REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

Third Division

DOOSAN HEAVY INDUSTRIES & CONSTRUCTION CO., LTD., (PHILIPPINE BRANCH), Petitioner,	**CTA CASE NO. 8276**
	Members: **BAUTISTA,** *Chairperson* **PALANCA-ENRIQUEZ,** and **COTANGCO-MANALASTAS,** *JJ.*
- *versus* -	
COMMISSIONER OF INTERNAL REVENUE, Respondent.	**Promulgated:** JAN 7 2013 ABFernand 3:23p.m.

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DECISION

BAUTISTA, J.:

The Petition for Review, filed pursuant to Section 7(a)(2) of Republic Act ("RA") No. 1125, as amended by RA No. 9282 and RA No. 9503, seeks for the issuance of a tax credit certificate in the amount of ₱17,860,450.00, representing excess creditable withholding taxes ("CWT") as of December 31, 2008.[1]

FACTS OF THE CASE

Petitioner is a foreign company organized and existing under the laws of the Republic of Korea. It established its Philippine Branch and obtained a license to transact business in the Philippines from the Securities and Exchange Commission (SEC) on April 4, 2008. It started

[1] *Records*, pp. 1-80, with Annexes.

commercial operation in April 2008 and has its principal office at KEPCO Power Plant, Colon, City of Naga, Cebu.[2]

On the other hand, respondent is the duly appointed Commissioner of Internal Revenue with authority to act as such, including, among others, the power to decide, approve and grant refunds or tax credit of overpaid internal revenue taxes as provided by law, with office at the BIR National Office Building, Diliman, Quezon City.[3]

On April 15, 2009,[4] petitioner filed with the Bureau of Internal Revenue ("BIR") its Annual Income Tax Return for the calendar year (CY) ended December 31, 2008, showing a net loss of ₱234,771,494.00, and an overpayment of income tax of ₱17,860,450.00 computed as follows:[5]

Sales/Revenues/Receipts	₱ 410,932,090.00
Cost of Sales/Services	621,338,661.00
Gross Income (Loss) from Operation	(210,406,571.00)
Non-Operating & Other Income	737,208.00
Total Gross Income (Loss)	(209,669,363.00)
Less Deductions	25,102,131.00
Taxable Income (Loss)	₱(234,771,494.00)
Tax Due	₱ -----
Less: Tax Credits/Payments	
Creditable Tax Withheld for the First Three Quarters	₱14,104,085.00
Creditable Tax Withheld Per BIR Form No. 2307 for the Fourth Quarter	3,756,365.00
Tax Amount Payable/ (Overpayment)	₱(17,860,450.00)

[2] Joint Stipulation of Facts and Issues, Facts Admitted, paragraph 1, p. 111.
[3] *Id.*, at paragraph 2, p. 111.
[4] *Records*, pp. 2 and 8.
[5] *Id.*

In the Annual Income Tax Return, petitioner reported its option to be issued Tax Credit Certificate in the amount of ₱17,860,450.00, by marking the appropriate box in Item 33 of the said return.[6]

On December 14, 2010, petitioner filed with the Revenue District Office No. 083 a formal written administrative application for the issuance of a Tax Credit Certificate on its excess CWT in the amount of ₱17,860,450.00.[7]

In petitioner's Annual Income Tax Return for CY 2009, petitioner did not carry over to the succeeding calendar year its excess CWT as of December 31, 2008.[8]

In this regard, petitioner claims for the issuance of a Tax Credit Certificate, in accordance with Section 76 of the 1997 National Internal Revenue Code ("NIRC"), as amended, in relation to Section 2.58.3 of Revenue Regulations No. 2-98 to respondent.

