REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus -

F.F. CRUZ AND COMPANY, INC.,
Respondent.

C.T.A. E.B. NO. 372
(C.T.A. CASE NO. 7216)

Present:

ACOSTA, *P.J.*
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA, *and*
PALANCA-ENRIQUEZ, *JJ.*

Promulgated:

JUN 1 2 2008

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DECISION

UY, J.:

This is a Petition for Review before the Court of Tax Appeals *En Banc* filed on March 19, 2008 under Republic Act No. 9282 and Section 3(b), Rule 8 of the Revised Rules of the Court of Tax Appeals seeking a review of the Decision and Resolution by the First Division of this Court (Court in Division) in CTA Case No. 7216, entitled "F.F. Cruz & Co., Inc. vs. Commissioner of Internal Revenue"[1], to wit:

[1] Ponencia of Associate Justice Lovell R. Bautista, First Division, concurred by Presiding Justice Ernesto D. Acosta, while Associate Justice Caesar A. Casanova inhibited.

1) Decision promulgated on July 23, 2007[2] partially granting herein respondent's claim for the issuance of tax credit certificate in its favor in the reduced amount of ELEVEN MILLION ONE HUNDRED EIGHTY FIVE THOUSAND FOUR HUNDRED SIXTY THREE AND 62/100 PESOS (P11,185,463.62) representing the unutilized excess tax credits for taxable year 2002; and

2) Resolution promulgated on February 13, 2008[3] denying herein petitioner's Motion for Partial Reconsideration and herein respondent's Partial Motion for Reconsideration of the aforesaid Decision for lack of merit.

THE FACTS

The factual antecedents of the case are not in dispute.

Petitioner is the duly appointed Commissioner of Internal Revenue who is empowered to perform the duties of his office, including among others, the duty to act upon and approve claims for refund or tax credit as provided by law, with office address at the 5th Floor, BIR National Office Building, Diliman, Quezon City. Respondent, on the other hand, is a corporation organized and existing under the laws of the Philippines and engaged in the construction business with business address at 800 E. de los Santos Avenue, Quezon City.

On April 16, 2003, respondent filed with the Bureau of Internal Revenue (BIR) its income tax return for taxable year 2002, but subsequently amended the same on May 9, 2003. In its amended 2002 income tax return, respondent declared an income tax due of P3,022,521.00 on taxable income of P13,572,486.00. However, respondent had accumulated tax credits in the

[2] Docket, pp. 401-410.
[3] Ibid, at pp. 28-32.

total amount of P46,638,248.00, representing the sum of the prior year's excess credits of P21,880,195.00 and creditable taxes withheld during the year in the amount of P24,758,053.00. After offsetting the income tax liability of P3,022,521.00 against the total tax credits of P46,638,248.00, respondent reflected an income tax overpayment of P33,065,762.00, computed as follows:

Sales / Revenue / Receipts / Fees	P	1,355,667,766.00
Less: Cost of Sales / Services		1,221,608,038.00
Gross Income from Operations	P	134,059,728.00
Add: Non-Operating / Other Income		17,066,337.00
Total Gross Income	P	151,126,065.00
Less: Deductions		108,712,046.00
Taxable Income	P	42,414,019.00
Income Tax Due	P	13,572,486.00
Less: Tax Credits		
Prior Year's Excess Credits	P	21,880,195.00
Creditable Taxes Withheld for the First Three Quarters		13,171,573.00
Creditable Taxes Withheld for the Fourth Quarter		11,586,480.00
Total Tax Credits	P	46,638,248.00
Total Overpayment	P	33,065,762.00

Respondent, as indicated in the return, opted to be issued a tax credit certificate for the income tax overpayment of P33,065,762.00.

Through a letter dated May 2, 2003 and filed with the BIR on May 12, 2003, respondent formalized its request for the issuance of a tax credit certificate corresponding to its reported excess tax credits as of December 31, 2002 in the amount of P33,065,762.00.

