

## THIRD DIVISION

[ G.R. No. 160949, April 04, 2011 ]

**COMMISSIONER OF INTERNAL REVENUE, PETITIONER, VS. PL  
MANAGEMENT INTERNATIONAL PHILIPPINES, INC.,  
RESPONDENT.**

### DECISION

**BERSAMIN, J.:**

How may the respondent taxpayer still recover its unutilized creditable withholding tax for taxable year 1997 after its written claim for refund was not acted upon by the petitioner, whose inaction was upheld by the Court of Tax Appeals (CTA) on the ground of the claim for tax refund being already barred by prescription?

#### **Nature of the Case**

The inaction of petitioner Commissioner of Internal Revenue (Commissioner) on the respondent's written claim for tax refund or tax credit impelled the latter to commence judicial action for that purpose in the CTA. However, the CTA denied the claim on December 10, 2001 for being brought beyond two years from the accrual of the claim.

On appeal, the Court of Appeals (CA) reversed the CTA's denial through the decision promulgated in C.A.-G.R. Sp. No. 68461 on November 28, 2002, and directed the petitioner to refund the unutilized creditable withholding tax to the respondent.<sup>[1]</sup>

Hence, the petitioner appeals.

#### **Antecedents**

In 1997, the respondent, a Philippine corporation, earned an income of P24,000,000.00 from its professional services rendered to UEM-MARA Philippines Corporation (UMPC), from which income UMPC withheld P1,200,000.00 as the respondent's withholding agent.<sup>[2]</sup>

In its 1997 income tax return (ITR) filed on April 13, 1998, the respondent reported a net loss of P983,037.00, but expressly signified that it had a creditable withholding tax of P1,200,000.00 for taxable year 1997 to be claimed as tax credit in taxable year 1998.<sup>[3]</sup>

On April 13, 1999, the respondent submitted its ITR for taxable year 1998, in which it declared a net loss of P2,772,043.00. Due to its net-loss position, the respondent was unable to claim the P1,200,000.00 as tax credit.

On April 12, 2000, the respondent filed with the petitioner a written claim for the

refund of the P1,200,000.00 unutilized creditable withholding tax for taxable year 1997.<sup>[4]</sup> However, the petitioner did not act on the claim.

### **Ruling of the CTA**

Due to the petitioner's inaction, the respondent filed a petition for review in the CTA (CTA Case No. 6107) on April 14, 2000, thereby commencing its judicial action.

On December 10, 2001, the CTA denied the respondent's claim on the ground of prescription,<sup>[5]</sup> to wit:

Records reveal that Petitioner filed its Annual Income Tax Return for taxable year 1997 on April 13, 1998 (Exhibit "A") and its claim for refund with the BIR on April 12, 2000 (Exhibit "D" and No. 2 of the Statement of Admitted Facts and Issues). Several days thereafter, or on April 14, 2000, Petitioner filed an appeal with this Court.

The aforementioned facts clearly show that the judicial claim for refund via this Petition for Review was already filed beyond the two-year prescriptive period mandated by Sections 204 (C) and 229 of the Tax Code xxx

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As earlier mentioned, Petitioner filed its Annual ITR on April 13, 1998 and filed its judicial claim for refund only on April 14, 2000 which is beyond the two-year period earlier discussed. The aforequoted Sections 204 (C) and 229 of the Tax Code mandates that both the administrative and judicial claims for refund must be filed within the two-year period, otherwise the taxpayer's cause of action shall be barred by prescription. Unfortunately, this lapse on the part of Petitioner proved fatal to its claim.

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WHEREFORE, in view of the foregoing the Petition for Review is hereby DENIED due to prescription.

### **Ruling of the CA**

Aggrieved, the respondent appealed to the CA, assailing the correctness of the CTA's denial of its judicial claim for refund on the ground of bar by prescription.

