REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**CTA EB NO. 1344** (CTA Case No. 8471)
- versus -	Present: **DEL ROSARIO,** *P.J.,* **CASTAÑEDA, Jr., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN,** *and* **MANAHAN,** *JJ.*
JARDINE LLOYD THOMPSON INSURANCE BROKERS, INC., Respondent.	Promulgated: MAR 21 2017 3:00pm

x- -x

DECISION

RINGPIS-LIBAN, *J.*:

The Case

Before the Court is a Petition for Review[1] seeking partial nullification of the Decision[2] dated April 14, 2015 and Resolution[3] dated July 23, 2015 of the Court of Tax Appeals Second Division (Second Division), ordering petitioner to refund or issue a tax credit certificate in the reduced amount of ₱1,356,786.92, representing respondent's excess and unutilized creditable income taxes withheld for calendar year 2009.

---

1 Under Section 3(b), Rule 8 of the Revised Rules of the Court of Tax Appeals.

2 Penned by Associate Justice Caesar A. Casanova, with Senior Associate Justice Juanito C. Castañeda, Jr. and Associate Justice Amelia R. Cotangco-Manalastas concurring. Docket, pp. 25-48.

3 Penned by Associate Justice Caesar A. Casanova, with Senior Associate Justice Juanito C. Castañeda, Jr. concurring. Docket, pp. 49-54.

The Facts

Petitioner is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR), vested with power to decide disputed assessments, grant tax refunds and issue tax credit certificates, pursuant to the provisions of the National Internal Revenue Code (NIRC) of 1997 and other laws, rules and regulations.

Respondent Jardine Lloyd Thompson Insurance Brokers, Inc. is a domestic corporation duly organized and existing under Philippine laws. It is engaged in the business of insurance brokerage, and as such, receives commission income from various insurance companies. Petitioner is registered with the BIR and was issued Tax Identification Number (TIN) 000-125-711-000 and BIR Certificate of Registration bearing RDO Control No. 8RC0000019169.

On April 14, 2010, petitioner filed with the BIR its Annual Income Tax Return (ITR) for calendar year ending in December 31, 2009 (CY 2009). On April 12, 2011, petitioner filed an Amended Annual ITR for CY 2009. On the face of both the Annual ITR and the Amended Annual ITR for CY 2009, petitioner indicated its option to claim for the refund of its excess and unutilized creditable withholding taxes for CY 2009.

On April 25, 2011, petitioner filed with the Large Taxpayers Service IV-Regular Taxpayer of the BIR, an administrative claim for refund of excess and unutilized creditable withholding taxes for CY 2009 in the amount of ₱10,166,848.00. On April 13, 2012, due to respondent's inaction on its claim for refund, petitioner filed a Petition for Review before the Court of Tax Appeals, assigned to the Second Division and docketed as CTA Case No. 8471.

The parties submitted the following issues for the resolution of the Second Division:

1. Whether or not petitioner had unutilized creditable withholding taxes for CY 2009 in the amount of ₱10,166,848.00.

2. Whether or not petitioner's unutilized creditable withholding taxes amounting to ₱10,166,848.00, for CY 2009 are duly substantiated by documentary evidence.

3. Whether or not the income from which the subject creditable withholding taxes were withheld were reported as part of petitioner's income in its Annual ITR for CY 2009.

4. Whether or not petitioner's unutilized creditable withholding taxes for CY 2009 were applied against its income tax liability for the succeeding taxable years.

5. Whether petitioner has complied with the provisions of Sections 204 and 229 of the NIRC of 1997, as amended, in the prescriptive period for filing of administrative and judicial claims for refund and/or issuance of a tax credit certificate.

6. Whether petitioner has exhausted all administrative remedies before filing this petition and whether this Court has jurisdiction over the petition for review.