Due to respondent's inaction, petitioner filed this instant Petition for Review on April 15, 2011, pursuant to Section 229 of the 1997 NIRC, as amended.[9]

On June 17, 2011, respondent filed her Answer,[10] interposing the following Special and Affirmative Defenses:

> 3. Petitioner failed to demonstrate that the tax subject of the case at bar was erroneously or illegally collected.
>
> 4. It is explicitly stated under Section 76 of the NIRC of 1997, as amended, that once a taxpayer chooses the option of carry-over, it shall be irrevocable for that taxable period and no application for a tax refund or tax credit certificate shall then be allowed (**Philam Asset Management, Inc. vs. Commissioner of Internal Revenue, G.R. Nos. 156637/162004, December 14,**

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[6] Joint Stipulation of Facts and Issues, Facts Admitted, paragraph 3, p. 112.
[7] *Id.*, at paragraph 4, p. 112.
[8] *Id.*, at paragraph 5, p. 112.
[9] *Id.*, paragraph 7, p. 112.
[10] Records, at pp. 87-88.

2005). Petitioner, therefore must prove that it did not carry-over its 2008 alleged unutilized creditable withholding taxes to the succeeding taxable quarters/years, otherwise, petitioner is precluded from claiming a cash refund or for issuance of tax credit certificate of its excess tax credit for taxable year 2008.

5. Taxes paid and collected are presumed to have been made in accordance with law and regulations, hence, not refundable.

6. In an action for tax refund/credit, the burden of proof is on the taxpayer to establish its right to refund and failure to adduce sufficient proof is fatal to the action for tax refund/credit.

7. It is incumbent upon the petitioner to show that it has complied with the provisions of Section 76 in relation to Sections 204 and 229 of the 1997 Tax Code, as amended, including Revenue Regulations No. 2-98, as amended.

8. Claims for refund are construed strictly against the claimant for the same partakes the nature of exemption from taxation (**Commissioner of Internal Revenue vs. Ledesma, G.R. No. L-13509, January 30, 1970, 31 SCRA 95**) and as such, they are looked upon with disfavor (**Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 121**).

On July 26, 2011, the parties filed their "Joint Stipulation of Facts and Issues."

Petitioner presented Ms. Rutchiel Rabor, as witness, and Ms. Luisa A. Caleon, as the Court-Commissioned Independent Certified Public Accountant ("CPA"), and documentary evidence marked as *Exhibits "A" to "N,"* inclusive of submarkings.[11]

On the other hand, respondent was constrained to submit the case for decision without presenting any evidence.[12]

[11] Joint Stipulation of Facts and Issues, pp. 113-114.
[12] February 8, 2012 Hearing, p. 226, with confirming Resolution dated February 20, 2012, p. 228.

On March 20, 2012,[13] the Court resolved to submit the case for decision, taking into consideration the "Memorandum" of petitioner filed on March 8, 2012, without the memorandum of respondent.

Hence, this Decision.

ISSUES

As stipulated upon by the parties, the issues for the Court's consideration are:[14]

1. WHETHER OR NOT PETITIONER HAS AN UNUTILIZED/EXCESS CREDITABLE WITHHOLDING TAX AMOUNTING TO ₱17,860,450.00 FOR THE CALENDAR YEAR 2008;

2. WHETHER OR NOT THE INCOME FROM WHICH THE TAXES WERE WITHHELD WAS INCLUDED AS PART OF THE GROSS INCOME IN THE PETITIONER'S INCOME TAX RETURNS; and

3. WHETHER OR NOT PETITIONER'S CLAIM FOR REFUND/TAX CREDIT REPRESENTING ITS UNUTILIZED/EXCESS CREDITABLE WITHHOLDING TAX FOR TAXABLE YEAR 2008 IN THE AGGREGATE AMOUNT OF ₱17,860,450.00 IS SUSBSTANTIATED BY DOCUMENTARY EVIDENCE.

RULING OF THE COURT

In claims for refund or issuance of tax credit certificate of CWT, Section 76 of the 1997 National Internal Revenue Code ("NIRC"), as amended, provides as follows:

> "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

[13] *Records*, p. 245.
[14] *Id.*, at p. 131.

> 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.
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> 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 income 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."