As earlier mentioned, the CA promulgated its decision on November 28, 2002, holding that the two-year prescriptive period, which was not jurisdictional (citing *Oral and Dental College v. Court of Tax Appeal*<sup>[6]</sup> and *Commissioner of Internal Revenue v. Philippine American Life Insurance Company*<sup>[7]</sup>), might be suspended for reasons of equity.<sup>[8]</sup> The CA thus disposed as follows:

WHEREFORE, the petition is partly GRANTED and the assailed CTA Decision partly ANNULLED. Respondent Commissioner of Internal Revenue is hereby ordered to refund to petitioner PL Management International Phils., Inc., the amount of P1,200,000.00 representing its unutilized creditable withholding tax in taxable year 1997.<sup>[9]</sup>

The CA rejected the petitioner's motion for reconsideration.<sup>[10]</sup>

### **Issues**

In this appeal, the petitioner insists that:

I. THE COURT OF APPEALS ERRED IN HOLDING THAT THE TWO-YEAR PRESCRIPTIVE PERIOD UNDER SECTION 229 OF THE TAX CODE IS NOT JURISDICTIONAL, THUS THE CLAIM FOR REFUND OF RESPONDENT IS SUSPENDED FOR REASONS OF EQUITY.

II. THE COURT OF APPEALS ERRED IN HOLDING THAT RESPONDENT'S JUDICIAL RIGHT TO CLAIM FOR REFUND BROUGHT BEFORE THE COURT OF APPEALS ON APRIL 14, 2000 WAS ONE DAY LATE ONLY.

<sup>[11]</sup>

The petitioner argues that the decision of the CA suspending the running of the two-year period set by Section 229 of the National Internal Revenue Code of 1997 (NIRC of 1997) on ground of equity was erroneous and had no legal basis; that equity could not supplant or replace a clear mandate of a law that was still in force and effect; that a claim for a tax refund or tax credit, being in the nature of a tax exemption to be treated as in derogation of sovereign authority, must be construed *in strictissimi juris* against the taxpayer; that the respondent's two-year prescriptive period under Section 229 of the NIRC of 1997 commenced to run on April 13, 1998, the date it filed its ITR for taxable year 1997; that by reckoning the period from April 13, 1998, the respondent had only until April 12, 2000 within which to commence its judicial action for refund with the CTA, the year 2000 being a leap year; that its filing of the judicial action on April 14, 2000 was already tardy; and that the factual findings of the CTA, being supported by substantial evidence, should be accorded the highest respect.

In its comment, the respondent counters that it filed its judicial action for refund within the statutory two-year period because the correct reckoning started from April 15, 1998, the last day for the filing of the ITR for taxable year 1997; that the two-year prescriptive period was also not jurisdictional and might be relaxed on equitable reasons; and that a disallowance of its claim for refund would result in the unjust enrichment of the Government at its expense.

### **Ruling of the Court**

We reverse and set aside the decision of the CA to the extent that it orders the petitioner *to refund* to the respondent the P1,200,000.00 representing the unutilized creditable withholding tax in taxable year 1997, but permit the respondent to apply

that amount as *tax credit* in succeeding taxable years until fully exhausted.

Section 76 of the NIRC of 1997 provides:

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 refund of the excess estimated quarterly income taxes paid, the refundable amount shown on its final adjustment return may be 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 tax refund or issuance of a tax credit certificate shall be allowed therefor.**

The predecessor provision of Section 76 of the NIRC of 1997 is Section 79 of the NIRC of 1985, which provides:

Section 79. *Final Adjustment Return.* - Every corporation liable to tax under Section 24 shall file a final adjustment return covering the total net 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 net income of that year the corporation shall either:

- (a) Pay the excess tax still due; or
- (b) Be refunded the excess amount paid, as the case may be.

In case the corporation is entitled to a refund of the excess estimated quarterly income taxes-paid, the refundable amount shown on its final adjustment return may be credited against the estimated quarterly income tax liabilities for the taxable quarters of the succeeding taxable year.