7. Whether petitioner is entitled to its claim for refund in the amount of ₱10,166,848.00, representing creditable income taxes for CY 2009.[4]

The Ruling of the Second Division

The Second Division partially granted respondent's Petition for Review in the Decision[5] dated April 14, 2015 (assailed Decision), thus:

> **WHEREFORE**, premises considered, the instant Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, respondent is hereby **ORDERED TO REFUND or TO ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the reduced amount of **₱1,356,786.92**, representing petitioner's excess and unutilized creditable income taxes withheld for calendar year 2009.[6]

The Second Division found that: (1) respondent's unutilized creditable withholding taxes for taxable year 2009 in the amount of ₱10,166,848.00 may be the subject of a claim for refund under Section 76 of the NIRC of 1997, as amended;[7] (2) respondent need not comply with all the documents prescribed in Revenue Memorandum Order (RMO) No. 53-98 and Revenue Regulations (RR) No. 2-2006 before it can claim its unutilized creditable withholding tax;[8] (3) to the extent of ₱1,356,786.92, respondent complied with the following requirements for the grant of a claim for refund of creditable withholding income tax:

1. The administrative and judicial claim for refund are filed within two (2) years from the date of payment of the tax;

---

[4] Docket, pp. 35-36.
[5] Supra, note 2.
[6] Docket, p. 47.
[7] Docket, p. 38.
[8] Docket, p. 40.

2. It is shown on the return of the recipient that the income payment received was declared as part of the gross income; and

3. The fact of withholding is established by a copy of a statement duly issued by the payer (withholding agent) to the payee, showing the amount paid and the amount of tax withheld therefrom.[9]

Aggrieved, petitioner filed a Motion for Partial Reconsideration on April 29, 2015, which the Second Division denied in a Resolution[10] dated July 23, 2015 (assailed Resolution), thus:

> **WHEREFORE**, in view of the foregoing, respondent's Motion for Partial Reconsideration is hereby **DENIED** for lack of merit.[11]

Hence, this Petition.

Petitioner filed a Motion for Extension of Time to File Petition for Review[12] on August 13, 2015, which the Court granted in a Resolution dated August 18, 2015.[13] Within the period granted, petitioner filed the instant Petition for Review on August 28, 2015.[14]

On October 6, 2015, the Court issued a Resolution[15] ordering respondent to comment on the instant Petition. On November 13, 2015, respondent filed a Motion for Extension of Time to File Comment,[16] which the Court granted in a Resolution dated November 23, 2015.[17] Within the period granted, respondent filed his Comment[18] on December 1, 2015.

In a Resolution dated January 7, 2016, the Court gave due course to the instant Petition and directed the parties to submit their respective memoranda.[19] On February 19, 2016, respondent manifested that he is adopting the arguments

9 Docket, pp. 38-39.
10 Supra, note 3.
11 Docket, p. 54.
12 Docket, pp. 1-4.
13 Docket, p. 6.
14 Docket, pp. 7-21.
15 Docket, pp. 59-60.
16 Docket, pp. 61-64.
17 Docket, p. 66.
18 Docket, pp. 67-78.
19 Docket, pp. 83-84.

raised in his Petition for Review filed on August 28, 2015.[20] Within the extension period granted, respondent filed its Memorandum[21] on March 10, 2016.

On April 5, 2016, the Court issued a Resolution[22] submitting the case for decision.

The Issues

Petitioner raises the following issues:

I.

WHETHER THE HONORABLE SECOND DIVISION ERRED IN RULING THAT RESPONDENT DID NOT VIOLATE THE DOCTRINE OF EXHAUSTION OF ADMINISTRATIVE REMEDIES.

II.

WHETHER THE HONORABLE SECOND DIVISION ERRED IN RULING THAT THE RESPONDENT IS ENTITLED TO THE REFUND OR ISSUANCE OF A TAX CREDIT CERTIFICATE IN THE AMOUNT OF ₱1,356,786.92 REPRESENTING RESPONDENT'S EXCESS AND UNUTILIZED CREDITABLE INCOME TAXES WITHHELD FOR CALENDAR YEAR 2009.[23]

The Ruling of the Court

We deny the petition.

To be entitled to a refund or tax credit representing any excess or unutilized creditable withholding tax, a claimant must comply with the essential conditions under the law and jurisprudence.[24]

In *Banco Filipino Savings and Mortgage Bank v. Court of Appeals*,[25] the Supreme Court held that there are three conditions for the grant of a claim for refund of creditable withholding tax, which are:

---

20 Docket, pp. 90-91.
21 Docket, pp. 94-105.
22 Docket, pp. 108-109.
23 Docket, pp. 10-11.
24 *Commissioner of Internal Revenue v. Team [Philippines] Operations Corporation [formerly Mirant (Phils) Operations Corporation]*, G.R. No. 179260, April 2, 2014.
25 G.R. No. 155682, March 27, 2007.