On June 10, 2003, petitioner issued a Letter of Authority No. 00002545, authorizing the Revenue Officers named therein to examine the books of accounts and accounting records relative to respondent's internal revenue taxes for the period from January 1, 2002 to December 31, 2002.

As there was no report on the instant claim by petitioner's examiners, respondent filed a follow-up letter with the BIR on March 29, 2005, reiterating its request for the issuance of a tax credit certificate in the amount of P33,065,762.00.

On April 15, 2005, respondent filed a Petition for Review with the Court in Division without waiting for an action from the petitioner, lest it will be barred under Section 229 of the National Internal Revenue Code (NIRC) of 1997.

On July 23, 2007, the Court in Division rendered its assailed Decision partially granting respondent's claim for the issuance of tax credit certificate in its favor in the reduced amount of ELEVEN MILLION ONE HUNDRED EIGHTY FIVE THOUSAND FOUR HUNDRED SIXTY THREE AND 62/100 PESOS (P11,185,463.62) representing the unutilized excess tax credits for taxable year 2002.

Finding no valid or cogent reason to either alter or modify the assailed Decision, the Court in Division denied herein petitioner's Motion for Partial Reconsideration and herein respondent's Partial Motion for Reconsideration of the aforesaid Decision in the Resolution dated February 13, 2008.

Hence, this recourse before the Court *en banc* praying that the assailed Decision dated July 23, 2007 and Resolution dated Feburary 13, 2008 of the Court in Division, be partially reversed/set aside and a new one be issued denying respondent's entire claim for the issuance of tax credit certificate in its favor.

THE ISSUE

Petitioner raises a sole issue for resolution, to wit:

"WHETHER OR NOT THE ALLEGED CERTIFICATES OF CREDITABLE TAXES WITHHELD WERE PROEPRLY IDENTIFIED IN COURT."[4]

Petitioner's Arguments:

In support of the instant Petition for Review, petitioner submits that respondent is not entitled to the refund of the unutilized excess tax credits for taxable year 2002 considering that the very documentary evidence presented, i.e. Certificates of Creditable Tax Withheld at Source, were not properly identified in Court. Hence, petitioner maintains that respondent failed to establish the authenticity and due execution of said certificates in violation of of Section 20 of Rule 132 of the Revised Rules of Court. Further, it is petitioner's belief that there is also a need to prove the truth of the contents of said certificates by presenting the very author who prepared and signed the same, citing the cases of Philippine National Bank vs. Court of Appeals, et al., G.R. No. 107508, April 25, 1996 and PNOC Shipping and Transport Corporation vs. Honorable Court of Appeals, et al., G.R. No. 107518, October 8, 1998.

Respondent's Counter-arguments:

Respondent filed its "Comment" on April 24, 2008 praying for the dismissal of the present petition for lack of merit. It posits that the questioned Certificates of Creditable Taxes Withheld at Source were duly issued under

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[4] Petitioner for Review, p. 3, Docket, p. 8

the pain of perjury by respondent's withholding agents/payors; and that no existing law, revenue memorandum, circular, or regulation that compels each and every individual withholding agent/payor to testify and identify the respective certificates they issued. Lastly, respondent emphasizes that petitioner failed to present any controverting evidence to refute its positive and convincing evidence.

THE COURT EN BANC'S RULING

We find no merit in the petition.

A careful and closer look at the arguments set forth by the petitioner in the instant petition would readily reveal that the grounds relied upon and the matters raised herein are mere restatements of the arguments raised before the Court in Division[5] which had already been exhaustively discussed and passed upon by the court *a quo* when it rendered its assailed Decision and Resolution promulgated on July 23, 2007 and February 13, 2008, respectively.

