REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**C.T.A. E.B. NO. 369** **(C.T.A. CASE NO. 6970)**
	Present:
- versus -	**ACOSTA,** *P.J.* **CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA,** *and* **PALANCA-ENRIQUEZ,** *JJ.*
TeaM (PHILIPPINES) OPERATIONS CORPORATION [Formerly: Mirant (Philippines) Operations Corporation], Respondent.	Promulgated: AUG 27 2008 Apolinario 3:00 p.m.

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DECISION

UY, J.:

This is a Petition for Review before the Court of Tax Appeals *En Banc* filed on March 12, 2008 seeking a review of the Decision[1] and Resolution[2] dated August 29, 2007 and February 4, 2008, respectively, rendered by the First Division of this Court (Court in Division) in CTA Case No. 6970, entitled "Commissioner of Internal Revenue vs. Mirant (Philippines) Operations Corporation [formerly: Southern Energy Asia-Pacific Operations (Phils.), Inc.]". The dispositive portions of which read as follows:

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[1] Ponencia of Associate Justice Caesar A. Casanova concurred by Presiding Justice Ernesto D. Acosta and Associate Justice Lovell R. Bautista. Docket, pp. 20 – 30.

[2] Docket, pp. 31 – 33.

Decision promulgated on August 29, 2007:

"**WHEREFORE**, premises considered, the Petition is hereby **PARTIALLY GRANTED**. Respondent is **ORDERED** to **REFUND** or, in the alternative, issue a Tax Credit Certificate in favor of the petitioner the reduced amount of **Twenty Three Million Fifty Three Thousand Nine Hundred Nineteen and 22/100 pesos** (P23,053,919.22) representing excess/unutilized creditable withholding taxes for taxable year 2002.

SO ORDERED."[3]

Resolution promulgated on February 4, 2008:

"**WHEREFORE**, respondent's "Motion for Reconsideration" is hereby **DENIED** for lack of merit.

SO ORDERED."[4]

THE FACTS

The factual antecedents of the case are not in dispute.

Petitioner is the duly appointed Commissioner of Internal Revenue vested with the authority to act as such, including inter alia, the power to decide, approve, and grant refunds or tax credits of overpaid internal revenue taxes as provided by law with office address at the BIR National Office Building, Agham Road, Diliman, Quezon City.

Respondent, on the other hand, is duly licensed to do business in the Philippines and is primarily engaged in the business of designing, construction, erecting, assembling, commissioning, operating, maintaining, rehabilitating and managing gas turbine and other power generating plants and related facilities for the conversion into electricity of coal, distillate and other fuel provided by and under contract with the Government of the Republic of the Philippines, or any subdivision, instrumentality or agency

[3] Docket, pp. 29 – 30.
[4] Docket, p. 33.

thereof, or any government owned or controlled corporations or other entity engaged in the development, supply or distribution of energy.

Respondent entered into Operating and Management Agreements with Mirant Pagbilao Corporation [formerly Southern Energy Quezon, Inc.] or (MPagC) and Mirant Sual Corporation [formerly Southern Energy Pangasinan, Inc.] or (MSC) to provide these corporations with maintenance and management services in connection with the operation, construction and commissioning of the coal-fired power stations situated in Pagbilao, Province of Quezon and Sual, Province of Pangasinan, respectively. Payments received by respondent for the operating and management services rendered to MPagC and MSC were allegedly subjected to creditable withholding tax.

On April 15, 2003, respondent filed with the Bureau of Internal Revenue (BIR) its original Annual Income Tax Return (ITR) for the calendar year ended December 31, 2002 declaring zero taxable income and unutilized tax credits of P23,108,689.00, detailed as follows:

Gross Income	P	82,732,818.00
Add: Non-Opearting & Other Income		172,834.00
Total Gross Income	P	82,905,652.00
Less: Deductions		82,905,652.00
Taxable Income	P	NIL
Tax Rate		32%
Minimum Corporate Income Tax (MCIT)	P	1,658,113.00
Income Tax Due	P	1,658,113.00
Less: Prior Years' Excess Credits	P	NIL
Tax Payments for 1st 3 Quarters		NIL
Creditable Tax Withheld for 1st 3 Quarters		24,766,802.00
Total Tax Credits / Payments	P	24,766,802.00
Tax Overpayment	**P**	**(23,108,689.00)**

In its ITR for the year 2002, respondent indicated its option to refund its alleged excess creditable withholding tax when it marked "X" the box corresponding to the option "To be refunded" under line 30 of said ITR.

