REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

GOLDEN ARCHES DEVELOPMENT CORPORATION ,
Petitioner,

- versus -

C.T.A. CASE NO. 5619

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
FEB 08 2000

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DECISION

This is a Petition for Review filed by the Petitioner on Ap il 14, 1998 seeking for a refund of the amount of ELEVEN MILLION NINE HUNDRED EIGHTY THREE THOUSAND SEVEN HUNDRED ONE PESOS (P11,983,701.00) representing allegedly unutilized withholding tax credits for the year ended December 31, 1995.

The factual backdrop of this case is undisputed.

Petitioner is a domestic corporation duly organized and existing under and by virtue of the laws of the Philippines. It is primarily engaged in the leasing of real property and derives rental income therefrom.

On April 15, 1996, Petitioner filed its Corporation Annual Income Tax Return for calendar year ended December 31, 1995 reflecting a net loss in the amount of P8,688,984.00 and excess withholding tax credits amounting to P46,162,412.00.

On October 9, 1996, Petitioner filed an Amended Income Tax Return for calendar year 1995 (Exh. B) showing a reduction in its total excess tax credits as of the year 1995 brought about by two separate cases filed by it with this Court where it sought a refund of the total amount of P8,834,545.00, which amount was deducted from its annual income tax return for calendar year 1995. Hence, only the amount of P37,327,867.00, as excess tax credit, is reflected in its Amended Income Tax Return for the year 1995. However, when Petitioner filed its amended annual income tax return for calendar year 1996 (Exh. D), it no longer applied the excess tax credit of the previous year (Exhs. D-1 & D-2). Instead, Petitioner filed a claim for refund of its unutilized excess tax credit amounting to P11,983,701.00 representing its creditable tax withheld from its rental income detailed as follows:

GOLDEN ARCHES DEVELOPMENT CORPORATION
SUMMARY OF RENTAL INCOME & WITHHOLDING
For the year ended, December 31, 1995

WITHHOLDING AGENT	EXHIBIT	INCOME PAYMENT	TAX WITHHELD
McPhilip Food Industries, Inc.	C-1	2,784,678.05	139,233.88
McPhilip Food Industries, Inc.	C-2	3,978,798.08	198,939.90
Alfonso Ng	C-3	3,273,643.53	163,682.15
ABC & G Corporation	C-4	3,296,916.29	164,845.80
McPhilip Food Industries, Inc.	C-5	2,771,585.34	138,579.27
McMary Food Center	C-6	2,976,706.80	148,835.34
GMC Foods	C-7	2,459,114.40	122,955.72
An-cel "A" Corporation	C-8	3,970,608.33	198,530.41
Giant Arches Food Corporation	C-9	5,541,930.78	277,096.52
McJola Food Industries	C-10	825,941.69	41,297.08
McRey Food Enterprises	C-11	2,228,038.57	111,401.92
Golden City Food Industries	C-12	1,020,379.48	51,018.99
EDSA Food Industries, Inc.	C-13	2,922,611.89	146,130.58
McMighty Corporation	C-14	884,208.00	44,210.40
McDaniel's Food Corporation	C-15	2,205,296.27	110,264.81
McBros Food Corporation	C-16	2,927,118.79	146,355.95
Mc DLC Foods Incorporated	C-17	722,692.95	36,134.63
Davao City Food Industries	C-18	1,840,954.59	92,047.73
Geneva Food Incorporated	C-19	2,145,216.78	107,260.82
McColby's Incorporated	C-20	2,025,289.20	101,264.46
McGill Food Industries	C-21	1,697,550.61	84,877.53

Mariel Food Industries	C-22	270,954.69	13,547.73
Blue Dairy Corporation	C-23	2,000,000.00	100,000.00
Fun Leisure Incorporated	C-24	921,955.50	46,097.76
Havi Food Services Phils, Inc. (PDI)	C-25	3,056,186.60	152,809.33
McGeorge Food Industries, Inc.	C-26	180,925,639.20	9,046,281.96
TOTALS		P 238,774,016.41*	P 11,983,700.67

Pursuant to Section 230 of the Tax Code (now Section 2:9), Petitioner filed an administrative claim for refund with the Respondent on March 9, 1998 pertaining to the aforesaid excess tax credits (Exhibit "E").

