REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-versus-

PHILIPPINE REALTY & HOLDINGS CORPORATION,
Respondent.

C.T.A. EB No. 270
(C.T.A. Case No. 6944)

Present:

Acosta, *P.J.*
Castañeda, Jr.,
Bautista,
Uy,
Casanova, and,
Palanca-Enriquez, *JJ.*

Promulgated:

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DECISION

ACOSTA, P.J.:

This is a Petition for Review *En Banc* seeking the reversal and setting aside of the Decision of this Court's Second Division dated October 11, 2006, partially granting respondent's claim for the issuance of tax credit certificate in the reduced amount of P14,376,871.55 representing excess creditable withholding taxes for the taxable year 2001 and the subsequent Resolution dated January 10, 2007, denying petitioner's Motion for Reconsideration.

The antecedent facts as culled from the records are as follows:

Petitioner is the official of the Republic of the Philippines, vested by law in general to implement and enforce the provisions of the National Internal Revenue

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Code (NIRC) of 1997 and other tax laws, and in particular make assessments and decide claims for refund of internal revenue taxes, with office address at the 5th Floor, BIR National Office, Agham Road, Diliman, Quezon city.

Respondent, on the other hand, is a corporation duly organized and existing under and by virtue of the laws of the Philippines with principal office and business address at the 3rd Floor, Magnitude Building, 186 E. Rodriguez, Jr. Avenue, Brgy. Bagumbayan, Quezon City. It was classified as a Large Taxpayer in a letter dated July 1, 1993.

Respondent's Annual Income Tax Return for the taxable year 2001 reported a Minimum Corporate Income Tax (MCIT) due of P9,774,390.00; tax credits/payments of P25,832,312.00; and a tax overpayment in the amount of P16,057,922.00 for which it opted to be issued a Tax Credit Certificate (TCC).

On July 16, 2003, respondent filed a letter requesting for the issuance of a TCC of its allegedly excess creditable tax withheld for the taxable year 2001 in the sum of P16,057,922.00. Pursuant to the said letter, petitioner issued a Letter of Authority (LOA) for the examination of respondent's books of accounts and other accounting records. And, in compliance with petitioner's request, respondent submitted relevant documents pertaining to its claim.

In order to toll the running of the two-year prescriptive period prescribed under Section 229 of the 1997 Tax Code, as amended, respondent instituted a Petition for Review on April 14, 2004 which was raffled to the Second Division.

Respondent submitted testimonial and documentary evidence while petitioner submitted the case for decision sans any evidence. The case was submitted for decision after considering respondent's Memorandum only since petitioner failed to file the same.

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On October 11, 2006, the Second Division partially granted respondent's claim and ordered petitioner to issue a TCC in favor of respondent in the reduced amount of P14,376,871.55.

On November 3, 2006, petitioner filed a Motion for Reconsideration arguing that the Second Division erred in not looking into the validity of the deductions claimed by respondent for the year 2001.

Petitioner's motion was denied in a Resolution dated January 10, 2007 .

After being granted a 15 day extension period, petitioner timely filed the instant Petition on February 16, 2007 raising the lone issue of whether or not respondent is entitled to the issuance of tax credit certificate in the amount of P16,057,922.00 representing its overpaid creditable withholding tax for the taxable year 2001.

Petitioner claims that the Second Division erred when it failed to inquire as to the veracity of respondent's Income Tax Return particularly with respect to respondent's declared losses, interest, and other expenses being claimed as deductions from its gross income.

We do not agree.

First, it is not the duty of the Second Division to determine or verify whether or not the items declared in the tax returns are true and correct. Section 6 of the 1997 Tax Code, as amended, provides in part that:

> "(A) *Examination of Returns and Determination of Tax Due* - After a return has been filed as required under the provisions of this Code, *the commissioner or his duly authorized representative may authorize the examination of any taxpayer and the assessment of the correct amount of tax:* Provided, however, That failure to file a return shall not prevent the Commissioner from authorizing the examination of any taxpayer" *(Italics Supplied)*

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Based on the foregoing, it is the petitioner who is vested with the authority and the duty to examine a taxpayer and assess him of the correct amount of tax due. This duty includes the examination of his returns. It must be remembered however, that this duty is generally limited by Section 203 of the 1997 Tax Code, as amended, which provides that the authority should be exercised within the prescriptive period of three years only.

