**REPUBLIC OF THE PHILIPPINES**
**COURT OF TAX APPEALS**
**QUEZON CITY**

## FIRST DIVISION

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**PHILIPPINE AIRLINES, INC. (PAL),**
Petitioner,

- versus -

**COMMISSIONER OF INTERNAL REVENUE,**
Respondent.

**C.T.A. CASE NO. 7489**

Members:

**ACOSTA,** *Chairperson*
**BAUTISTA,** and
**CASANOVA,** *JJ.*

**Promulgated:**

JAN 05 2010; 2:50pm

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# DECISION

***CASANOVA, J.:***

The *Petition for Review* seeks for the refund of alleged unapplied creditable income tax withheld for the fiscal year which ended March 31, 2004 in the amount of P62,359,178.55

Petitioner, Philippine Airlines, Inc. (PAL), is a domestic corporation organized in accordance with the laws of the Republic of the Philippines with principal office at the 9th Floor, PAL Center, Legazpi St., Legazpi Village, Makati City.[1]

On the other hand, respondent is the Commissioner of the Bureau of

[1] Division Docket, p. 152.

Internal Revenue (BIR), which is the government agency in charge of the assessment and collection of all national internal revenue taxes, fees, and charges, with principal office at the BIR National Office Building, Agham Road, Diliman, Quezon City.[2]

The *Petition for Review* was filed on June 9, 2006.[3]

In its *Answer*,[4] respondent made the following assertions, viz.:[5]

> 4. Petitioner's alleged claim for refund is subject to administrative routinary investigation/examination by the Bureau;
>
> 5. The amount of P62,359,178.55 being claimed by petitioner as alleged unapplied income tax withheld for the fiscal year ended 31 March 2004 was not properly documented;
>
> 6. In an action for refund, the burden of proof is on the taxpayer to establish its right to refund, and failure to sustain the burden is fatal to the claim for refund/credit;
>
> 7. Petitioner must show that it has complied with the provisions of Sections 204(C) and 229 of the 1997 Tax Code on the prescriptive period for claiming tax refund/credit;
>
> 8. Claims for refund are construed strictly against the claimant for the same partake the nature of exemption from taxation *(Commissioner of Internal Revenue vs. Ledesma, 31 SCRA 95)* and such, they are looked upon with disfavor *(Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 1211)*.

The parties filed their *Joint Stipulation of Facts and Issues*[6] on August 25, 2006, which to quote:

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[2] Division Docket, p. 152.
[3] Division Docket, pp. 1-8.
[4] Division Docket, pp. 128-131.
[5] Division Docket, p. 129.
[6] Division Docket, pp. 152-155.

> 3. In response to the March 7, 2006 written claim for refund of the petitioner, the respondent through its Large Taxpayer Service, issued Letter of Authority LOA 2000-00096214 (LOA) dated April 18, 2000, addressed to the petitioner and received by the latter on April 26, 2006, informing the petitioner that the Revenue Officers mentioned therein "are authorized to examine your books of accounts and other accounting records for all Internal Revenue Taxes (Except PT) – Claim for TCC/Refund for the period from FY ending March 31, 2004..." Attached to the LOA is a "First Notice for Presentation and Submission of Documents and Records" dated April 21, 2006.
>
> 4. On May 17, 2006, the respondent issued a "Second Notice for Presentation and Submission of Documents and Records.[7]

After presentation of its evidence, *Petitioner's Formal Offer of Evidence*[8] filed on June 23, 2008, with respondent's *Comment (Re: Petitioner's Formal Offer of Evidence)*[9] filed on July 1, 2008, was resolved in *Resolutions* dated July 31, 2008[10] and October 6, 2008.[11]

On September 16, 2008, respondent's counsel manifested that she will not present any evidence and that she is submitting the case for decision.[12]

Respondent filed its *Memorandum*[13] on December 11, 2008, whereas petitioner filed its *Memorandum*[14] on January 5, 2009.

