REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SECOND DIVISION

ORION PROPERTY DEVELOPMENT, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 7000

Members:

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

Promulgated:

JAN 0 9 2008
8:00 a.m.

x- x

DECISION

UY, *J*.:

Before Us is a Petition for Review filed on June 3, 2004 by petitioner, Orion Property Development, Inc. against respondent, Commissioner of Internal Revenue, seeking a refund or issuance of tax credit certificate in the total amount of P31,118,710.00, allegedly representing excess and unutilized creditable withholding tax for fiscal year ending June 30, 2002.

THE FACTS

Petitioner is a domestic corporation duly organized and existing under and by virtue of the laws of the Philippines, with principal office address at the

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20th Floor, LKG Building, 6801 Ayala Avenue, Makati City[1]. It is registered with the Bureau of Internal Revenue (BIR) under Taxpayer's Identification No. 002-921-267-000 and adopts a fiscal year covering from July 1 to June 30 for purposes of keeping its books of accounts and of filing its annual income tax returns.[2]

Respondent, on the other hand, is the duly appointed Commissioner of Internal Revenue, with power, among others, to act on and approve claims for refund or tax credit as provided by law, with office address at BIR National Office Building, Diliman, Quezon City.[3]

On October 15, 2002, petitioner filed its Original Annual Corporate Income Tax Return (ITR) for fiscal year ended June 30, 2002. Petitioner's Annual Income Tax Return for the said fiscal year reported zero taxable income, and an excess and unutilized creditable withholding tax credits in the amount of P31,130,235.00[4]. The Annual Income Tax Return showed the following details:

Sales/Revenues/Receipts/Fees	P 562,068,237.00
Less: Cost of Sales/Services	110,924,026.00
Gross Income from Operations	P 451,114,211.00
Add: Non-operating & Other income	1,643,271.00
Total Gross Income	P 452,757,482.00
Less: Deductions	452,757,482.00
Taxable Loss	(P NIL)
Income Tax Due (32%)	-
Minimum Corporate Income Tax Due (MCIT)	P 9,055,150.00
Less: Tax Credits	
Prior Years Excess Credits	P 9,194,327.00

[1] Par. 1, Joint Stipulation of Facts & Issues (JSFI), Docket, p. 98.
[2] Par. 2, JSFI, Docket, p. 98.
[3] Par. 3, JSFI, Docket, p. 98.
[4] Par. 4, JSFI, Docket, p. 99.

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Creditable Tax Withheld for the first 3 Quarters	30,991,058.00
Total Tax Credits	40,185,385.00
Total Excess Creditable Taxes Withheld For 2002 per ITR	**(P 31,130,235.00)**[5]

However, on March 31, 2003, petitioner amended its Annual Corporate Income Tax Return for fiscal year ended June 30, 2002; this time reflecting a net loss and unutilized excess creditable withholding taxes in the amount of P31,118,710.00.[6] Petitioner's Amended Income Tax Return reported the following details:

Sales/Revenues/Receipts/Fees	P 562,038,237.00
Less: Cost of Sales/Services	109,991,200.00
Gross Income from Operations	P 452,047,037.00
Add: Non-operating & Other income	1,643,271.00
Total Gross Income	P 453,690,308.00
Less: Deductions	591,215,181.00
Taxable Loss	(P 137,524,873.00)
Income Tax Due (32%)	-
Minimum Corporate Income Tax Due (MCIT)	P 9,073,806.00
Less: Tax Credits	
Prior Years Excess Credits	P 9,201,458.00
Creditable Tax Withheld for the first 3 Quarters	30,991,058.00
Total Tax Credits	P 40,192,516.00
Total Excess Creditable Taxes Withheld For 2002 per ITR	**(P 31,118,710.00)**[7]

Petitioner filed its Annual Corporate Income Tax Return for fiscal year ended June 30, 2003 on October 15, 2003[8]. The said return reflected that petitioner was in a loss position. It also showed that the unutilized excess creditable withholding taxes pertaining to fiscal year 2002 which was originally

[5] Exhibit "B".
[6] Par. 5, JSFI, Docket, p. 99.
[7] Exhibit "C".
[8] Exhibit "E".

applied against the Minimum Corporate Income Tax (MCIT) of P9,073,806.00 still left a balance of P31,118,710.00 as excess creditable withholding tax credits for 2002 that remained unutilized and was not carried forward to the succeeding fiscal year.[9]

On April 21, 2003, petitioner filed a letter with respondent, requesting refund or issuance of a tax credit certificate of its total excess and unutilized creditable withholding taxes for fiscal year ended June 30, 2002 in the amount of P31,118,710.00.[10]

However, to date, respondent has neither denied nor approved petitioner's administrative claim for refund or issuance of a tax credit certificate. Hence, petitioner filed this Petition for Review on June 3, 2004[11], in accordance with and within the period prescribed under Sections 204(C) and 229 of the National Internal Revenue Code (NIRC) of 1997.