The law prescribing a limitation of actions for the collection of the income tax is beneficial both to the Government and to its citizens; to the Government because tax officers would be obliged to act promptly in the making of assessment, and to citizens because after the lapse of the period of prescription citizens would have a feeling of security against unscrupulous tax agents who will always find an excuse to inspect the books of taxpayers, not to determine the latter's real liability, but to take advantage of every opportunity to molest peaceful, law-abiding citizens. Without such legal defense taxpayers would furthermore be under obligation to always keep their books and keep them open for inspection subject to harassment by unscrupulous tax agents[1].

In this case, respondent filed its income tax return on April 15, 2002 reflecting an overpayment of P16,057,922.00. Thereafter, upon the filing by respondent of its claim for the issuance of a TCC representing its tax overpayment, an investigation of respondent's books of accounts and other accounting records ensued, but it was never completed. On April 14, 2004, respondent filed its judicial claim before the Second Division of this Court to toll the running of the prescriptive period.

The Second Division in resolving petitioner's Motion for Reconsideration was correct in ruling in favor of the validity of respondent's returns; the pertinent portion thereof is quoted as follows:

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[1] Republic vs. Ablaza, 108 Phil 1105 (1960); G.R. No. L-14519, July 26, 1960

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> In sum, the returns duly presented by petitioner [herein respondent] enjoy the presumption of validity considering that these were executed under penalties of perjury. Nowhere in the course of the trial did respondent present any evidence to overthrow such presumption.

Counting three years from April 15, 2002, the investigation should have ended on April 14, 2005[2] however during the trial of the case before the Second division until the promulgation of its Decision, the investigation was never finished. Apparently, the three year prescriptive period to investigate had already prescribed. Since no erroneous findings was submitted by petitioner on respondent's return and considering that it was executed under penalties of perjury, there was no error on the part of the Second Division to consider the items, specifically the deductions, declared in the tax returns as true. The grant of a refund is founded on the assumption that the tax return is valid, that is, the facts stated therein are true and correct[3].

Worth mentioning here is the case of *Citibank N.A. vs. Court of Appeals*[4] wherein the Supreme Court had the occasion to address the issue regarding the duty of the petitioner to examine returns, the decision in part reads:

> "In general, there is no disagreement that a claimant has the burden of proof to establish the factual basis of his or her claim for tax credit or refund. Tax refunds, like tax exemptions, are construed strictly against the taxpayer. The mechanics of a tax refund is provided in Rev. Reg. No. 13-78:
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>> 'Section 8. *Claims for tax credit or refund.* – 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 was declared as part of the gross income and the fact of withholding is established by a copy of the statement, duly issued by the payor to the payee (BIR Form No. 1743-A) showing the amount paid and the amount of tax withheld therefrom.'

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[2] 2004, being a leap year
[3] Commissioner of Internal Revenue vs. Court of Tax Appeals 234 SCRA 348(357) [1994]
[4] G.R. No. 107434, Oct. 10, 1997; 280 SCRA 459

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> A refund claimant is required to prove the inclusion of the income payments which were the basis of the withholding taxes and the fact of withholding. However, detailed proof of the truthfulness of each and every item in the income tax return is not required. **That function is lodged in the commissioner of internal revenue by the NIRC which requires the commissioner to assess internal revenue taxes within three years after the last day prescribed by law for the filing of the return. In *San Carlos Milling Co., Inc. vs. Commissioner of Internal Revenue,* the Court held that the internal revenue branch of government must investigate and confirm the claims for tax refund or credit before taxpayers may avail themselves of this option.**
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> xxx xxx xxx
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> Prior to Rev. Reg. 12-94, the requisites for a refund were: (1) the income tax return for the previous year must show that income payment (rental in this case) was reported as part of the gross income; and (2) the withholding tax statement of the withholding tax agent must show that payment of the creditable withholding tax was made. However, even without this regulation, the commissioner may inspect the books of the taxpayer and reassess a taxpayer for deficiency tax payments under Sections 7, NIRC. We stress that what was required under Rev. Reg. 12-94 was only a submission of records but **the verification of the tax return remained the function of the commissioner**." (Emphasis Supplied)

Second, petitioner never raised as issue the veracity of the contents of the returns nor has it adduced proof of any irregularity in the same which will adulterate their reliability or sufficiency despite the fact that it is well within their competence to do so.

