REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

PHILAM ASSET MANAGEMENT, INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 6370

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
NOV 03 2003
[signature]

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D E C I S I O N

This case involves a claim for refund in the amount of P835,953.46 allegedly representing unapplied creditable withholding tax paid by petitioner for the calendar year 1999 through its withholding agents, Philam Fund, Inc., Philam Bond Fund, Inc. and Philam Strategic Growth Fund, Inc., hereinafter referred to as PFI, PBFI and PSGFI, respectively.

Petitioner is a domestic corporation organized and existing under the laws of the Republic of the Philippines, with principal office address at 5th Floor Philamlife-Salcedo Bldg., 126 L. P. Leviste Street, Salcedo Village, Makati City ***(par.1, Petition for Review, admitted by respondent in his Answer)***. It is the investment manager of PFI, PBFI and PSGFI which are open-end investment companies in the sale of their shares of stocks and in the investment of the proceeds thereof into a diversified portfolio of debt and equity securities.

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Being an investment manager, petitioner provides management and technical services to PFI, PBFI and PSGFI. It is likewise the principal distributor of PFI, PBFI, and PSGFI that takes charge of the sales of said companies' shares to prospective investors. Pursuant to the separate Management and Distribution Agreements between the petitioner and PFI, PBFI and PSGFI, they (*PFI, PBFI and PSGFI*) agreed to pay the petitioner, by way of compensation for the latter's services and facilities, a monthly management fee from which an amount equivalent to five percent (5%) of the management fee shall be withheld by them pursuant to the Expanded Withholding Tax Regulations.

On April 14, 2000, petitioner filed with the Bureau of Internal Revenue (BIR) its Annual Income Tax Return (ITR) for the calendar year 1999 ***(Exhibit "A")***. In its ITR, petitioner reported, among others, the following:

Income Tax Due		P80,042
Less: Tax Credits/Payments		
Prior Year's Excess Credits	459,756	
Creditable Tax Withheld	915,995	1,375,751
Tax Payable/(Overpayment		P(1,295,709)

The ITR showed that petitioner's creditable tax withheld was not fully utilized resulting to overpayment of P1,295,709. Petitioner, however, failed to mark the appropriate box on whether the overpayment is "to be refunded", "to be issued a tax credit certificate", or "to be carried over as tax credit next year/quarter".

Petitioner alleged that its unapplied creditable tax for 1998 in the amount of P459,756 is subject of a pending judicial claim for tax refund before this court (*CTA Case No. 6210*). Hence, it has a refundable sum of only P835,953.46, computed as follows:

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Creditable Tax Withheld for Year 1999

PFI	P 366,028	
PBFI	127,545	
PSGFI	422,422	
Total		P 915,995
Less: Income Tax Due for Year 1999		80,042
Amount subject of the claim for refund		P 835,953

On November 29, 2001, petitioner filed with the BIR an administrative claim for refund in the amount of P835,953.

On December 26, 2001, petitioner, alleging inaction by the BIR on its administrative claim for refund, filed the instant petition for review in order to suspend the running of the two-year prescriptive period.

In his answer filed through registered mail on February 7, 2002, respondent raised the following Special and Affirmative Defenses, to wit:

"4. Petitioner's alleged claim for refund is subject to administrative routinary investigation/examination by the respondent's bureau;

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

6. Petitioner failed to prove the following:

   a. That the total amount of PHP835,953.46 allegedly claimed by it as excess creditable income tax withheld for taxable year 1999 was duly substantiated.

   b. That the subject of the instant claim have not been carried-over or applied against any income tax liability for the succeeding taxable year/period.

   c. That it has incurred tax loss for taxable year 1999.

   d. That the alleged income tax payments from which the taxes were withheld were included in its gross income for 1999;

7. Assuming but without admitting the fact that petitioner is entitled to tax refund, it is incumbent upon the latter to show that it has complied with the provisions under **Sections** (*sic*) **204** in relation to **Section 230** **(now**

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229) of the Tax Code. Otherwise, its failure to prove the same is fatal to its claim for refund;

8. Claims for refund are construed strictly against the claimant for the same partakes the nature of exemption from taxation (**Commissioner of Internal Revenue vs. Ledesma, 31 SCRA 95**) and as such, they are looked upon with disfavor (**Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 1211**)."

