheld therefrom; and

3. That it must be shown in the return of the recipient that the income payment received was declared as part of the gross income [***Citytrust Finance Corporation vs. The Commissioner of Internal Revenue, CTA Case No. 4134, November 11, 1991, affirmed by the Court of Appeals in Citytrust Finance Corporation vs. Court of Tax Appeals and the Commissioner of Internal Revenue, C.A. G.R. SP No. 28239, March 14, 1994; Citytrust Finance Corporation (formerly Investors Finance Corporation/FNCB Finance) vs. Commissioner of Internal Revenue, CTA Case No. 4046, February 24, 1993, affirmed by the Court of Appeals in Commissioner of Internal Revenue vs. Citytrust Finance Corporation (formerly Investors Finance Corp./FNCB Finance) and the Court of Tax Appeals, CA G.R. SP No. 31104, April 18, 1994; Ayala Life Assurance, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 5631, dated May 11, 2000; Stock Transfer Service Inc. vs. Commissioner of Internal Revenue, CTA Case No. 5796, dated May 3, 2000; Union Bank of the Philippines vs. Commissioner of Internal Revenue, CTA Case No. 5623, dated April 12, 2000; Citibank, N.A. vs. Court of Appeals and CIR, 280 SCRA 459; ACCRA Investments Corporation vs. Court of Appeals, 204 SCRA 957***].

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Applying the aforesaid standards in resolving the case under consideration, this court finds that petitioner has indeed complied with the first requirement. The two-year prescriptive period for the filing of a claim for refund commences from the date of filing of the final adjustment return (***ACCRA Investments Corporation vs. Court of Appeals, supra***). It must be noted that the claimed excess creditable withholding taxes pertain to taxable year ended December 31, 1999 for which petitioner filed its annual income tax return on April 17, 2000 *(Exhibit "A")*. Counting from this latter date, petitioner had until April 15, 2002 within which to file a claim for refund corresponding to its 1999 excess creditable withholding taxes. Thus, petitioner's administrative claims for refund filed on April 6 and April 9 of 2002 and the Petition for Review filed before this court on April 12, 2002 fall within the two-year prescriptive period. As a matter of fact, respondent, in their Joint Stipulation of Facts and Issues dated October 30, 2002, admitted petitioner's compliance with respect to the first requirement referred to above.

As regards the second requirement, the petitioner substantiated the fact of its income payors' withholding by submitting the Certificates of Creditable Tax Withheld at Source as evidence, detailed as follows:

Withholding Agent	**Exhibit**	**Period Covered**	**Income Payment**	**Tax Withheld**
Avon Cosmetics, Inc.	D	1/1/99-3/31/99	P 28,402,011.00	P 284,020.11
Avon Cosmetics, Inc.	E	4/1/99-6/30/99	32,277,376.00	322,773.76
Avon Cosmetics, Inc.	F	7/1/99-9/30/99	10,495,492.00	104,954.92
Avon Cosmetics, Inc.	G	10/1/99-12/31/99	13,489,069.00	134,890.69
Triumph Int'l (Phils.), Inc.	H	1/1/99-3/31/99	49,377,858.08	493,778.56
Triumph Int'l (Phils.), Inc.	I	4/1/99-6/30/99	56,886,314.80	568,863.18
Triumph Int'l (Phils.), Inc.	J	7/1/99-9/30/99	71,422,471.44	714,224.06
Triumph Int'l (Phils.), Inc.	K	10/1/99-12/31/99	57,724,930.53	577,251.20
Total			P320,075,522.85	P3,200,756.48

On April 17, 2000, petitioner filed its Annual Income Tax Return for taxable year 1999 *(Exhibits "A" & "A-1")*, showing the following information:

Sales/Revenues/Receipts/Fees		P 322,540,692.00
Less: Cost of Sales/Services		272,445,294.00
Gross Income from Operation		P 50,095,398.00
Add: Non-Operating & Other Income		751,583.00
Total Gross Income		P 50,846,981.00
Less: Deductions		44,999,545.00
Taxable Income		P 5,847,436
Income Tax (33%)		P 1,929,654.00
Less: Unexpired Excess of Prior Year's MCIT over Normal Income Tax Rate		**1,030,016.00**
Balance		P 899,638
Less: Tax Credit Payments		
Prior Year's Excess Credits	P 6,667,491.00	
Creditable Tax Withheld for First Three Quarters	**2,507,796.00**	
Creditable Tax Withheld for the Fourth Quarter	**702,801.00**	
Total Tax Credits/Payments		9,878,088.00
Tax Payable/(Overpayment)		P (8,978,450.00)

From the above information, it can be determined that petitioner reported the amount to P3,210,597.00 (P2,507,796.00 for the first three quarters and P702,801.00 for the fourth quarter) as creditable withholding taxes for 1999. The petitioner is claiming the same for refund or issuance of a tax credit certificate.

However, after a careful scrutiny of petitioner's creditable withholding taxes for the year 1999 as per the evidence presented, this court finds a discrepancy, detailed hereunder for easy reference:

Annual Income Tax Return 1999	P 3,210,597.00
Certificates Creditable Tax Withheld at Source	3,200,756.48
Difference	P 9,840.52

Clearly, out of the reported 1999 creditable taxes withheld of P3,210,597.00, petitioner was able to support only the amount of P3,200,756.48 based from the aforesaid certificates submitted before this court.