The investigation of the claim started as early as 2003 and it took more than two years before the case was decided by the Second Division but during that period, petitioner did nothing to controvert the truthfulness of the returns and the declared deductions, ignoring all together its importance to his case. In fact, petitioner allowed the case to be submitted for Decision without presenting any evidence.

For failure of petitioner to controvert the reliability of the return, he is thereby considered to have admitted the truth of the contents of the return.

Third, the 1997 Tax Code, as amended, had provided several measures against falsification of returns as recognized in the case of *Commissioner vs. TMX Sales, Inc*[5]. and reiterated in the same case of Citibank[6], to wit:

> "Furthermore, Section 321 [now Section 232] of the National Internal Revenue Code requires that the books of accounts of companies or persons with gross quarterly sales or earnings exceeding Twenty Five Thousand Pesos (₱25,000.00) [now P150,000] be audited and examined yearly by an independent Certified Public Accountant and their income tax returns be accompanied by certified balance sheets, profit and loss statements, schedules listing income producing properties and the corresponding incomes therefrom and other related statements.
>
> It is generally recognized that before an accountant can make a certification on the financial statements or render an auditor's opinion, an audit of the books of accounts has to be conducted in accordance with generally accepted auditing standards.
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> Since the audit, as required by Section 321 (now Section 232) of the Tax Code is to be conducted yearly, then it is the Final Adjustment Return, where the figures of the gross receipts and deductions have been audited and adjusted, that is truly reflective of the results of the operations of a business enterprise. Thus, it is only when the Adjustment Return covering the whole year is filed that the taxpayer would know whether a tax is still due or a refund can be claimed based on the adjusted and audited figures."

With all these measures provided for by the 1997 Tax Code, as amended, there is no reason for the Second Division not to rely on the truthfulness of the return.

The issue of whether or not the deductions are true and sufficiently supported by evidence is vital in the refund case. Deductions go into the computation of gross income which is considered in determining whether or not a taxpayer has overpayment. Overpayment, in turn may entitle a taxpayer to a claim for the issuance of a TCC or refund subject to the compliance of certain requirements. Thus,

[5] G.R. No. 8373. January 15, 1992
[6] G.R. No. 107434, October 10, 1997

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petitioner should have been vigilant in guarding all aspects of respondent's claim. In this case however, petitioner failed to finish the investigation within the prescriptive period and worse, failed to raise any issue on the infirmity in the taxpayer's claim before the Second Division either in his Answer or Pre-trial Briefs.

In his answer filed with the Second Division, petitioner merely cited the following special and affirmative defense:

> 1.) Petitioner's claim for refund is subject to administrative investigation/examination by the respondent;
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> 2.) The following requirements must be complied with before a claim for refund of creditable withholding taxes is sustained, to wit:
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> > a) The claim for refund was filed within the two (2) – year period prescribed under Section 230 of the NIRC;
> > b) The income upon which the taxes were withheld was included in the return of the recipient; and
> > c) The fact of withholding is established by a copy of statement (BIR Form 1743.1) duly issued by the payor (withholding agent) to the payee, showing the amount paid and the amount of tax withheld therefrom; and
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> 3.) In taxation, claims for refund are construed strictly against the claimant as they partake of the nature of an exemption from tax and it is incumbent upon petitioner to prove that it is entitled thereto under the law.

Nowhere can you find petitioner objecting to the veracity of respondent's deductions declared in its return.

It may be simple negligence but petitioner should not be countenanced in passing off his error upon the Court.

Fourth, tax returns, being public documents, until controverted by competent evidence, are *prima facie* correct with respect to the entries therein[7]. Further, Section 23, Rule 132 of the Revised Rules of court clearly provides that:

> "Documents consisting of entries in public records made in the performance of a duty by a public officer are prima facie evidence of the facts therein stated. All other public documents are evidence, even against third person, of the fact which gave rise to their execution and of the date of the latter."

Prima facie evidence is defined as evidence good and sufficient on its face. Such evidence as, in the judgment of the law, is sufficient to establish a given fact, or the group or chain of facts constituting the party's claim or defense, and which if not rebutted or contradicted, will remain sufficient[8].