We disagree with petitioner's assertion that the authenticity of the subject Certificates of Creditable Tax Withheld at Source (Certificates) must be proved by identification of either anyone who saw the document executed or written, or by evidence of the genuineness of the signature or

[5] Respondent's "Memorandum" filed on May 9, 2007 and "Motion for Partial Reconsideration" filed on August 16, 2007, both file in CTA Case No. 7216, Court in Division Records in CTA Case No. 7216, pp. 389-397, and pp. 411-421, respectively.

handwriting of the maker. On the other hand, We adopt the Court in Division's main basis in admitting the questioned Certificates,[6] and We quote:

> "The testimonial evidence of the person, who made entries in the Certificate of Creditable Tax Withheld at Source, or also known as BIR Form 2307, is **not an indispensable requirement**. **The fact of withholding is sufficiently established by a certificate issued by the payor primarily attesting the amount of taxes withheld from the income payments received by the payee.** The Supreme Court made the following pronouncement in the case of ***Banco Filipino Savings and Mortgage Bank vs. Court of Appeals, Court of Tax Appeals and Commissioner of Internal Revenue***:[7]
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>> In fine, the document which may be accepted as evidence of third condition, that is the fact of withholding, must emanate from the payor itself, and not merely from the payee, and must indicate 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.
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>> At the time material to this case, the requisite information regarding withholding taxes from the sale of acquired assets can be found in BIR Form No. 1743.1. As described in Section 6 (of) Revenue Regulations No. 6-85, BIR Form No. 1743.1 is a written statement issued by the payor as withholding agent showing the income or other payments made by the said withholding agent during a quarter or year and the amount of the tax deducted and withheld therefrom. It readily identifies the payor, the income payment and the tax withheld. **It is complete in the relevant details which would aid the courts in the evaluation of any claim for refund of creditable withholding taxes.**'" *(Emphasis Ours)*

In the same ***Banco Filipino Savings and Mortgage Bank*** case cited by the Court in Division, the Supreme Court elucidated that there are three conditions for the grant of a claim for refund of creditable withholding tax, to

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[6] Resolution dated February 13, 2008, CTA Case No. 7216; Docket, pp. 31-32.
[7] G.R. No. 155682, March 27, 2007, 519 SCRA 93 (2007).

wit: 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 to the payee showing the amount paid and the amount of the tax withheld therefrom.[8] The third condition is specifically imposed under Section 10 of Revenue Regulations No. 6-85 (as amended), thus:

> "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*** xxx." *(Emphasis Ours)*

There is no dispute that respondent complied with the first two requirements aforementioned. It is respondent's manner of compliance with the third requirement that is being assailed by petitioner in the instant petition.

In this regard, the document which may be accepted as evidence in compliance with the third condition, that is, the fact of withholding, must emanate from the payor itself, and not merely from the payee, and must indicate 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.[9] A perusal of the contents of the subject Certificates (BIR Form No. 2307, formerly Form 1743-750) would readily show that the Certificates are such documents,

[8] Ibid., at p. 96.
[9] Id., at pp. 99-100.

complete in the relevant details which would aid the courts in the evaluation of any claim for refund of creditable withholding taxes.

Additionally, it is worthy to mention at this point, that proof of actual remittance by respondent is not even necessary to prove withholding and remittance of taxes to petitioner. Section 2.58.3 (B) of Revenue Regulations No. 2-98 clearly provides that proof of remittance is the responsibility of the withholding agent and not of the taxpayer-refund claimant. It should be borne in mind by the petitioner that payors of withholding taxes are by themselves constituted as withholding agents of the BIR. The taxes they withhold are held in trust for the government. In the event that the withholding agents commit fraud against the government by not remitting the taxes so withheld, such act should not prejudice herein respondent who has been duly withheld taxes by the withholding agents acting under government authority.

Moreover, pursuant to Sections 57 and 58 of the NIRC of 1997, as amended, the withholding of income tax and the remittance thereof to the BIR is the responsibility of the payor and not the payee. Therefore, respondent, being the payee in this case, has no control over the remittance of the taxes withheld from its income by the withholding agent or payor who is the agent of the petitioner. The Certificates of Creditable Tax Withheld At Source issued by the withholding agents of the government are prima facie proof of actual payment by herein respondent-payee to the government itself through said agents.