On March 17, 2004, respondent filed an administrative claim for refund or issuance of tax credit certificate with the BIR in the total amount of P23,108,689.00, allegedly representing overpaid income tax or excess creditable withholding tax for calendar year ended December 31, 2002.

As the two-year prescriptive period for the filing of a judicial claim under Section 229 of the National Internal Revenue Code (NIRC) of 1997 was about to lapse without action on the part of petitioner, respondent elevated its case before the Court in Division by way of Petition for Review on April 27, 2004, docketed as C.T.A. Case No. 6970.

On July 31, 2006, the Court in Division rendered its assailed Decision partially granting herein respondent's petition, and accordingly, ordering petitioner to refund or issue a tax credit certificate in the reduced amount of P23,053,919.22 representing excess / unutilized creditable withholding taxes for the taxable year 2002.

The Court in Division in disallowing the amount of P54,769.78 out of the total claim ratiocinated that since the income upon which the taxes were withheld amounted to P247,668,015.80 but only P247,120,318.00 was included in the return of the recipient-petitioner, the tax (10%) that corresponds to the difference of P547,697.80, should be deducted because the income upon which it was withheld did not form part of the income as declared in herein respondent's 2002 ITR.

Not satisfied, herein petitioner filed a Motion for Partial Reconsideration of the said Decision on September 21, 2007.

Finding no compelling reason to either modify or alter the assailed Decision, the Court in Division denied petitioner's motion thereof in a Resolution dated February 4, 2008.

Hence, this recourse before the Court *En Banc* praying that the assailed Decision dated August 29, 2007 and the assailed Resolution dated February 4, 2008 be reversed and set aside.

In support of her Petition for Review, petitioner submits that although she readily assents that the Certificates of Creditable Tax Withheld (CTW) duly issued by the payor / withholding agent showing the amount paid and the amount of tax withheld would establish the fact of withholding of the latter amount, however, there are principles of fairness embodied in our evidentiary rules and jurisprudence that must be complied with in properly presenting documents to prove its authenticity and the truth of the contents thereof.

Moreover, petitioner avers that since the signatory of the certificates or any person who had a hand in the preparation thereof was never presented, therefore, any attempt to pass as absolute truth the contents of such document would be hearsay and thus, inadmissible.

On April 9, 2008, the Court *En Banc* issued a Resolution[5] ordering respondent to comment thereto.

Respondent, on April 24, 2008, filed a "Motion for Extension of Time to File Respondent's Comment / Opposition" which the Court *En Banc*, in a Resolution granting said motion, gave respondent a non-extendible period of

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[5] Docket pp. 38 – 39.

twenty (20) days from April 26, 2008 up to May 16, 2008, within which to file its comment / opposition.

On May 16, 2008 respondent timely filed its "Comment [with Motion to Change Caption][6]" and emphasizes that it has long been settled that in claims for refund of excess or unutilized creditable withholding taxes, the fact of withholding need not be established by the testimonial evidence of various payors or withholding agents. Furthermore, respondent asserts that it has adequately discharged its burden of proving its entitlement to the refund and that the August 29, 2007 Decision and February 4, 2008 Resolution of the Court in Division are both in accord with law and jurisprudence.

Lastly, respondent submits that it has changed its corporate name from "Mirant (Philippines) Operations Corporation" to "TeaM (Philippines) Operations Corporation"[7].