Failing to obtain an affirmative response from the Respondent and fearing that its claim would be barred by the two year period of prescription within which to initiate judicial action, Petitioner filed a Petition for Review with this Court on April 14, 1998.

In his Answer, Respondent interposed the following Special and affirmative Defenses, to wit.:

x x x x

> 4. The alleged formal application or claim for refund in the amount of P 11, 983, 701.00 as unutilized withholding tax credits for the year ended December 31, 1995 is subject to and yet under administrative investigation by Respondent's bureau personnel tasked to undertake the same;
>
> 5. The amount sought to be refunded was not properly documented and taxes are presumed collected in accordance with law and regulations, hence, not refundable;
>
> 6. In an action for tax refund, the burden of proof is upon the taxpayer to establish its right thereto and show compliance to the provisions in Section 229 of the Tax Code, as amended;
>
> 7. Well-settled is the rule that claims for refund are construed strictly against the taxpayers/ claimants, since the same partake of the nature of exemption from taxation(Resins, Inc. vs. Auditor General, 25 SCRA 754, 1968)

The sole issue to be resolved in this case is whether or not the Petitioner is entitled to a refund of the amount of P11,983,701.00 representing unutilized creditable withholding tax at source.

In cases of this nature, this Court has repeatedly held that the grant of refund of taxpayer's unutilized creditable withholding tax is dependent upon compliance with the following requisites:

> 1.) That the claim for refund was filed within two years as prescribed under Section 230 (now Sec. 229) of the Tax Code;
>
> 2.) That the income upon which the taxes were withheld were included in the return of the recipient;
>
> 3.) That the fact of withholding is established by a copy of statement (BIR Form1743.1) duly issued by the payor (withholding agent) to the payee showing the amount paid and the amount of tax withheld therefrom.
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> [Section 10, Rev. Regs. No. 6-85; Citytrust Finance Corporation vs. The Honorable 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; and Citytrust Finance Corporation 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 and the Court of Tax Appeals, C.A. G.R. SP No. 31104, April 18, 1994]

These requirements were affirmed by the Supreme Court in the case of Citibank, N.A. vs. Court of Appeals and Commissioner of Internal Revenue, 280 SCRA 459.

Pursuant to Section 230 (now Section 229) of the Tax Code, Petitioner filed its claim for refund with the Bureau of Internal Revenue on March 9,1998 and with this Court on

April 14,1998; both dates are well within the two- year period from April 15, 1996, the date Petitioner filed its Annual Income Tax Return for the year 1995.

As regards the second requirement, Petitioner failed to prove that all of the income reflected in the Certificate of Income Tax Withheld at Source (Exhs. C-1 to C-26) were part of the income declared in its annual income tax return for calendar year 1995. In its 1995 income tax return, Petitioner declared a gross income in the amount of P 232, 124, 127.00 from income producing properties (Exhs. B-4 & B-5). However, a cross reference with the Summary of Rental Income and Withholding Tax supporting such gross income, reveals a greater amount of P 238, 774, 016, .41 (Exh. C). It is also evident that some of the income, [e.g., income from professional fees (Exhs. C-5, C-17, C- 18)] reflected in the certificates do not tally with the income stated on the schedule found in Petitioner's annual income tax return, to wit:

NAME OF LESSEE/ WITHHOLDING AGENT	PER SCHEDULE EXHIBIT B-5	PER SUMMARY EXHIBIT C	DISCREPANCY
McGeorge Food Industries, Inc.	154,773,785.00 P	180,925,639.20 P	(26,151,854.20)
McPhilip Food Industries, Inc.	9,517,511.00	9,535,061.47	(17,550.47)
Alfonso Ng	3,273,924.00	3,273,643.53	280.47
ABC & G Corporation	3,298,107.00	3,296,916.29	1,190.71
McMary Food Center	3,915,519.00	2,976,706.80	938,812.20
GMC Foods	2,492,104.00	2,459,114.40	32,989.60
An-cel "A" Corporation	-	3,970,608.33	(3,970,608.33)
Giant Arches Food Corporation	5,541,931.00	5,541,930.78	0.22
McJola Food Industries	3,511,984.00	825,941.69	2,686,042.31
McRey Food Enterprises	2,209,633.00	2,228,038.57	(18,405.57)
Golden City Food Industries	2,266,432.00	1,020,379.48	1,246,052.52
EDSA Food Industries, Inc.	3,752,163.00	2,922,611.89	829,551.11
McMighty Corporation	1,412,792.00	884,208.00	528,584.00
McDaniel's Food Corporation	2,206,313.00	2,205,296.27	1,016.73
McBros Food Corporation	3,499,721.00	2,927,118.79	572,602.21
Mc DLC Foods Incorporated	1,578,091.00	722,692.95	855,398.05
Davao City Food Industries	1,988,112.00	1,840,954.59	147,157.41
Geneva Food Incorporated	2,190,657.00	2,145,216.78	45,440.22

McColby's Incorporated	2,639,258.00	2,025,289.20	613,968.80
McGill Food Industries	1,669,785.00	1,697,550.61	(27,765.61)
Mariel Food Industries	272,824.00	270,954.69	1,869.31
Fun Leisure Incorporated	-	921,955.50	(921,955.50)
Havi Food Services Phils, Inc. (PDI)	10,446,025.00	3,056,186.60	7,389,838.40
Cebu Golden Food Ventures, Inc.	3,328,619.00	-	3,328,619.00
McFerry Food Services	103,239.00	-	103,239.00
Arlene Recto	3,986,803.00	-	3,986,803.00
McDonald's Clark	248,795.00	-	248,795.00
TOTALS	230,124,127.00 P	237,674,016.41 P	(15,217,345.41)

Thus, in view of the aforestated discrepancy, this Court finds it inevitable to disallow the amount of withholding tax corresponding to the income not declared in the final adjustment return computed as follows :

NAME OF LESSEE/ WITHHOLDING AGENT	DISCREPANCY	RATE OF TAX		DISALLOWANCE
McPhilip Food Industries, Inc.	17,550.47	5%	P	877.52
McGeorge Food Industries, Inc.	26,151,854.20	5%		1,307,592.71
An-cel "A" Corporation	3,970,608.33	5%		198,530.42
McRey Food Enterprises	18,405.57	5%		920.28
McGill Food Industries	27,765.61	5%		1,388.28
Fun Leisure Incorporated	921,955.50	5%		46,097.78
TOTALS	31,108,139.68		P	1,555,406.98

As to the third requirement, Petitioner was able to present various Certificates of Income Tax Withheld at Source (Exhs. C-1 to C- 26) to prove that the amount of P11,983,700.67 as creditable withholding tax was indeed withheld. However, a careful scrutiny of the said certificates reveal that one such certificate issued by Mc Gill Food Industries, Inc. bears no signature (Exh. C-2) , hence, should likewise be disallowed.

After taking into account the certificates and the summary/ schedule submitted by the Petitioner, including the certificate left unsigned, the refundable amount is hereby computed as follows :

PETITIONER'S CLAIM FOR REFUND		P11,983,700.67
LESS: DISALLOWANCES		
(a) Creditable withholding taxes of which Income were not declared in ITR	P1,555,406.98	
(b) Certificate with no signature	84,877.53	1,640,284.51
AMOUNT REFUNDABLE		P10,343,416.16

WHEREFORE, in view of all the foregoing, Respondent is hereby ordered to **REFUND,** or in the alternative, to **ISSUE** a Tax Credit Certificate in the amount of **TEN MILLION THREE HUNDRED FORTY THREE THOUSAND FOUR HUNDRED SIXTEEN PESOS AND SIXTEEN CENTAVOS (P10,343,416.16)** in favor of the Petitioner, representing unutilized withholding tax credits for the year ended December 31, 1995.

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 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