

REPUBLIC OF THE PHILIPPINES
Court Of Tax Appeals
QUEZON CITY

FORMER SECOND DIVISION

SONOMA SERVICES, INC.,

C.T.A. CASE NO. 7613

Petitioner,

Members:

-versus-

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

COMMISSIONER OF INTERNAL
REVENUE,

Promulgated:

Respondent.

JUN 18 2010

X ----- 1:06 p.m. ----- X

D E C I S I O N

PALANCA-ENRIQUEZ, J.:

A taxpayer's excess withholding tax credits for the taxable quarter/taxable year shall automatically be allowed as a refund or credit for purposes of filing his income tax return for the taxable quarter/taxable year immediately succeeding the taxable quarter/taxable year in which the aforesaid excess credit arose. This right to refund or credit, however, is not automatic, the taxpayer must be able to prove the same by substantial evidence, in compliance with the basic requirements set forth in our Tax Code.



THE CASE

This is a Petition for Review filed by petitioner Sonoma Services, Inc. praying for a refund or issuance of a tax credit certificate (TCC) in the total amount of P5,188,970.00, representing petitioner's excess and unutilized creditable income taxes withheld for calendar year 2004.

THE PARTIES

Petitioner is a domestic corporation duly organized and existing under and by virtue of Philippine laws, with principal place of business at the 35th Floor, Tower One, Exchange Plaza, Ayala Triangle, Ayala Avenue, Makati City.

Respondent, on the other hand, is the duly appointed Commissioner of Internal Revenue, vested with authority to carry out all the functions, duties, and responsibilities of said office, including inter alia, the power to decide, approve, and grant refunds, and/or tax credits of overpaid and erroneously paid or collected internal revenue taxes. He presently holds office at the 5th Floor, BIR National Office Building, Agham Road, Diliman, Quezon City.

THE FACTS

In their "Joint Stipulation of Facts", the parties stipulated as follows:



“1. Petitioner’s Articles of Incorporation and the covering Certificate of Incorporation issued by the Securities and Exchange Commission on October 23, 2002 are authentic and duly executed.

2. Petitioner was incorporated with the primary purpose of carrying on and conducting a general services business with any party, including the rendering of management and allied services within the limits allowed by law, including office and clerical support services, maintenance services of any kind, or otherwise, to engage in any preservation, maintenance or repair work upon any and every kind of property, to enter into and execute contracts therefore or relating thereto.

3. Petitioner is a registered taxpayer of the Bureau of Internal Revenue (BIR), Revenue Region No. 8, Revenue District Office (RDO) No. 50, with Taxpayer Identification No. 220-868-954-000.

4. Petitioner’s BIR Certificate of Registration dated October 29, 2002 is authentic and duly executed.

5. Petitioner filed with the BIR its Annual Income Tax Return for CY 2004 on April 14, 2005.

6. Petitioner filed with the BIR, RDO No. 50 its administrative claim for refund of excess creditable withholding taxes for CY 2004 in the amount of P5,188,970.00 on May 6, 2005.

7. To date, respondent has neither denied nor approved petitioner’s administrative claim for refund of excess and unutilized creditable withholding taxes for CY 2004 in the amount of P5,188,970.00.”



In order to preserve its right and to toll the running of the prescriptive period for its judicial claim, on April 16, 2007, petitioner filed the instant Petition for Review.

In his Answer, respondent, by way of special and affirmative defenses, averred that petitioner's claim for refund is still subject to administrative routinary investigation/examination by respondent; that taxes paid and collected are presumed to have been made in accordance with law and implementing regulations, hence, not refundable; that petitioner's claim in the amount of P5,188,970.00, as alleged excess and unutilized creditable income taxes withheld for taxable year 2004, was not fully substantiated by proper documentary evidence; that petitioner failed to prove that the amount of P5,188,970.00 as alleged excess and unutilized creditable income taxes withheld for taxable year 2004, was included as part of its gross income for taxable year 2004 and that it did not carry over to the succeeding taxable quarter/year the subject of its claim and that the same was not utilized in payment of its income tax liability for the succeeding taxable quarter/year; that petitioner failed to prove that the amount subject of its claim went into the coffers of the government; that petitioner's claim for refund had already prescribed; that it is incumbent upon petitioner to show that it has complied with the



provisions of *Section 204*, in relation to *Section 229*; and that claims for refund are construed strictly against the claimant for the same partake of the nature of exemption from taxation.