A Resolution[8] dated June 5, 2008 was issued by the Court *En Banc* granting the change of caption and in addition, this case was deemed submitted for decision as of date of promulgation of said resolution.

THE ISSUES

Petitioner raised the lone issue of whether or not respondent is entitled to the P23,053,919.22 claim for refund or issuance of tax credit certificate representing overpaid income tax or excess creditable withholding taxes for the calendar year ended December 31, 2002 for the Court *En Banc*'s consideration.

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[6] Docket, pp. 43 – 58.
[7] A copy of the Certificate of Filing of Amended Articles of Incorporation issued by the Securities and Exchange Commission (SEC) was attached thereto. Docket, pp. 48 – 58.
[8] Docket, p. 59.

THE COURT EN BANC'S RULING

The petition is bereft of merit.

Petitioner's assertion that the entries in the certificate of CTW primarily pertaining to respondent's income earning transactions, and the corresponding income taxes withheld from the same must be established by the testimonial evidence of various payors / withholding agents is untenable.

The Supreme Court in the case of **BANCO FILIPINO SAVINGS AND MORTGAGE BANK VS. COURT OF APPEALS, COURT OF TAX APPEALS AND COMMISSIONER OF INTERNAL REVENUE**[9] and as held by the Court in Division in its assailed Decision dated August 29, 2007, there are three conditions for the grant of a claim for refund of creditable withholding tax:

1) the claim is filed with petitioner 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.

There is no doubt that respondent in this case complied, as found by the Court in Division, with the first and second requirement. Petitioner's claim, filed on March 17, 2004, was well within the two-year prescriptive period counted from the date of filing of its annual income tax return on April 15,

[9] G.R. No. 155682, March 27, 2007.

2003; and that said return reflects the income from which the claim being made is based.

With respect to the third requirement, the fact of withholding can be sufficiently established by a document known as Certificate of CWT which emanates from the payor itself (not merely from the payee), and indicates the name of the payor, the income payment basis of the tax withheld, the amount of the tax withheld and the nature of the tax paid, considering that these information are complete in the relevant details which would aid the courts in the evaluation of any claim for refund of creditable withholding taxes.

Moreover, petitioner may not assail the authenticity of the certificates of CWT due to respondent's failure to have it properly identified in court since these documents are executed under the penalties of perjury, pursuant to Section 267 of the NIRC of 1997, to wit:

> "**SEC. 267. Declaration under Penalties of Perjury.** — Any declaration, return, and other statements required under this Code, shall, in lieu of an oath, contain a written statement that they are made under the penalties of perjury. Any person who willfully files a declaration, return or statement containing information which is not true and correct as to every material matter shall, upon conviction, be subject to the penalties prescribed for perjury under the Revised Penal Code."

The long-standing principle prevailing in our legal system is that no one shall unjustly enrich oneself at the expense of another. This applies not only to individuals but to the State as well. In the field of taxation where the State exacts strict compliance upon its citizens, the State must likewise deal with taxpayers with fairness and honesty. The harsh power of taxation must be tempered with evenhandedness. Hence, under the principle of solutio indebiti[10], the Government has to restore to petitioner the sums representing erroneous or excessive payments of taxes.[11]

In view of the foregoing, the Court in Division correctly ruled in favor of the respondent granting its claim for refund or issuance of tax credit certificate in the amount of Twenty Three Million Fifty Three Thousand Nine Hundred Nineteen representing excess / unutilized creditable withholding taxes for the taxable year 2002.

WHEREFORE, premises considered, the instant petition is hereby **DENIED** for lack of merit.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

CAESAR A. CASANOVA
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

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[10] Civil Code of the Philippines, Art. 2154. If something is received when there is no right to demand it, and it was unduly delivered through mistake, the obligation to return it arises.
[11] Filinvest Development Corp. vs. Commissioner of Internal Revenue, G.R. No. 146941, August 9, 2007.

CERTIFICATION

Pursuant to Section 13, Article VIII 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 *En Banc*.

ERNESTO D. ACOSTA
Presiding Justice