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[7] Division Docket, pp. 152-153.
[8] Division Docket, pp. 208-218.
[9] Division Docket, pp. 219-221.
[10] Division Docket, pp. 223-224.
[11] Division Docket, pp. 234.
[12] Division Docket, p. 233.
[13] Division Docket, pp. 244-253.
[14] Division Docket, pp. 255-273.

## Issues

The parties' statement of Issues to be Tried or Resolved, viz.:

a. Whether or not PAL is entitled to the refund of the amount of PHP62,359,178.55, representing its alleged unapplied creditable income tax withheld for the fiscal year ended March 31, 2004;

b. Whether or not petitioner electronically filed (e-filed) on July 15, 2004, with the Bureau of Internal Revenue (BIR), its Annual Income Tax Return for fiscal year ended March 31, 2004 showing a total creditable tax withheld for the four quarters of PHP42,430,424.72;

c. Whether or not petitioner filed on September 21, 2005, with the BIR, its Amended Annual Income Tax Return for fiscal year ended March 31, 2004 showing a total creditable tax withheld for the four quarters of PHP62,120,584.01;

d. Whether or not petitioner filed on December 15, 2005, with the BIR, its second Amended Annual Income Tax Return for fiscal year ended March 31, 2004 showing a total creditable tax withheld for the four quarters of PHP62,359,178.55;

e. Whether or not the PHP62,359,178.55 creditable tax withheld for petitioner's fiscal year ended March 31, 2004 was applied against its income tax liability for the succeeding fiscal year ended March 31, 2005;

f. Whether or not when petitioner prepared its Amended Annual Income Tax Return for fiscal year ended March 31, 2005, filed on December 15, 2005, the subject PHP62,359,178.55 creditable tax withheld was applied against its income tax liability for the said fiscal year;

g. Whether or not petitioner wrote the respondent on March 7, 2006, inquiring about the status of the above-mentioned excess tax payment, which petitioner has opted to claim for refund;

h. Whether or not the income from which the taxes were withheld were included in its gross income for 2004;

i. Whether the taxes withheld were actually remitted to the BIR;

j. Whether or not the amount of PHP62,356,178.55[15] being claimed by PAL as unapplied income tax withheld for the fiscal year ended March 31, 2004 is properly documented; and

k. Whether or not PAL complied with the provisions of Sections 204 (c) and 229 of the 1997 Tax Code on the prescriptive period for claiming tax refund/credit.

Section 76 of the National Internal Revenue Code (NIRC) of 1997, as amended, states:

> **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.
>
> In case the corporation is entitled to a tax credit or refund of 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

[15] Should be P62,359,178.55

> 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 therefore.

Accordingly, a corporation entitled to a tax credit or refund of the excess estimated quarterly income taxes paid has two options: first, to carry over the excess credit; or second to apply for the issuance of a tax credit certificate or to claim a cash refund.

In the same vein, in exercising its option, the corporation must signify in its annual corporate adjustment return (by marking the option box provided in the BIR form) its intention either to carry over the excess credit or to claim a refund. To facilitate tax collection, these remedies are in the alternative and the choice of one precludes the other.[16]

From the records of the case, petitioner marked the option "*To be refunded*" insofar as the income tax overpayment shown in its Annual Income Tax Return for FY which ended March 31, 2004 filed on July 15, 2004[17], as well as its amendments thereto filed on September 21, 2005[18] and December 15, 2005[19].

To prove that it did not carry-over the claimed creditable withholding taxes of P62,359,178.55 to the succeeding first, second and third quarters of

[16] Philippine Bank of Communications v. Commissioner of Internal Revenue, 361 Phil. 916 (1999).
[17] Exhibit "B" including sub-markings.
[18] Exhibit "C" including sub-markings.
[19] Exhibit "D" including sub-markings.