1. The claim is filed with the CIR within the two-year period from the date of payment of the tax;

2. It is shown on the return of the recipient that the income payment received was declared as part of the gross income; and

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

The First Condition

Sections 204 (C) and 229 of the NIRC of 1997, as amended, provide:

> Sec. 204. *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.* – The Commissioner may –
>
> x x x
>
> (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: *Provided, however,* That a return filed showing an overpayment shall be considered as a written claim for credit or refund.
>
> 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: *Provided, however*, That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid.

A review of the pertinent dates in this case shows that respondent complied with the first condition:

Event	Date
Filing of original Annual Income Tax Return	April 14, 2010
Deadline to file the claim for refund	*April 13, 2012*[26]
Filing of the administrative claim	April 25, 2011
Filing of the judicial claim	April 13, 2012

The Second and Third Conditions

Section 2.58.3(B) of Revenue Regulations No. 2-98[27] provides:

Sec. 2.58.3. Claim for Tax Credit or Refund

x x x

(B) Claims for tax credit or refund of any creditable income tax which was deducted and withheld on income payments shall be given due course only when it is shown that the income payment has been declared as part of the gross income and the fact of withholding is established by a copy of the withholding tax statement duly issued by the payor to the payee showing the amount paid and the amount of tax withheld therefrom.

In compliance with Section 76 of the NIRC of 1997,[28] as amended, respondent opted to be refunded of its unutilized creditable taxes withheld

---

26 2012 was a leap year.

27 Implementing Republic Act No. 8424, "An Act Amending the National Internal Revenue Code, as Amended" Relative to the Withholding on Income Subject to the Expanded Withholding Tax and Final Withholding Tax, Withholding on Income Tax on Compensation, Withholding of Creditable Value-Added Tax and Other Percentage Taxes.

28 Section 76 of the NIRC of 1997, as amended, provides:
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:

during the year 2009 in the amount of ₱10,166,848.00 by indicating so in its Annual Income Tax Return for CY 2009. Hence, the amount ₱10,166,848.00 may be the proper subject of a claim for refund or credit.[29]

However, the Second Division found that respondent was able to substantiate, in accordance with the second and third conditions, only the amount of ₱1,356,786.92.[30]

The foregoing findings are not disputed by petitioner. However, petitioner posits that compliance with the requirements discussed above does not suffice if respondent failed to comply with Revenue Memorandum Order (RMO) No. 53-98 and RR No. 2-2006.[31] This is rehashed from his arguments before the Second Division, and have been sufficiently discussed in the assailed Decision and assailed Resolution.

Petitioner argues that his inaction on the administrative claim for refund was due to respondent's own failure to submit the complete supporting documents.[32] He claims that respondent failed to comply with the prescribed checklist of documents to be submitted pursuant to RMO No. 53-98 and RR No. 2-2006. Petitioner also argues that respondent failed to exhaust administrative remedies prior to the filing of the instant Petition.[33] Petitioner claims that had respondent submitted the relevant documents to substantiate its claim for tax credit, he would have had the opportunity to determine the veracity of the claim. The alleged failure of respondent to do so unduly deprived petitioner of the opportunity and time to study its claim for refund and to fully exercise his function.[34]

Petitioner's arguments are untenable.

Petitioner insists that it is evident that respondent lacked the necessary documents, on the basis of the testimony of Revenue Officer Hannah Thea

---

(A) Pay the balance of the 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 of the taxable quarter 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.

29 Docket, p. 38.

30 Docket, pp. 44-46.

31 Petition for Review, docket, pp. 14-15.

32 Docket, pp. 11-13.

33 Docket, p. 17.

34 Docket, p. 19.

Tulio, the revenue officer who conducted the audit and examination of respondent's claim for refund. He refers to his Exhibits "1", "2" and "3". A perusal of these documents, in particular Exhibit "3", belies his claim.

Exhibit "3" is a Second Request for Presentation of Records dated June 9, 2011.[35] At the bottom of the letter is stated:

> Please be informed also that non-submission of the complete supporting documents after three notices is a ground for denial for (sic) the claim of refund pursuant to RMC 29-2009 dated April 16, 2009.