Petitioner presented Marivic Lao and Katherine Constantino, as witnesses, and documentary evidence, marked as *Exhibits "A" to "O"* and "*AA*" to "*BBBB-2*", inclusive of their submarkings, which were all admitted by the Court in its Resolutions dated July 18, 2008 and July 3, 2009, respectively.

On the other hand, in a Resolution dated August 7, 2009, upon motion of counsel for petitioner, respondent's right to present evidence was considered waived for the repeated failure of counsel for respondent to appear at the trial for the initial presentation of the evidence for the respondent.

Thereafter, both parties were ordered to file their simultaneous memoranda, within thirty (30) days from notice. Considering respondent's "Manifestation and Motion" filed on September 28, 2009 that he is submitting the case for decision based on the pleadings, which was granted by the Court in a Resolution dated October 22, 2009, and petitioner's "Memorandum" filed on November 10, 2009, this case was deemed submitted for decision on November 13, 2009.



Hence, this decision.

ISSUES

As stipulated upon by the parties, the following are the issues for this Court's consideration:

I

WHETHER OR NOT PETITIONER'S WITHHOLDING TAX CREDITS FOR CY 2004 IN THE AMOUNT OF P5,188,970.00 ARE DULY SUBSTANTIATED BY DOCUMENTARY EVIDENCE.

II

WHETHER OR NOT PETITIONER HAD EXCESS CREDITABLE WITHHOLDING TAXES IN CY 2004.

III

WHETHER OF NOT THE INCOME FROM WHICH THE SUBJECT CREDITABLE INCOME TAXES WERE WITHHELD WERE REPORTED AS PART OF PETITIONER'S REVENUES IN ITS ANNUAL INCOME TAX RETURN FOR CY 2004.

IV

WHETHER OR NOT PETITIONER APPLIED ITS EXCESS CREDITABLE WITHHOLDING TAXES FOR CY 2004 AGAINST ITS INCOME TAX LIABILITY IN THE SUCCEEDING TAXABLE YEAR/S.

V

WHETHER OR NOT PETITIONER FILED ITS ADMINISTRATIVE AND JUDICIAL CLAIMS FOR REFUND OF EXCESS CREDITABLE WITHHOLDING



TAXES FOR CY 2004 WITHIN THE TWO-YEAR
PRESCRIPTIVE PERIOD PROVIDED IN SECTION 204
OF THE TAX CODE.

Principal Issue

The foregoing issues raised by both parties boil down to the principal issue of whether or not petitioner is entitled to a refund or issuance of a TCC in the aggregate amount of P5,188,970.00, representing petitioner's excess and unutilized creditable income taxes withheld for calendar year 2004.

THE COURT'S RULING

The petition is partly meritorious.

Settled is the rule that a taxpayer's excess withholding tax credits for the taxable quarter/taxable year shall automatically be allowed as a refund or credit for purposes of filing his income tax return for the taxable quarter/taxable year immediately succeeding the taxable quarter/taxable year in which the aforesaid excess credit arose. This right to refund or credit, however, is not automatic, the taxpayer must be able to prove the same by substantial evidence, in compliance with the prescribed requirements set forth in our Tax Code and related laws.

Corollary thereto, *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:

- (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 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 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.”

The above provision offers two options to a taxable corporation whose total quarterly income tax payment in a given taxable year exceeds its total income tax due. These options are (1) be credited or refunded either in the form of cash or credit certificate with the excess amount paid; or (2) carry over the excess credit to the succeeding taxable year.



The first option works simply by applying for a cash refund or tax credit certificate with the Bureau of Internal Revenue for any tax on income that is paid in excess of the amount due to the government. The second option, on the other hand, works by applying the refundable amount, as shown on the Final Adjustment Return of the given taxable year, against the income tax liabilities of the succeeding taxable year.