Respondent, in his Answer[12] filed on July 28, 2004, averred the following Special and Affirmative Defenses:

> "4. The petitioner has not shown or alleged that the amount claimed in the petition was not utilized in the succeeding quarters or years;
>
> 5. The petitioner has not shown that the income from which the alleged excess withholding taxes were withheld and subject of the instant claim for refund/tax credit was fully reported in the petitioner's income tax returns for Fiscal Year ending June 30, 2002;
>
> 6. Amendment of the income tax return is allowed only within a period of three (3) years from the filing thereof and provided that no notice of audit or investigation has

[9] Par. 6, JSFI, Docket, p. 99.
[10] Par. 9, JSFI, Docket, p. 99.
[11] Docket, pp. 1-6.
[12] Docket, pp. 48-49.

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yet been actually served on the taxpayer (Sec. 6(A), NIRC);

7. The total withholding taxes withheld as shown in the Certificates of Creditable Withholding Tax Withheld At Source does not tally with the total tax credits reported in the petitioner's tentative and amended income tax returns for FY ending June 30, 1999 suggesting that said returns are not truthful and inaccurate;

8. 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;

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

12. Well-settled is the rule that a claim for refund is strictly construed against the claimants since it partakes of the nature of an exemption from taxation."

Petitioner filed its Reply[13] to respondent's Answer on August 10, 2004.

Both parties having presented their testimonial and documentary evidence in support of their claims, the Court ordered the parties to simultaneously file their respective Memorandum. Only petitioner filed its Memorandum on March 29, 2007[14] and this case was submitted for decision on May 22, 2007.

THE ISSUES

The parties stipulated on the following issues [15] for this Court's resolution, to wit:

"1. Whether or not the Petitioner is entitled to its claim for refund or the issuance of a Tax Credit Certificate (TCC) in the amount of P31,118,710.00 representing its excess

[13] Docket, pp. 51-55.
[14] Docket, pp. 237-257.
[15] JSFI, Docket, p. 100.

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and unutilized creditable withholding taxes for the fiscal year ending June 30, 2002?

2. Whether or not Petitioner's amendment of its income tax return complies with Section 6(A) of the New Internal Revenue Code?

3. Whether or not Petitioner declared in its ITR for fiscal year 2002 income payments reflected in the certificates of creditable tax withheld at source as part of its gross income?"

THE COURT'S RULING

The first and third issues being interrelated, We deem it proper to resolve the second issue first.

After careful review of the records of this case, We find that petitioner has complied with the provisions of Section 6(A) of the NIRC of 1997, as amended, which reads:

> "**Sec. 6. Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement. –**
>
> (A) **Examination of Returns and Determination of Tax Due**. – After a return has been filed as required under the provisions of this Code, the Commissioner or his duly authorized representative may authorize the examination of any taxpayer and the assessment of the correct amount of tax: Provided, however, that failure to file a return shall not prevent the Commissioner from authorizing the examination of any taxpayer.
>
> The tax or any deficiency tax so assessed shall be paid upon notice and demand from the Commissioner or from his duly authorized representative.
>
> **Any return, statement or declaration filed in any office authorized to receive the same shall not be withdrawn: Provided, That within three (3) years from the date of such filing, the same may be modified, changed, or amended: Provided, further, That no notice for audit or investigation of such return, statement or declaration**

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> **has, in the meantime, been actually served upon the taxpayer.**" (*Emphasis supplied*)

Petitioner filed its Annual Income Tax Return (ITR) for fiscal year ending June 30, 2002 on **October 15, 2002**[16]. An Amended Income Tax Return was filed on **March 31, 2003**[17]. Records of this case do not show that a notice of audit or investigation for the fiscal year concerned was issued by respondent or his duly authorized representative against petitioner, prior to the filing of the Amended ITR on March 31, 2003. Respondent issued Letter of Authority (LOA) No. 00016119 for the examination of petitioner's books of accounts and other accounting records for the fiscal year covering the period from July 1, 2001 to June 30, 2002, only on **April 30, 2003**. Clearly, petitioner's amendment of its ITR for fiscal year 2002 on March 31, 2003, which was prior to its receipt on April 30, 2003 of the BIR's LOA No. 00016119, complied with the provisions of Section 6(A) of the NIRC of 1997, as amended.