Based from the foregoing, and as enunciated by this Court in the case of *SC & C Cosmetech Co., Inc., v. Commissioner of Internal Revenue*,[15] a corporation entitled to a tax credit or refund of excess estimated quarterly income taxes paid has two (2) options, *viz*: (1) to carry-over the excess credit; or (2) to apply for the issuance of a tax credit certificate or to claim a cash refund. And once the option to carry-over has been made, such shall be irrevocable for that taxable period and no application for cash refund or issuance of tax credit certificate shall be allowed. The irrevocability rule when taken with the phrase "for that taxable period" refers to that taxable period when the taxpayer made the choice of carry-over, and not to the next taxable year when the said excess or unutilized tax credits be carried-over.

Also in the case of *Asiaworld Properties Philippine Corporation, vs. Commissioner of Internal Revenue*,[16] the Supreme Court ruled that, "Section 76 of the NIRC of 1997 clearly states: Once the option to carry-over and

[15] CTA Case No. 6650, June 6, 2005.
[16] G.R. No. 171766, July 29, 2010, 626 SCRA 172.

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. Section 76 expressly states that the option shall be considered irrevocable for that taxable period - referring to the period comprising the succeeding taxable years. Section 76 further states that no application for cash refund or issuance of a tax credit certificate shall be allowed therefore-referring to that taxable period comprising the succeeding taxable years."

In the instant case, as reported in its Annual Income Tax Return[17] for taxable year 2008, petitioner declared no income tax liability (either at the regular rate of 35% or minimum corporate income tax rate of 2%) as it incurred a net loss in the amount of ₱234,771,494.00,[18] and gross loss of ₱210,406,571.00.[19] Thus, the reported creditable tax withheld for the first three quarters in the amount of ₱14,104,085.00, and creditable tax withheld for the fourth quarter in the amount of ₱3,756,365.00, in the total amount of ₱17,860,450.00 were unutilized as of December 31, 2008, as shown below:

Sales/Revenues/Receipts/Fees	₱ 410,932,090.00
Less: Cost of Sales/Services	621,338,661.00
Gross Income from Operation	₱ (210,406,571.00)
Add: Non-Operating & Taxable Other Income	737,208.00
Total Gross Income	₱ (209,669,363.00)
Less: Deductions	25,102,131.00
Taxable Income	₱ (234,771,494.00)
Income Tax Due	₱ -
Less: Tax Credits:	
Creditable Tax Withheld for the First Three Quarters	₱ 14,104,085.00
Creditable Tax Withheld for the Fourth Quarter	3,756,365.00
Total Tax Credits	₱ 17,860,450.00
Tax Overpayment	**₱ (17,860,450.00)**

[17] Exhibit "A.
[18] Exhibit "A
[19] Exhibit "A." [illegible]

And considering that petitioner marked the option "*To be issued a Tax Credit Certificate*" in its 2008 Annual Income Tax Return,[20] and that it did not carry-over the excess tax credits of ₱17,860,450.00 in its Quarterly Income Tax Returns,[21] and Annual Income Tax Return,[22] for the succeeding taxable year 2009, the amount of ₱17,860,450.00 can be the proper subject of a claim for Tax Credit Certificate pursuant to Section 76 of the NIRC of 1997, as amended.

However, in order that the claim for refund may be granted, petitioner must satisfy the following three basic requirements:[23]

(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 (withholding agent) to the payee showing the amount paid and the amount of the tax withheld therefrom.

Relevant in the first requisite is Sections 204(C) and 229 of the NIRC of 1997, as amended, which state that:

> "SEC. 204. *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.* - The Commissioner may-
>
> xxx xxx 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

[20] Exhibit "A-7."
[21] Exhibits "D-8," "D-12," and "D-16".
[22] Exhibit "D-3."
[23] Banco Filipino Savings and Mortgage Bank vs. Court of Appeals, Court of Tax Appeals and Commissioner of Internal Revenue, G.R. No. 155682, March 27, 2007, 519 SCRA 93.

good condition by the purchaser, and, in his discretion, redeem or change unused stamped 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."

xxx xxx xxx

"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 therefore, 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."