However, from June 9, 2011 until the respondent's filing of the judicial claim on April 13, 2012, there is nothing on record that shows that petitioner sent respondent a third notice, or even if Exhibit "3" were construed as the third notice, that petitioner denied the claim. Indeed, the testimony of Revenue Officer Hannah Thea Tulio shows that there was still no decision on respondent's claim for refund as of July 16, 2013.[36] As a matter of fact, it appears that the BIR was able to conduct a review of the claim for refund, contrary to the allegation that petitioner could not study the claim because documents from respondent were lacking.[37]

In any event, the requirements to claim refund of excess creditable withholding tax are the three conditions discussed above. Petitioner's argument that compliance with RMO No. 53-98 and RR No. 2-2006 are additional requirements for the claim for refund has no basis. We quote with approval the discussion of the Second Division, thus:

---

[35] Division docket, vol. II, p. 1036.

[36] Judicial Affidavit of Hannah Thea Tulio, division docket, vol. II, pp. 1029-1031.

[37] Id. at pp. 1030-1031.

> 11. Q: What is the status of Jardine Lloyd's claim for refund?
>
> A: To enable us to verify the correctness of the tax remittance to the government of the withholding agents who withheld the creditable withholding tax of Jardine Lloyd, we requested for the Annual Information Return of Creditable Income Taxes Withheld – Expanded (BIR Form No. 1604-E) and Alphalist of Payees subjected to Expanded Withholding Tax. **Requests were sent to the Large Taxpayer Document Processing and Quality Assurance Division (LTDPQAD)** for those withholding agents registered under Large Taxpayers Service **and to the different Revenue District Offices for those withholding agents registered under Revenue District Office.**
>
> **To date, we received responses from some of the Revenue District Offices and LTDPQAD** and was provided with the filed Annual Information return of Creditable Income Taxes Withheld – Expanded (BIR Form No. 1604-E) of the withholding agents. **However, we are still awaiting for the responses of the other RDO** to the access letter sent.
>
> Tax payment certification of the said expanded withholding tax remitted as appearing in the Annual Information Return of Creditable Income Taxes Withheld -Expanded (BIR Form 1604-E) **will be requested to our Revenue Accounting Division**. *(Emphasis supplied.)*

In the case of *Ayala Corporation vs. Commissioner of Internal Revenue*, the Second Division of this Court discussed both RMO No. 53-98 and RR 2-2006 in relation to claims for unutilized creditable withholding tax, to wit:

> It must be stressed that Revenue Memorandum Order (RMO) No. 53-98, dated June 1, 1998 and entitled "Checklist of Documents to be Submitted by a Taxpayer upon Audit of his Tax Liabilities as well as of the Mandatory Reporting Requirements to be Prepared by a Revenue Officer, all of which Comprise a Complete Tax Docket", refers mainly to the requirements in the administrative level for claims for refund/tax credit, wherein the taxpayer is required to submit for audit purposes, all his/its pertinent documents/records, to establish the veracity of his/its claim. However, when a taxpayer's claim reaches the judicial level or when the claim is elevated to this Court, the Rules of Court and this Court's own Rules govern the matter of proving the said claim.
>
> Moreover, RR 2-2006, indeed prescribes the attachment of the *Summary of Withholding Agents of Income Payments Subjected to Tax Withheld at Source* (SAWT) to tax returns, with claimed tax credits due to creditable tax withheld at source. However, this Court, in numerous cases, held that the following are the requisites that must be complied with in order to claim a Tax Credit Certificate or Refund of excess creditable withholding tax (CWT): (a) that the claim for refund was filed within the two-year prescriptive period as provided under Section 204(C) in relation to Section 229 of the National Internal Revenue Code (NIRC) of 1997, as amended; (b) that the fact of withholding is established be 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 (c) that the income upon which the taxes were withheld were included in the return of the recipient. These requisites were also adopted by the Supreme Court in the case of *United International Pictures AB vs. Commissioner of Internal Revenue.*

> [Respondent], therefore, need not comply with all the documents prescribed in RMO No. 53-98 and RR 2-2006 before it can claim its unutilized creditable withholding tax. It just needs to comply with the three conditions enumerated above.

Having shown compliance with the requirements for a claim for refund, to the extent of ₱1,356,786.92, respondent is entitled to a refund of the said amount, as correctly granted by the Second Division.

WHEREFORE, premises considered, the Court hereby **DENIES** the Petition for Review for lack of merit. The Decision dated April 14, 2015 and the Resolution dated July 23, 2015 of the Second Division in CTA Case No. 8471 are hereby **AFFIRMED**.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

CERTIFICATION

Pursuant to *Article VIII, Section 13 of the Constitution*, 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.

ROMAN G. DEL ROSARIO
Presiding Justice