FY 2005, petitioner presented its Annual Income Tax Return for FY 2005.[20] However, the same is not enough to prove that petitioner did not apply said unutilized creditable withholding taxes against the income tax due for the FY 2005. Albeit there was no amount indicated in its *"Prior Year's Excess Credits"*[21] as reflected therein, the presentation of the quarterly income tax returns are vital for without which, it cannot be ascertained whether petitioner did not carry over the excess/unutilized creditable withholding taxes for FY 2004 to the subsequent quarters of FY 2005. This doubt could have been avoided had petitioner presented the quarterly income tax returns for FY 2005.[22]

As aptly ruled by this Court in the case of *"Millenium Business Services, Inc. vs The Commissioner of Internal Revenue"*[23], and We quote:

> "While petitioner's administrative claim on April 7, 2006 and its Petition for Review on April 12, 2006 were both filed within the two-year prescriptive period; the fact of withholding of P1,341,623.00 is established by a copy of certificates of creditable tax withheld at source issued by withholding agents; and petitioner's income from service of P13,478,144.67 upon which the creditable taxes of P1,341,623.00 is withheld were included in the return, petitioner, however, has failed to prove that it did not carry over its claimed excess creditable withholding taxes to the succeeding quarters of taxable year 2004. Records of the case disclosed that petitioner failed to present as evidence its 2004 quarterly income tax returns.
>
> Although, petitioner presented its 2004 Annual Income Tax

[20] Exhibit "F" including sub-markings.
[21] Exhibit "F-3".
[22] Millenium Business Services, Inc. v. Commissioner of Internal Revenue, C.T.A. Case No. 7441, February 11, 2009.
[23] Amended Decision, CTA Case No. 7441, February 11, 2009.

Return wherein it shows that it did not carry over as tax credit its claimed unutilized creditable withholding taxes P1,341,623.00 to the succeeding taxable year 2004, however, this evidence is not enough to conclude that petitioner did not apply the said unutilized creditable withholding taxes against the income tax due for the first three quarters of 2004. Petitioner should have presented its 2004 quarterly income tax returns. The said quarterly income tax returns could help the Court determine whether petitioner effectively opted to carry over the 2003 excess creditable withholding taxes to the subsequent taxable year. If petitioner applied the said unutilized creditable withholding taxes against the income tax due for the first three quarters of taxable year 2004, it therefore effectively exercised the option to carry over the 2003 unutilized creditable withholding taxes to the succeeding taxable year 2004; thus, its claim for refund should be denied pursuant to Sec. 76 of the 1997 Tax Code., which provides:

'xxx xxx xxx'

In the case of *Benguet Management Corporation vs. Commissioner of Internal Revenue*[24], the Court *En Banc* agreed with the findings of the Court a quo that petitioner therein indeed carried over its declared overpayment for 2001 to the subsequent quarters as proved by its quarterly income tax returns of 2002, viz:

> 'However, petitioner carried over the declared overpayment for 2001 in the amount of P6,249,534.00 to the succeeding quarters of taxable year 2002 as prior year's excess credits (*Annexes C to E, Petition for Review, pp. 10-12*). As petitioner's own evidence would show (*original/tentative annual ITR for CY 12/2001, Exhibit "A"*), the total declared overpayment of P6,249,534.00 for the calendar year 2001, was carried over by the petitioner to the first quarter of 2002, filed on June 11, 2002 (*Quarterly Income Tax Return for the 1st Quarter of 2002, Annex C, Petition for Review*). When petitioner filed its second quarterly return for the year 2002, it likewise carried over the amount of P6,249,534.00 as prior year's excess credits (*Quarterly Income Tax Return for the 2nd Quarter of 2002, Annex D, Petition for Review*). For the third quarter of 2002, petitioner still carried over the same amount of P6,249,534.00 as prior year's excess credits (*Quarterly Income Tax Return for 3rd Quarter of 2002, Annex E,*

[24] CTA EB No. 200, April 4, 2007 affirming the decision of Benguet Management Corporation vs. Commissioner of Internal Revenue, CTA Case No. 6890, January 9, 2006

*Petition for Review*). The total amount of P5,700,272.00 subject of this claim, formed part of the P6,249,534.00 overpayment for calendar year 2001 (Exhibit A-1).'