In support of its claim for refund, petitioner offered the following as evidence which were all admitted by the court in a Resolution promulgated on January 17, 2003, to wit:

1. Annual Income Tax Return for the Year 1999 (Exhibit "A")
2. Certificates of Creditable Tax Withheld at Source (Exhibits "B" to "E", "S" to V", "JJ" to "MM")
3. 1999 Annual Information Returns of Income Tax Withheld of PFI, PBFI and PSGFI (Exhibits "F", "W", "NN")
4. Various Monthly Remittance Returns of Income Tax Withheld (Exhibits "G" to "R", "X" to "Z", "AA" to "II", "OO" to "ZZ")
5. Written Claim for Refund dated November 27, 2001 (Exhibit "AAA")
6. Petitioner's letter to BIR dated June 18, 2002 (Exhibit "BBB")
7. Amended Annual Income Tax Return for the year 1999 (Exhibit "CCC")
8. Amended Annual Income Tax Return for the Year 2000 (Exhibit "DDD")

On June 12, 2003, petitioner filed its Memorandum. On the other hand, respondent failed to file his Memorandum within the period given by this court. Thus, on July 15, 2003, the court submitted this case for decision.

The issues to be resolved by the court have been stipulated by the parties to be as follows:

a. Whether or not the petitioner has excess creditable withholding tax for calendar year ended December 31, 1999 in the amount of P835,953.46.

b. Whether or not the income from which the subject creditable tax were withheld were included as part of the gross income in petitioner's 1999 income tax return.

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c. Whether or not the petitioner's alleged excess creditable withholding tax for taxable year 1999 in the amount of P835,953.46 was carried over and applied against its tax liability in the succeeding taxable year.

d. Whether or not the petitioner's claim for refund of alleged excess creditable withholding tax is substantiated by documentary evidence.

We resolve to deny the petition.

Time and again, this court has ruled that in a claim for refund of creditable withholding tax, petitioner must comply with the following requirements:

1. That the claim for refund/tax credit was filed within the two-year prescriptive period provided under Section 204 (3) [now Section 204 (c)] in relation to Section 230 [now Section 229] of the Tax Code, as amended;

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 the income upon which the taxes were withheld were included in the return of the recipient ***[Revenue Regulations No. 6-85 as amended by Revenue Regulations No. 12-94; Citibank, N.A. vs. Court of Appeals and Commissioner of Internal Revenue, 280 SCRA 459; ACCRA Investments Corporation vs. Court of Appeals, Commissioner of Internal Revenue and Court of Tax Appeals, 204 SCRA 957]***.

Anent the first requirement, the court finds that both the administrative and judicial claims for refund filed on November 29, 2001 and December 26, 2001, respectively, were filed within the two-year period allowed by law counted from April 14, 2000, the date of filing of petitioner's 1999 Annual Income Tax Return.

On the second requirement, petitioner was able to prove the fact of withholding through the presentation of the various certificates of creditable tax withheld at source (***Exhs. "B" to "E", "S" to"V" and "JJ" to "MM"***).

And as to whether or not the income upon which these taxes were withheld were included as part of the gross income declared in the return of the petitioner, the

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court is convinced that the income payments were included in the amount of P20,982,815 declared by petitioner as gross revenues in its 1999 Annual Income Tax Return.

While the petitioner offered in evidence its 2000 Annual Income Tax Return (***Exh. DDD***), petitioner did not submit the original of the said return. This court found that the said ITR offered by petitioner as evidence is an amended income tax return filed with the BIR only on July 9, 2002, long after this petition was filed. Thus, said ITR cannot be accepted by this court as proof that the excess creditable taxes of petitioner for year 1999 were never applied to its income tax liabilities because Section 76 of the Tax Code speaks of a final adjustment return and not an amended one, 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.
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> 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. **(Underscoring supplied)**

In the case of ***Philippine Airlines, Inc. (PAL) vs. Commissioner of Internal Revenue Mr. Rene Bañez, CTA Case No. 6327, August 28, 2003***, the court ruled that the said return is necessary for the court to verify if indeed the original option of

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petitioner was to refund the excess income tax payment. This is because under Section 76 of the 1997 Tax Code, 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 for that taxable period. Thus, if petitioner has originally chosen the option 'to be carried over as tax credit next year', it will be precluded from claiming for the refund of the same excess payment.

In an earlier case decided by this court involving the same parties, facts and issues, the Court of Appeals in affirming this court's decision in ***Philam Asset Management, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 5965, October 9, 2001***, stated that:

> "As correctly found by the Court of Tax Appeals, the failure of petitioner to indicate in its 1997 ITR its option to refund or apply as credit to the succeeding year the tax credit of P522,092.00 and to present its 1998 ITR is fatal to its claim for refund since there is no way by which we can determine with certainty whether or not the claimed 1997 tax credits were not applied against its 1998 tax liabilities." ***(Philam Asset Management, Inc. vs. Commissioner of Internal Revenue, CA-G.R. SP No. 69197, December 19, 2002)***

We have already ruled in a number of cases that once the option to carry-over has been made, the same becomes irrevocable for that taxable period and the taxpayer can no longer claim for a cash refund or issuance of a tax credit certificate of any overpaid income tax payment for the said year ***(Pilipinas Transport Industries, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 6073, March 1, 2002; Pilipinas Hino, Inc. vs. Commissioner 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; Roxas Land Corp. vs. Commissioner of Internal***