We now resolve the remaining issues.

Section 76 of the NIRC of 1997 provides that:

> "**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

[16] Exhibit "B-5".
[17] Exhibit "C-5".

> (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 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.**" (*Emphasis supplied*)

Based on the afore-quoted provision of law, the corporate taxpayer's excess tax credits or overpaid income tax in a given taxable year may be refunded or applied against its income tax liabilities for the succeeding taxable years. Thus, a corporation entitled to a tax credit or refund of the excess estimated quarterly income taxes paid, is allowed two (2) options: (a) be credited or refunded (either in the form of cash or tax credit certificate) with the excess amount paid; or (b) carry-over the excess credit. However, once the taxpayer has exercised the option to carry-over and applied the excess quarterly income tax against income tax due for the taxable quarters of the succeeding taxable years, such option becomes irrevocable for that taxable period and no application for cash refund or issuance of a tax credit certificate shall be allowed.

A perusal of petitioner's Amended ITR for fiscal year 2002 reveals that the claimed amount of P31,118,710.00 consists of (a) the balance of the prior year's excess credits in the amount of P127,652.00 [P9,201,458.00 – P9,073,806.00 (MCIT)]; and (b) the creditable taxes withheld during the year

2002 in the amount of P30,991,058.00. While it appears that petitioner was unable to utilize its prior years' excess tax credits in the year 2002, petitioner actually exercised the option of carry-over insofar as the balance of the prior year's excess credits in the amount of P127,652.00 is concerned[18]. Having exercised such option, the same is therefore irrevocable. Petitioner's only recourse then is to carry over the said amount of P127,652.00 to the succeeding taxable years until the same is fully utilized.[19]

Moreover, petitioner has failed to substantiate the existence of the prior year's excess credits in the amount of P9,201,458.00. Save for the amount of P570,007.00, records are wanting of petitioner's withholding tax certificates corresponding to the creditable taxes withheld of P9,596,867.00. It is crucial for petitioner to prove that it has enough prior year's excess credits to cover its reported fiscal year 2002 MCIT liability in the amount of P9,073,806.00; otherwise, the said MCIT liability shall have to be deducted from petitioner's claimed fiscal year 2002 creditable withholding taxes in the amount of P30,991,058.00.

Apparent from the Report[20] of the Court-Commissioned Independent Certified Public Accountant (ICPA) and petitioner's related income tax returns[21] is the fact that petitioner's claimed prior year's excess credits in the amount of P9,201,458.00 originated from the creditable taxes withheld in the total amount of P9,596,867.00 for the years 1998, 1999, 2000 and 2001, after

[18] Exhibit "C".
[19] Subic Bay Distribution, Inc. vs. The Commissioner of Internal Revenue, CTA Case No. 6640, November 3, 2004.
[20] Exhibit "H".
[21] Exhibits "I-5" to "I-8".

deducting therefrom the income taxes payable in the amount of P395,408.00 for the years 1999 and 2001. The details are shown hereunder:

Fiscal Year	Income Tax Payable	Prior Year's Excess Credits	Balance Due/Refundable	CWT for the Year	Year to date CWT
1998				5,854,434.00	5,854,434.00
1999	327,640.00	5,854,434.00	(5,526,794.00)	1,898,103.00	(7,424,897.00)
2000		7,424,897.00	(7,424,897.00)	1,274,323.00	(8,699,220.00)
2001	67,768.00	8,699,220.00	8,631,452.00	570,007.00	9,201,459.00
	395,408.00			**9,596,867.00**	

Anent the remaining claimed creditable taxes withheld for fiscal year 2002 in the amount of P30,991,058.00, this Court finds that the same should likewise be denied.

In petitioner's Original Annual Income Tax Return for fiscal year ended 2002 filed on October 15, 2002[22], no mark as to any option was made insofar as the amount of excess tax credits of P30,991,058.00 is concerned. However, in its Amended Income Tax Return filed on March 31, 2003 for the same fiscal year, petitioner marked the option "To be issued a Tax Credit Certificate". As petitioner did not declare any "prior year's excess credits"[23] in its Annual Income Tax Return for the succeeding fiscal year 2003, on its face, the said amount may be the subject of a claim for issuance of a tax credit certificate pursuant to Section 76 of the NIRC of 1997, as amended.

[22] Exhibit "B".
[23] Exhibit "F-3".