'When petitioner filed its corporate annual income tax return for the calendar year 2002 on April 14, 2003, it still carried over the amount of P6,249,534.00 as prior year's excess credits (Exhibit F, Records, pp. 91-93). The fact that petitioner amended its 2002 tax return on October 9, 2003 (Exhibit G, Records, pp. 94-96) does not alter the fact that petitioner in fact carried the amount of P6,249,534.00 which the claimed amount of P5,700,272.00 formed a part of, to the succeeding first, second and third quarters of 2002. And in its 2002 original corporate income tax return, petitioner again carried over the same amount of prior year's excess credits. (Emphasis supplied)

In fact, Section 2.58.3 of Revenue Regulations No. 2-98 implementing Republic Act No. 8424 even provides:

'Section 2-58-3. Claim for Tax Credit or Refund. –

(A) The amount of creditable tax withheld shall be allowed as a tax credit against the income tax liability of the payee in the quarter of the taxable year in which income was earned or received.

(B) Claims for tax credit or refund or 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.

(C) Excess Credits – An individual or corporate taxpayer's excess expanded withholding tax credits for the taxable quarter/year shall automatically be allowed as a credit against his income tax due for the taxable quarters/years immediately succeeding the taxable quarters/years in which the excess credit arose, provided he submits with his income tax return, a copy of the first page of his income tax return for the previous taxable period showing the amount of his excess withholding tax credits, and on which return he has not opted for a cash refund or tax credit certificate.

1. If in lieu of the automatic application of his excess credit, the taxpayer wants a cash refund or a tax credit certificate for use in payment of his other national internal revenue tax liabilities, he shall make a written request therefore, within two years after the payment of the tax (Ref. Secs. 204 (c) and 229 of the Code), provided however, that if the taxpayer has indicated in his income tax return his option for either a cash refund or a tax credit certificate, such indication shall be considered sufficient for the purpose. Upon filing of his request, the taxpayer's income tax return showing the excess expanded withholding tax credits shall be examined. The excess expanded withholding tax so determined, shall be refunded/credited to the taxpayer.

2. Sample computation of application for excess credits-ordinary

| Tax Period | 1997 | 1998-QTR1 | 1998-QTR2 | 1998-QTR3 |
|---|---|---|---|---|
| Tax Due | 1,000 | 200 | 200 | 500 |
| Less: Tax Withheld | (1,500) | (500) | (300) | 0 |
| Net Tax Payable/ Creditable | (500) | (300) | (100) | 500 |

In the above illustration, there is an excess credit in 1997 that can be applied to the subsequent quarter. And if the option to apply the excess credit is **initiated** in the first quarter of 1998, the taxpayer cannot avail of the refund/tax credit certificate of the excess credit of P500 in 1997." (Emphasis supplied)

Thus, the presentation of the quarterly income tax returns is very important. Without which, it cannot be ascertained whether petitioner did not carry over the 2003 excess/unutilized creditable withholding taxes to the subsequent quarters of 2004. Petitioner may have carried over its 2003 unutilized creditable withholding taxes to its quarterly income tax returns for 2004, and it may have amended said returns whereby such unutilized creditable withholding taxes are no longer reflected therein; thus, it follows that its 2004 Annual ITR will likewise not show any amount of prior year's excess credit. This doubt could have been avoided had petitioner presented the quarterly income tax returns for 2004."

To stress, tax refunds are in the nature of tax exemptions. The same are regarded as in derogation of sovereign authority and shall be construed

*strictissimi juris* against the person claiming such exemption. The taxpayer has the burden of proving that it is entitled to the claim for refund.[25]

In view of the foregoing, the *Petition for Review* is hereby **DENIED** for insufficiency of evidence.

**SO ORDERED.**

**CAESAR A. CASANOVA**
Associate Justice

WE CONCUR:

**ERNESTO D. ACOSTA**
Presiding Justice

**LOVELL R. BAUTISTA**
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's Division.

**ERNESTO D. ACOSTA**
Presiding Justice
Chairman, First Division

[25] BPI-Family Savings Bank v. Court of Appeals, 330 SCRA 507 (2002).