The two options under *Section 76* are alternative in nature (*Paseo Realty & Development Corp. v. Court of Appeals*, 440 SCRA 235, 250-251). The choice of one precludes the other. Once the choice is made it shall be considered irrevocable for that taxable period, and no application for a tax refund or issuance of a tax credit certificate shall then be allowed regardless of whether or not the excess tax credit is actually utilized.

A perusal of petitioner's Annual Income Tax Return (ITR) for calendar year ending December 31, 2004 (*Exhibit "D"*) shows an overpayment in the total amount of P7,406,068.00 and an income tax due amounting to P550,220.00, which was deducted from its tax credits, leaving a balance of P6,855,848.00. Petitioner deducted the income tax due from its prior year's excess credits and marked the option "To be refunded" for its 2004 excess taxes. Since petitioner has previously chosen the option "To be carried over as tax credit next year/quarter" in



its 2003 ITR (*Exhibit "C"*) for its excess taxes in 2003, petitioner may claim for refund only the amount corresponding to the excess taxes accrued during calendar year 2004, in the total amount of P5,188,970.00 (*Lines 27C and 27D of Exhibit "D"*). A further perusal of petitioner's 2005 ITR shows that it carried over only the amount of P1,666,878.00, corresponding to the remaining taxes from its excess in 2003 (*Exhibit "E"*). Clearly, petitioner did not carry over the claimed amount of P5,188,970.00 in its 2005 ITR. Consequently, the creditable tax withheld amounting to P5,188,970.00 for taxable year 2004, while collected legally, partook of the nature of erroneously collected taxes at the end of the taxable year, hence, may be subject of a claim for refund.

Well-settled is the rule that to be entitled to a claim for refund or issuance of a tax credit certificate, the taxpayer must satisfy the three conditions for the grant of a claim for refund of creditable withholding tax, to wit:

- 1) that the claim is filed with the CIR, within the two (2) year period from the date of payment of the tax;
- 2) that 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; and



- 3) that it is shown on the return of the recipient that the income payment received was declared as part of the gross income

(Banco Filipino Savings and Mortgage Bank vs. CA et.al, 519 SCRA 93).

First Requisite –
Claim For Refund Was
Filed Within the Two-year
Prescriptive Period

In this regard, *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 —

(A) xxx

(B) xxx

(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."

Clearly, the two-year prescriptive period for the filing of a claim for refund under *Section 204 (C)*, in relation to *Section 229* of the *NIRC of 1997, as amended*, commences from the date of filing of the final adjustment return (*ACCRA Investments Corp. vs. Court of Appeals, 204 SCRA 957*). It bears emphasis at this point that the rationale in computing the two-year prescriptive period with respect to petitioner corporation's claim for refund from the time it filed its final adjustment return is the fact that it was only then that petitioner could ascertain whether it made profits or incurred losses in its business operations.

Records show that petitioner filed its ITR for calendar year ending December 31, 2004 on April 14, 2005 (*Exhibit "D"*). Counting from April 14, 2005, petitioner had until April 14, 2007, within which to file its

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claim for refund/tax credit certificate. However, considering that April 14, 2007 fell on a Saturday, petitioner had until April 16, 2007 within which to file its claim both administratively and judicially. Therefore, both petitioner's administrative claim for refund filed on May 3, 2005 (*Exhibit "F"*) and judicial claim filed on April 16, 2007 (Petition for Review) were both filed within the two-year prescriptive period allowed by law. Clearly, the first requirement has been complied with.

Second and Third Requisites -

As regards the second and third requisites, *Section 10 of Revenue Regulation No. 12-94*, provides:

“SEC. 10. Claim for Tax Credit or Refund.-

(a) Claims for tax credit or refund of income tax deducted and withheld on income payments shall be given due course **only when it is shown on the return that the income payment received 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.**” (*Emphasis supplied*)

Pursuant to the above provision, petitioner must be able to show that the income payments it received has been declared as part of its gross income and that the fact of withholding must be established by substantial evidence.