In addition, the Supreme Court ruled in the case of *ACCRA Investments Corporation vs. Court of Appeals,*[24] that petitioner has two years from the filing of the final adjustment return within which to file a claim for refund of excess CWT both in the administrative and judicial levels.

[24] G.R. No. 96322, December 20, 1991, 204 SCRA 957.

In the instant case, petitioner filed its Annual Income Tax Return for taxable year 2008, on April 15, 2009.[25] Counting from this date, the administrative claim filed by petitioner on December 14, 2010,[26] and the Petition for Review filed on April 15, 2011,[27] are well within the two-year prescriptive period. Clearly, the first requirement has been satisfied.

This brings Us to the second requisite.

Relevant provision is Section 48 of the NIRC of 1997, as amended, which states:

> "SEC. 48. *Accounting for Long-term Contracts.* — Income from long-term contracts shall be reported for tax purposes in the manner as provided in this Section. As used herein, the term '*long-term contracts*' means building, installation or construction contracts covering a period in excess of one (1) year. Persons whose gross income is derived in whole or in part from such contracts shall report such income upon the basis of percentage of completion. The return should be accompanied by a return certificate of architects or engineers showing the percentage of completion during the taxable year of the entire work performed under contract. There should be deducted from such gross income all expenditures made during the taxable year on account of the contract, account being taken of the material and supplies on hand at the beginning and end of the taxable period for use in connection with the work under the contract but not yet so applied. If upon completion of a contract, it is found that the taxable net income arising thereunder has not been clearly reflected for any year or years, the Commissioner may permit or require an amended return."

In the instant case, records show that the income of ₱893,022,477.85 represents collections received by petitioner in the year 2008 with its contract[28] with KEPCO SPC Power Corporation in the construction of the Cebu Coal Fired Power Plant. However, out of the total collections of

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[25] Exhibit "A-2."
[26] Exhibits "G" and "[illegible]."
[27] Records, pp. 1-5.
[28] Exhibit "N."

₱893,022,477.85, only the amount of ₱410,932,090.00 was declared as Contract Revenues in petitioner's 2008 Annual Income Tax Return[29] and Statement of Income and Expenses.[30] This is due to the fact that petitioner applied the Percentage of Completion Method in determining the appropriate amount of revenues to be recognized in a given period. Furthermore, petitioner, in determining the stage of completion, made reference to the weight of the project at the end of each reporting period as a percentage of total estimated weight (per engineering plan) of the project.[31]

Consequently, the Contract Revenues of ₱410,932,090.00 reflected in petitioner's 2008 Annual Income Tax Return was arrived at by multiplying the contract price of ₱3,543,740,000.00,[32] net of VAT, with the percentage of completion rate of 11.596%[33] as of December 31, 2008, as shown below:

Contract Price	₱ 3,968,988,800.00
Less: VAT	425,248,800.00
Net of VAT	₱ 3,543,740,000.00
Multiply by the Progress Rate of Completion as of December 31, 2008	11.59600%
Contract Revenues per return	**₱ 410,932,090.40**

Thus, the remaining collections in the amount of ₱482,090,387.00 (₱893,022,478.00 less ₱410,932,090.00) was treated by petitioner as liability under the account "Unearned Contract Revenues,"[34] as of December 31, 2008. But petitioner reported said amount as part of its income in its Annual Income Tax Return[35] for taxable year 2009, as clearly illustrated by the Court-commissioned Independent CPA in her Report[36] dated September 20, 2011, as follows:

> 2.3 The Unearned Contract Revenue amounting to P482,090,387.00 in the Year 2008 was recognized as part of

[29] Exhibit "A-3."
[30] Exhibit "A-17-1."
[31] 2.7 Revenue and Expense Recognition, Notes to Financial Statements, December 31, 2008, attached to Exhibit "A."
[32] Exhibit "N-2."
[33] Exhibit "G-7-1."
[34] Exhibit "A-16-1."
[35] Exhibit "D."
[36] Exhibit "O."