However, as often cited by this Court in a number of similar cases[24], a taxpayer is entitled to its claim for refund or issuance of a tax credit certificate of its excess or unutilized creditable withholding taxes at source, provided, the following requisites are satisfied:

1. That the claim for refund was filed within the two-year reglementary period pursuant to Section 229 of the NIRC of 1997, as amended;

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

3. That the income upon which the taxes were withheld was included as part of the gross income declared in the income tax return of the recipient.

The fact that the instant claim was filed within the two-year prescriptive period both in the administrative and judicial levels is admitted.[25]

As regards the second requisite, petitioner was able to prove the fact of withholding of the claimed amount of P30,991,058.00, by presenting in evidence various Certificates of Creditable Tax Withheld at Source[26]. The said amount had been duly remitted, as verified and reported by the ICPA.[27] The details are as follows:

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[24] Filinvest Development Corp vs. Commissioner of Internal Revenue, C.T.A. Case No. 6055, May 16, 2002; Roxas Land Corporation vs. Commissioner of Internal Revenue, C.T.A. Case No. 6063, August 29, 2002; United Overseas Bank Phils. vs. Commissioner of Internal Revenue, C.T.A. Case No. 6393, April 13, 2004; Golden Arches Realty Corp. vs. Commissioner of Internal Revenue, C.T.A. Case No. 6930, September 1, 2006; Commissioner of Internal Revenue vs. Nissan Motor Phils., Inc, C.T.A. EB No. 137, October 6, 2006.

[25] Pars. 9-13, JSFI, Docket, pp. 99-100.

[26] Exhibits "D-1" to "D-13".

[27] Exhibit "H".

Withholding Agent/Payor	Period Covered	Income Payments	Tax Withheld
On sale, exchange or transfer of real property other than capital assets sold by a corporation, estate or trust:			
Isagani & Ofelia Dayao	7/1/01 to 9/30/01	624,448.43	18,733.45
Roberto & Janet Escueta	7/1/01 to 9/30/01	699,767.53	20,993.03
Florencia M. Mendoza	7/1/01 to 9/30/01	552,927.27	16,587.82
Ferdinand & Nancy Mercado	7/1/01 to 9/30/01	636,363.64	19,090.91
Valentino R. Patron	7/1/01 to 9/30/01	620,000.00	18,600.00
Corazon R. Briones	10/1/01 to 12/31/01	656,964.13	19,708.92
Sophia V. Valencia	10/1/01 to 12/31/01	613,800.00	18,414.00
Asian Micro Realty Dev't Corp.	1/1/02 to 3/31/02	3,966,816.14	119,004.49
Jesson C. Fabico	1/1/02 to 3/31/02	1,880,808.87	56,424.27
Miriam C. Fabrico	1/1/02 to 3/31/02	1,111,704.87	33,351.14
Antonia B. Torrijos	1/1/02 to 3/31/02	1,245,000.00	37,350.00
Philippine National Bank	4/1/02 to 6/30/02	611,816,000.00	30,590,800.00
	subtotal	**624,424,600.88**	**30,969,058.03**
On professional fees paid to juridical persons:			
Luck Hock Venture Holdings	4/1/02 to 6/30/02	220,000.00	22,000.00
	subtotal	**220,000.00**	**22,000.00**
	Total	**624,644,600.88**	**30,991,058.03**

Regarding the third requisite, the ICPA found that petitioner reported, as part of its gross income subject to income tax for fiscal years 1998 to 2002, the income related to the above creditable taxes withheld, except for the creditable taxes withheld in the amount of P37,350.00, which pertains to the sale of real property to Mr. Antonio B. Torrijos[28]. Although a "Status of Collection" report[29] was submitted, the Court, however, cannot ascertain whether the amounts in the report were reflected in petitioner's income tax returns/financial statements for the said years because the documents evaluated and verified by the ICPA, such as monthly journals, general ledger and audited financial statements, were not presented.

Furthermore, petitioner should have submitted detailed sales schedules for fiscal years 1998 to 2002 and reconciliation schedules whereby the Court can ascertain whether the income payments related to the claimed creditable taxes withheld indeed formed part of petitioner's taxable gross income for fiscal years 1998 to 2002.

Inasmuch as petitioner failed to substantiate its claim, the Court is left without any recourse but to deny this instant Petition for Review.

WHEREFORE, the instant Petition for Review is hereby **DENIED** for lack of merit.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

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

OLGA PALANCA-ENRIQUEZ
Associate Justice

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[28] Exhibit "D-5".
[29] Exhibit "M".

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