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Second Requisite –
Taxes Withheld Are Duly
Supported by Certificates
of Tax Withheld

To prove the fact of withholding of creditable taxes withheld for taxable year 2004 in the amount of P5,188,970.00, petitioner presented Certificates of Creditable Tax Withheld at Source duly issued to it by various withholding agents for the same year (*Exhibits "J-1" to "J-54"*) which were all summarized in *Exhibit "J"*. A further perusal of the documents shows that petitioner likewise filed the said certificates, together with its 2004 ITR on April 14, 2005, thus, the creditable withholding taxes were duly supported by valid withholding tax certificates. As petitioner's evidence was uncontroverted by respondent, this Court finds that petitioner has substantially complied with the second requisite.

Third Requisite –
The Income Withheld
Made Part of Petitioner's
Gross Income

As regards third requisite, this Court finds that a total revenue of P30,979,273.00 was reflected in petitioner's ITR for taxable year 2004 (*Exhibit "B"*), thus:



Sales/Revenues/Receipts/Fees	30,979,273
Less: Cost of Sales/Services	-
Gross Income from Operation	30,979,273
Add: Non-Operating & Other Income	1,228,348
Total Gross Income	32,207,621
Less: Deductions	30,488,184
Taxable Income	1,719,437

On the other hand, the certificates show that the creditable withholding taxes of P5,188,969.74 were withheld on income payments totalling to P36,890,545.40 (*Exhibit "J"*).

Clearly, there is a marked discrepancy amounting to P5,911,272.80, between petitioner's declared income in its 2004 ITR and the income reflected in the certificates, as summarized in *Exhibit "J"*. The total income, as shown in the Certificates of Creditable Tax Withheld at Source, is higher than the gross income declared by petitioner in its ITR for 2004, resulting to an underdeclaration of gross income.

In her report, ICPA Katherine Constantino, explained that the discrepancy was allegedly due to the following:

"Administration fees accrued and recorded in CY 2003 and collected in CY 2004	P4,479,454.62
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Recovery on Cost for the year 2004	1,431,818.18
<u>Difference due to rounding off of figures</u>	<u>(.40)</u>

P5,911,272.40"
(*Exhibit "AA", p. 7*)

To corroborate said findings, Marivic Lao, Accounting Supervisor of petitioner, manifested in her Sworn Statement (*Exhibit "O"*) that the



administration fees amounting to P4,479,454.62, were accrued and recorded in petitioner's books of accounts in 2003, but were collected only in 2004. Petitioner allegedly declared it as part of its revenues in calendar year 2003, but it did not claim the related withholding taxes on the said accruals in its 2003 ITR since the certificates are still with its clients. As to the Recovery on Cost, Marivic Lao testified that it pertains to the share of its clients on petitioner's rental and depreciation expenses for calendar year 2004, which was subjected to withholding tax and was not reported as part of petitioner's income, but was deducted from petitioner's rental and miscellaneous expenses per ITR and audited financial statements.

In support thereof, petitioner presented Cost Recovery Agreements for 2004 (*Exhibits "YYY-1" to "YYY-7"*), Cash Receipts Books (*Exhibits "N-1" to "N-1-j"*), Ledgers for CY 2004 (*Exhibit "N-2-a" to "N-2-f"*), General Ledgers for 2003 and 2004 (*Exhibits "ZZ-1" to ZZ-10" and "CC-1" to "CC-6"*), Management Services Agreements (*Exhibits "XXX-1" to "XXX-22"*), Official Receipts for Administration Fees (*Exhibits "BB-1" to "BB-168"*) and Financial Statements (*Exhibits "C-2, "D-7" and "E-2"*). However, the Court finds the aforesaid documents insufficient to prove that the income from



which the creditable tax withheld formed part of the revenues declared by petitioner in its ITR in 2004 or in 2003.

As to the amount of P4,479,454.62, petitioner failed to prove by substantial evidence that it was actually accrued in 2003 and that it formed part of the declared taxable gross income in its 2003 ITR. We cannot give credence to petitioner's 2003 ledgers reflecting the amount corresponding to the administration fees allegedly incurred in 2003, not only because it is self-serving, as it was prepared by petitioner's own accountants, but also because the same merely reflected figures which cannot be verified by the Court since it is not supported by source documents, such as invoices or billing statements, therefore, the ledgers are of doubtful credence. Consequently, this Court cannot ascertain whether the alleged accrued administration fees actually formed part of the reported gross income in petitioner's 2003 ITR.