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Moreover, petitioner failed to substantiate the payment of the Unexpired Excess of Prior Year's MCIT over Normal Income Tax Rate for the year 1998, in the amount of P1,030,016.00, and Prior Year's Excess Credits, in the amount of P6,667,491.00, claimed as tax credits against income tax due in taxable year 1999. No other evidence was presented by petitioner to prove that it had indeed paid the unexpired MCIT and prior year's excess credits. The Annual Income Tax Return for taxable year 1998 *(Exhibit "M")* submitted by petitioner is not a sufficient proof of payment, without the accompanying documents, such as Certificates of Creditable Tax Withheld at Source for prior years tax credit, among others, since prior year's excess credits and creditable taxes withheld in 1998 were also partially applied against the 1998 MCIT. Accordingly, this court holds that without any proof of payment, the application of the Unexpired Excess of Prior Year's MCIT over Normal Income Tax Rate, and Prior Year's Excess Credits as tax credit against the income tax due in 1999, could not be validly allowed.

Having in mind the foregoing facts, we rule that the petitioner may validly claim as tax credits only the amount of P3,200,756.48, as exhaustively discussed earlier. This court further observed that in applying the aforesaid allowable tax credits against the P1,929,654.00 income tax due in 1999, there is still an overpayment amounting to P1,271,102.48, computed as follows:

Income Tax (33%)		P 1,929,654.00
Less: Unexpired Excess of Prior Year's MCIT over Normal Income Tax Rate		-
Balance		P 1,929,654.00
Less: Tax Credit Payments		
Prior Year's Excess Credits	P -	
Creditable Tax Withheld Supported by	3,200,756.48	

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Certificates		
Total Tax Credits/Payments		3,200,756.48
Tax Payable/(Overpayment)		P (1,271,102.48)

The P1,271,102.48 overpayment may still be claimed as a refund or as a tax credit certificate or be carried-over and applied to the subsequent years, in accordance with Section 76 of the 1997 Tax Code.

After careful perusal of the records of the case, petitioner, however, chose the option of claiming for refund or issuance of tax credit certificate. In the Annual Income Tax Return for 1999, the box "To be refunded" in Line 31 was marked "**x**" *(Exhibit "A-8")* indicating petitioner's option for the excess tax payments.

On April 4, 2001, petitioner filed its Annual Income Tax Return for taxable year 2000 *(Exhibits "N & N-2")*, showing the following information:

Sales/Revenues/Receipts/Fees		P 314,875,416.00
Less: Cost of Sales/Services		273,947,874.00
Gross Income from Operation		P 40,927,542.00
Add: Non-Operating & Other Income		619,476.00
Total Gross Income		P 41,547,018.00
Less: Deductions		41,547,018.00
Taxable Income		P -
Income Tax (32%)		P -
Minimum Corporate Income Tax (MCIT)		830,940.00
Less: Tax Credit Payments		
Prior Year's Excess Credits	P -	
Creditable Tax Withheld for First Three Quarters	2,416,437.00	
Creditable Tax Withheld for the Fourth Quarter	711,988.00	
Total Tax Credits/Payments		3,128,425.00
Tax Payable/(Overpayment)		P (2,297,485.00)

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From the above data, it can be clearly seen that the creditable withholding taxes for the year 1999 in the sum of P3,210,597.00 were not carried-over and applied to the taxable year 2000. The box for the prior year's excess credit in the petitioner's 2000 income tax return was left blank *(Exhibit "N-3")*. In addition, the petitioner indicated in its 1999 income tax return its option to claim for a refund its excess payments *(Exhibit "A-8")*. Therefore, we are convinced that petitioner was able to substantially comply with the second requirement earlier enumerated.

Lastly, as regards the third requirement, the petitioner's total gross sales/revenues/receipts amounted to P322,540,692.00, the entire amount of which was clearly reflected in its Annual Income Tax Return for 1999 *(Exhibit "A-6")*, Account Information Form *(Exhibit "A-7-a")*, and Breakdown of Gross Receipts/FS & Related Section of Income Tax Return *(Exhibit "P")*. However, as reflected in the Certificates of Creditable Tax Withheld at Source, this court has noted that the income payments made by Avon Cosmetics, Inc. (Avon) and Triumph International (Phils.), Inc. (Triumph) to petitioner only amounted to P320,075,522.85.

In view thereof, since the reported revenue is greater than the income payments indicated in the certificates, we therefore conclude that the income, upon which the creditable withholding taxes were withheld by Avon and Triumph, was included in and reported as part of the petitioner's revenues in its income tax return for the taxable year 1999.

In sum, considering that the three (3) basic requirements for claiming for a refund/tax credits of excess creditable withholding taxes were all present and

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complied with by the petitioner, it is therefore entitled to the claim sought for but in a reduced amount of P1,271,102.48.

WHEREFORE, the instant petition is **PARTIALLY GRANTED**. Accordingly, respondent is hereby **ORDERED** to **REFUND** or **ISSUE A TAX CREDIT CERTIFICATE** in favor of the petitioner in the reduced amount of P1,271,102.48 representing excess creditable taxes withheld for the taxable year 1999.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Justice

WE CONCUR:

LOVELL R. BAUTISTA
Associate Justice

CAESAR 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

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