Revenue, CTA Case No. 6063, August 29, 2002; Sithe Philippines Holdings, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 6274, dated April 4, 2003; Banco Filipino Savings & Mortgage Bank vs. Commissioner of Internal Revenue, CTA Case No. 6374, dated April 3, 2003; Philippine Airlines, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 6134, dated May 16, 2003 and Asiaworld Properties Philippine Corporation vs. Commissioner of Internal Revenue, CTA Case No. 6439, September 11, 2003). And in the case of ***Commissioner of Internal Revenue vs. Honda Philippines, Inc., CA-G.R. SP No. 68141***, the Court of Appeals elucidated further, thus:

> "Now we go to the issue of whether or not respondent may still claim for a cash refund of alleged excess tax payment even though it had already availed of the option to carry-over and apply the same to tax credit for the succeeding taxable year.
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> We rule in the negative. Under the Tax Reform Act of 1997, when after filing the Annual Income Tax Return for a particular taxable year there appears to be an excess in the amount of withheld taxes vis-à-vis income taxes actually paid, the corporate taxpayer may either ask for a cash refund or claim the excess as a tax credit to be applied to the succeeding taxable quarters (Sec. 76 NIRC, as amended by RA 8424). In such a case, however, the taxpayer may only avail of one of these two remedies, as they are only alternative, not cumulative remedies.
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> In **Philippine Bank of Communication vs. Commissioner of Internal Revenue, 302 SCRA 241**, the Supreme Court had occasion to discuss the remedies afforded to a corporate taxpayer in case of excess payment of taxes, thus:
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>> "Sec. 69 of the 1977 NIRC (now Sec. 76 of the 1997 NIRC) provides that any excess of the total quarterly payments over the actual income tax computed in the adjustment or final corporate income tax return, *shall either* (a) be refunded to the corporation, or (b) may be credited against the estimated quarterly income tax liabilities for the quarters of the succeeding taxable year.
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>> "The corporation must signify in its annual corporate adjustment return (by marking the option box provided in the BIR Form) its intention, whether to request for a refund or claim for an automatic tax

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> credit for the succeeding taxable year. To ease the administration of tax collection, these remedies are in the alternative, and the choice of one precludes the other" (underscoring supplied).
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> Clearly, the ruling in the case of **Philippine Bank of Communication vs. Commissioner of Internal Revenue, supra**, is applicable in this case. Respondent's choice of automatic carry-over of the alleged tax credit precludes it from claiming for a cash refund during the succeeding taxable years. Even under Section 69 of the 1977 NIRC, the option to claim for cash refund or tax credit was recognized as an alternative remedy, the availment of one precludes the other. The exercise of the option to avail of these alternative remedies was further made stricter under the Tax Reform Act of 1997 wherein it was declared that once the option to claim for cash refund or tax credit carry-over is exercised, the choice becomes irrevocable for the succeeding taxable year. It bears noting that the Guidelines and Instructions reflected in BIR Form No. 1702 [Corporation/Partnership Annual Income Tax Return] (p. 41, Rollo) states that if a taxpayer is entitled to a tax refund or credit, the taxpayer shall exercise said option by checking the appropriate (option) box and that in case the taxpayer failed to signify its choice, the excess payment shall be automatically credited against its estimated income tax liabilities for the quarters of the next succeeding taxable year."

Petitioner's ITR filed on April 14, 2000 sufficiently proved that it realized a net income of P80,042 for the calendar year 1999. However, as stated earlier, an examination of its ITR would disclose that petitioner failed to indicate its intention on whether the tax credit is "to be refunded", "to be issued a tax credit certificate", or "to be carried over as tax credit next year/quarter". Considering this omission of petitioner, in addition to the fact that it also failed to produce and present to this court as evidence its year 2000 original ITR, this court would be in no position to determine with absolute certainty the option chosen as well as whether or not the claimed tax credits were not applied to its year 2000 income tax liabilities. If the petitioner applied the excess creditable taxes to its 2000 tax liabilities, then the instant claim for refund should no longer be granted because this would be tantamount to granting twice the refund being sought, to the prejudice of the

Government ***(Paseo Realty and Development Corporation vs. Commissioner of Internal Revenue, C.A., G.R. SP No. 33589, October 14, 1994).***

Settled is the rule in this jurisdiction that a claim for refund is in the nature of a claim for exemption, hence should be construed in *strictissimi juris* against the taxpayer ***(Commissioner of Internal Revenue vs. Tokyo Shipping Co., Ltd., 244 SCRA 332).***

WHEREFORE, in view of the foregoing, the instant petition for review is hereby **DENIED** for lack of merit.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

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

C E R T I F I C A T I O N

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 Judge

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