As regards the claimed deduction of P1,431,818.18, allegedly representing the Recovery on Cost for the year 2004, the same should also be disallowed. Records show that the amount of P1,431,818.18 is part of the total income per certificates, thus, it should have been declared as part of petitioner's gross income pursuant to *Section 10 of RR 12-94*, which clearly mandates that the income payments received by the



taxpayer must be declared as part of its gross income. Even granting that the direct deduction on Recovery on Cost effectively increased the net taxable income of petitioner to an amount equivalent to the rental and depreciation expenses shouldered by its clients, the same must also be denied, as it is not supported by substantial evidence. Likewise, the ledgers are not supported by source documents from which the Court can verify petitioner's allegation relating to the figures reflected in the ledgers. Similarly, the Cost Recovery Agreements are not sufficient to prove the exact amount due from petitioner which was charged by its clients, as they are mere contracts evidencing the responsibility of the parties.

It must be emphasized that *Section 10 of RR 12-94* mandates that the income payments received by the taxpayer must have been declared as part of the gross income in order to be entitled for a refund (*Calamba Steel Center, Inc. vs. CIR, 457 SCRA 482*). In this case, since petitioner failed to declare the amount of P5,911,272.80 in its ITR, it must substantially prove its allegations and reasons for not including the same in its taxable gross income, which it failed to do so. Petitioner was remiss in its duty in failing to account the discrepancy between the declared taxable income and the income per certificates of creditable tax withheld for calendar



year 2004. Elementary is the rule that the taxpayer has the burden of proof to establish the factual basis of his claim for tax credit or refund (*Citibank N.A. vs. Court of Appeals and Commissioner of Internal Revenue*, 280 SCRA 459).

Accordingly, for petitioner's failure to account for the discrepancy of P5,911,272.80, the related creditable withholding taxes in the amount of P831,470.96 shall be disallowed from petitioner's claim, as this Court finds that the corresponding income was not declared, as part of petitioner's taxable income, in accordance with the third requisite, thus:

Income per Certificates	P	36,890,545.40
Less: Income per ITR		30,979,273.00
Discrepancy in Income Declared		5,911,272.40
Divided by: Income per Certificates	÷	36,890,545.40
Multiplied by: Claimed CWT	×	5,188,970.00
CWT related to undeclared income		<u>P831,470.90</u>

For all the foregoing, the Court finds petitioner to have sufficiently established its entitlement to a refund/tax credit of its unutilized creditable taxes withheld for the taxable year 2004 in the reduced amount of P4,357,499.04, computed, as follows:

Claimed creditable taxes withheld	P5,188,970.00
Less:	
Amount corresponding to undeclared income	831,470.96
Refundable Excess Tax Credits	<u>P4,357,499.04</u>



WHEREFORE, premises considered, the present Petition for Review is **PARTLY GRANTED**. Accordingly, respondent Commissioner of Internal Revenue is hereby **ORDERED TO REFUND OR TO ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner Sonoma Services, Inc. in the reduced amount of **FOUR MILLION THREE HUNDRED FIFTY SEVEN THOUSAND FOUR HUNDRED NINETY NINE AND 04/100 PESOS (P4,357,499.04)**, representing the unutilized creditable withholding taxes for the calendar year 2004.

SO ORDERED.


OLGA PALANCA-ENRIQUEZ
Associate Justice

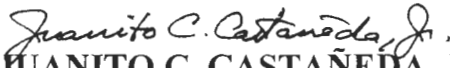
WE CONCUR:


JUANITO C. CASTAÑEDA, JR.
Associate Justice


ERLINDA P. UY
Associate Justice

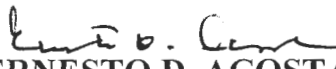
A T T E S T A T I O N

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's Division.


ERNESTO D. ACOSTA
Presiding Justice