the income in Year 2009. The amount of Contract Revenues computed based on the progress rate at December 31, 2009 follows:

Contract Revenues Realized up to December 31, 2009

Contract Price	3,968,988,800.00
Less: VAT	425,248,800.00
Net of VAT	3,543,740,000.00
Multiply by the Progress Rate of Completion at December 31, 2009	54.235%[37]
Total Contract Revenue realized up to December 31, 2009	1,921,947,389

In the Company's ITR for Years 2008 and 2009 and in its AFS for the same periods the total Contract Revenues recognized amounted to P1,922,959,947.00 as shown below:

Income recognized based on percentage of completion reflected in AFS and ITR for Years 2008 & 2009	
Year 2008	410,932,091.00
Year 2009	1,512,027,856.00 [38]
	1,922,959,947.00

There is an overstatement of P1,012,558.00 (Recognized in AFS/ITR – ₱1,922,959,947.00 less- Based on percentage of completion – ₱1,921,947,389.00) in the amount recognized for income tax purposes.

All these prove that the income of petitioner upon which the taxes were withheld was included in its returns for taxable years 2008 and 2009; hence, complying with the second requirement.

This brings Us to the third requisite.

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[37] Exhibit "G-7-2."
[38] Exhibits "D-17" and "D-18."

In the third requisite, it requires petitioner to establish the fact of withholding by a copy of a statement duly issued by the payor (withholding agent) to the payee showing the amount paid and the amount of the tax withheld therefrom.

In the instant case, documents establishing the fact of withholding were evident when petitioner submitted the Certificates of Creditable Tax Withheld at Source (BIR Form No. 2307) issued to it by KEPCO SPC Power Corporation for taxable year 2008, showing CWT in the amount of ₱17,860,449.57 on income payments of ₱893,022,477.85, the details of which are as follows:

Period	Withholding Agent	Income Payment	Income Tax Withheld	Exhibit
Payment from Top 10,000 corporation				
Apr-08	KEPCO SPC Power Corporation	₱ 368,548,958.93	₱ 7,370,979.18	"A-8"
May-08	KEPCO SPC Power Corporation	67,331,059.82	1,346,621.20	"A-9"
Payment from Prime contractors/sub-contractors				
Jun-08	KEPCO SPC Power Corporation	67,331,059.82	1,346,621.20	"A-10"
Jul-08	KEPCO SPC Power Corporation	67,331,059.82	1,346,621.20	"A-11"
Aug-08	KEPCO SPC Power Corporation	67,331,059.82	1,346,621.20	"A-12"
Sep-08	KEPCO SPC Power Corporation	67,331,060.00	1,346,621.20	"A-13"
Oct-08	KEPCO SPC Power Corporation	124,030,900.00	2,480,618.00	"A-14"
Nov-08	KEPCO SPC Power Corporation	63,787,319.64	1,275,746.39	"A-15"
	TOTAL	**₱ 893,022,477.85**	**₱17,860,449.57**	

Hence, petitioner complied with the third requirement.

In sum, the Court finds the evidence adduced by petitioner to be sufficient to support its claim for the issuance of a Tax Credit Certificate in the amount of ₱17,860,450.00 representing unutilized CWT for taxable year 2008.

WHEREFORE, premises considered, the instant Petition for Review is hereby GRANTED. Accordingly, respondent is hereby **ORDERED** to **ISSUE** A TAX **CREDIT CERTIFICATE** in favor of petitioner in the amount of SEVENTEEN MILLION EIGHT HUNDRED SIXTY THOUSAND FOUR HUNDRED FIFTY PESOS (₱17,860,450.00) representing, unutilized creditable withholding taxes for taxable year 2008.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

(Retired)
OLGA PALANCA-ENRIQUEZ
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

ATTESTATION

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.

LOVELL R. BAUTISTA
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13 of 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's Division.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Acting Presiding Justice