To reiterate, aside from merely alleging that the Second Division erred in not looking into the deductions declared by respondent, petitioner failed to adduce evidence that would convince the Second Division or this Court to support his allegations.

Petitioner likewise contends that the Second Division simply took as "gospel truth respondent's outstanding claim that it suffered net loss for the period and thus, entitled to the refund" of its creditable withholding taxes. However as already explained, it was not erroneous for the Second Division to do so, considering that the returns are presumed true and correct.

Be that as it may, contrary to petitioner's belief, there was no sole reliance on the respondent's returns or on its mere claim. A further reading of the Decision and a verification of the records of the case would show that the Second Division, in granting respondent's claim took into account all the available data as supplied by the

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[7] Ropali trading Corp. vs. NLRC and Dalupang, GR No. 122409, September 25, 1998
[8] Black's Law Dictionary sixth edition, page 1190

pieces of evidence submitted by respondent, as well as the BIR Records. To illustrate, several portions of the assailed Decision are hereby quoted:

> "The Court noticed that in the certificate marked as Exhibit 'UUUU' covering the claimed creditable withholding tax of P32,813.91, petitioner's name was not indicated as the payee but rather as the payor/withholding agent. Therefore, We are constrained to exclude the said amount from the above total creditable taxes withheld at source, resulting in a substantiated creditable withholding taxes of P424,172,715.82 (P24,205,529.73 – P32,813.91).
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> xxx xxx xxx
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> A verification of the records in this case discloses that out of the creditable withholding taxes of P23,041,347.82 related to petitioner's sale of real property, the amount of P22,412,454.55 pertains to its sale of real property by way of dacion en pago to Metropolitan Bank & Trust Company (Metrobank) xxx
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> xxx xxx xxx
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> With reference to the claimed creditable withholding taxes of P1,129,694.36, a comparison of the gross rental income of P22,637,988.47 reflected per petitioner's 2001 Income Tax Return reveals a discrepancy of P2,571,859.47. Considering that petitioner failed to reconcile or provide supporting documents explaining such discrepancy, We cannot ascertain whether the income related to the claimed creditable withholding taxes of P1,129,694.36 was in fact declared in their 2001 Income Tax Return."
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> If the contention of petitioner is regarded as true, than the Second division would have granted the refund in the full amount of the claim. Instead, the Second Division only granted the reduced amount of 14,376,871.55 as subject to the issuance of a TCC.

To recall, in claiming a tax refund/credit of unutilized creditable withholding taxes, the applicant/taxpayer must be able to prove its compliance with the three basic requirements and they are:

> a. that the claim for refund must be filed within the two-year prescriptive period provided under Section 204 (C) in relation to section 229 of the NIRC, as amended;
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> b. that the fact of withholding is established by a copy of the statement duly issued by the payor (withholding agent) to the payee, showing the amount paid and the amount of tax withheld therefrom; and

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c. That the income upon which the taxes were withheld was included in the return of the recipient.

The Second Division was guided by these requirements. And only after finding that respondent complied with the requirements that it promulgated the assailed Decision.

Finally, while the Court agrees that settled is the principle in taxation that claim for refund are construed strictly against the claimant and it is incumbent upon him to prove that it is entitled thereto under the law. Nonetheless, respondent was able to prove with the evidence it submitted that it is entitled to a refund. Simple justice would require petitioner to return something that does not rightfully belong to him. Broadly speaking, tax refunds (or tax credits) are based on the legal principle of quasi-contracts or *solutio indebiti*[9] governed by Articles 2142 and 2154 of the Civil Code. As stated by the Supreme Court, "enshrined in our basic legal principles is the time honored doctrine that no person shall unjustly enrich himself at the expense of another. It goes without saying that the government is not exempted from the application of this doctrine."[10]

WHEREFORE, finding no reversible error in the assailed Decision promulgated on October 11, 2006 and Resolution dated January 10, 2007, the instant Petition for Review is hereby **DISMISSED** for lack of merit.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Justice

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[9] Law of Basic Taxation in the Philippines by Benjamin Aban, Revised Edition, page 321
[10] Commissioner of Internal Revenue vs. Fireman's Fund Insurance Co., et al., L-30644, March 9, 1987

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WE CONCUR:

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

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

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