Taken collectively, We stress that the pertinent provisions of law and the established jurisprudence evidently demonstrate that there is no need for the claimant, respondent in this case, to present testimonial evidence of the withholding agent (payor) who made the entries in said certificates and to establish actual remittance by the withholding agent (payor) to the BIR.

Furthermore, the evidence on record in which herein petitioner interposed no objection to its admission[10] and was consequently admitted[11] by the Court in Division, show that respondent was able to substantiate its claim through the presentation of Exhibits "F" to "F-47",[12] the Certificates of Creditable Tax Withheld At Source. It must be noted that in case of failure to timely object to the admission or presentation of evidence, will render admissible even an incompetent or irrelevant evidence, and the court cannot, on its own volition, disregard such evidence.[13]

In the light of the foregoing considerations, as well as the applicable laws in the instant case, and contrary to petitioner's contention, respondent has sufficiently discharged its burden of proving its entitlement to the refund sought for. The documentary evidence presented sufficiently established that respondent was subjected to withholding taxes, and there was an excess thereof which remains unutilized. and the same may rightfully be the subject of a claim for refund. Correspondingly, respondent is entitled to its claim for the issuance of a tax credit certificate in its favor.

This Court is not unaware of the principle that the burden of proof is upon him who claims the exemptions in his favor and he must be able to

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[10] Comment on Petitioner's Formal Offer of Evidence filed on July 10, 2006, CTA Case No. 7216, Court in Division's Records , pp. 347-350.

[11] Resolution dated September 22, 2006, CTA Case No. 7216, Court in Division's Records, pp. 356-357.

[12] Ibid.

[13] Marella vs. Reyes, 12 Phil. 1; U.S. vs. Chun Tong, 22 Phil. 562.

justify his claim by the clearest grant of the organic or statute law.[14] This is consistent with the well-established principle that tax refunds are in the nature of a tax exemption and should be construed strictissimi juris against the taxpayer.[15] Nevertheless however, and as earlier pointed out, We are fully convinced that respondent was able to establish its claim for the issuance of a tax credit certificate in its favor based on the evidence presented and the factual and legal findings of the Court in Division.

All the foregoing considered, this Court finds no reversible error committed by the Court in Division when it rendered the Decision dated July 30, 2007 and Resolution dated February 13, 2008. We therefore adopt the ruling that respondent has sufficiently substantiated its reported creditable withholding taxes for taxable year 2002, pursuant to Section 76, in relation to Sections 204 (C) and 229 of the NIRC of 1997, and Revenue Regulations No. 2-98, particularly Section 2.58.3 thereof, in the amount of TWENTY FOUR MILLION SEVEN HUNDRED FIFTY SEVEN THOUSAND NINE HUNDRED FORTY NINE AND 62/100 PESOS (P24,757,949.62); and We accordingly find respondent to be entitled to its claim for the issuance of a tax credit certificate in the amount of ELEVEN MILLION ONE HUNDRED EIGHTY FIVE THOUSAND FOUR HUNDRED SIXTY THREE AND 62/100 PESOS (P11,185,463.62) representing unutilized excess tax credits for taxable year 2002.

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[14] China Banking Corporation vs. Court of Appeals, 403 SCRA 634 (2003).
[15] Commissioner of Internal Revenue vs. S.C. Johnson and Son, Inc. and Court of Appeals, 309 SCRA 87(1999); Commissioner of Internal Revenue vs. Tokyo Shipping Co., Ltd., 244 SCRA 332 (1995); Commissioner of Internal Revenue vs. Procter and Gamble Philippine Manufacturing Corporation and the Court of Tax Appeals, 204 SCRA 377 (1991).

WHEREFORE, premises considered, the instant petition is hereby **DENIED DUE COURSE**, and, accordingly, **DISMISSED** 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

(Inhibited)
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