REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

MAUNSELL PHILIPPINES, INC., *Petitioner,*	**C.T.A. EB NO. 860 (C.T.A. CASE NO. 7860)**
	Present:
-versus-	ACOSTA, Presiding Justice, CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, PALANCA-ENRIQUEZ, FABON-VICTORINO, MINDARO-GRULLA, and COTANGCO-MANALASTAS, JJ.
COMMISSIONER OF INTERNAL REVENUE, ***Respondent.***	**Promulgated:** OCT 23 2012

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DECISION

PALANCA-ENRIQUEZ, J.:

THE CASE

This is a Petition for Review filed by Maunsell Philippines, Inc. (hereafter "petitioner MPI") under *Section 11 of RA 9282,* in relation to *Rule 43 of the 1997 Rules of Civil Procedure, as amended*, which seeks to reverse and set aside the Decision dated October 21, 2011 and Resolution dated December 26, 2011 rendered by the Second Division of this Court in C.T.A. Case No. 7860, entitled "Maunsell Philippines, Inc. vs. Commissioner of Internal Revenue," the respective dispositive portions of which read, as follows:

> "**WHEREFORE**, premises considered, the Petition for Review is hereby **DISMISSED** for lack of merit.
>
> **SO ORDERED**."
>
> "**WHEREFORE**, finding no cogent reason to reverse the previous ruling of this Court, the **"Motion for Reconsideration"** filed on November 10, 2011 is hereby **DENIED** for lack of merit.
>
> **SO ORDERED**."

THE PARTIES

Petitioner Maunsell Philippines, Inc. is a domestic corporation duly organized and existing under Philippine laws, with principal office at 11/F, Ayala Life-FGU Center, 6811 Ayala Avenue, Makati City.

On the other hand, respondent Commissioner of Internal Revenue (hereafter " respondent CIR") is the duly appointed Commissioner of the Bureau of Internal Revenue, with authority, among others, to decide, approve and grant refunds of erroneously paid or excessively collected taxes, and holds office at the 5th Floor, BIR National Office Building, BIR Road, Diliman, Quezon City.

THE FACTS

The antecedent facts, as summarized by the Second Division of this Court, are hereunder adopted, to wit:

> "During the first three (3) taxable quarters of the fiscal year ending September 30, 2006, petitioner accumulated creditable withholding taxes amounting to P2,773,482.54. Petitioner reported the aforesaid withholding tax credits in its income tax returns filed for the first three taxable quarters of FY 2006.
>
> Petitioner was not able to utilize its withholding tax credits except for the portion applied to settle its minimum corporate income tax (MCIT) liability amounting to P497,494.28, when it filed its FY 2006 Annual Income Tax Return on January 25, 2007; as its operation during FY 2006 resulted in net loss.
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> In its amended Annual Income Tax Return for FY 2006, petitioner indicated that its chosen option is "To be issued a Tax Credit Certificate" for its overpaid taxes of P3,839,671.30.
>
> On July 13, 2007, petitioner filed an administrative claim for the issuance of a tax credit certificate for its purported overpaid income tax for FY 2006 with the BIR.
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> Respondent failed to act on petitioner's administrative claim for the issuance of a tax credit certificate, prompting

petitioner to file the instant Petition for Review before this Court on January 15, 2009."

On October 21, 2011, the Second Division rendered the assailed Decision dismissing the Petition for Review for lack of merit.

On November 10, 2011, petitioner MPI filed a "Motion for Reconsideration" of the Decision dated October 21, 2011.

On December 26, 2011, the Second Division denied petitioner's "Motion for Reconsideration" for lack of merit.

On February 2, 2012, petitioner filed the instant Petition for Review before this *Court En Banc*, raising a lone issue:

ISSUE

WHETHER OR NOT THE HONORABLE COURT ERRED IN DENYING PETITIONER'S CLAIM FOR REFUND IN THE AMOUNT OF THREE MILLION EIGHT HUNDRED THIRTY-NINE THOUSAND SIX HUNDRED SEVENTY-ONE and 31/100 (P3,839,671.31) BASED ON THE ALLEGED FAILURE OF PETITIONER TO PRESENT ITS ORIGINAL ANNUAL ITR FOR FY 2006.

Without necessarily giving due course to the Petition for Review, on March 28, 2012, We ordered respondent CIR to file her comment, not a motion to dismiss, within ten (10) days from notice. Despite notice, respondent CIR failed to file her comment.

On May 28, 2012, the Court *En Banc* ordered both parties to file their simultaneous memoranda, within thirty (30) days from notice; afterwhich the petition shall be deemed submitted for decision.

Despite notice, both parties failed to comply. Thus, on September 5, 2012, the petition was deemed submitted for decision.

Petitioner MPI's Arguments

Petitioner argues that its claim was filed within two (2) years from the filing of the amended ITR or Final Adjustment Return; that at any rate, the prescriptive period is not jurisdictional and may be suspended for reasons of justice and equity; that the Honorable Court could take cognizance of the evidentiary value of petitioner's original ITR filed through EFPS; and that petitioner had no occasion to exercise the option to be refunded or to carry-over its excess tax credits when it filed its original ITR; at any rate, the option to be refunded was exercised only when petitioner's final tax liability was determined upon the filing of the amended ITR.

THE COURT *EN BANC'S* RULING

The petition is without merit.

Petitioner anchors its claim on the provisions of *Section 76 of the NIRC of 1997, as amended,* in relation to *Sections 204 and 229 of the same Code. 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 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 therefor."** *(Emphasis supplied)*

Pursuant to the afore-quoted provision, the corporate taxpayer's excess tax credits or overpaid income tax in a given taxable year may either be refunded or carried over/applied to the succeeding taxable years.

However, once the option to carry-over has been made, the same becomes irrevocable for that taxable period.

A careful perusal of petitioner's 2006 amended ITR shows that its total tax credits during the year in the amount of P4,337,165.59 far exceeded its income tax liability of P497,494.28, resulting to an unutilized amount of P3,839,671.31 tax credits.

Settled is the rule that a taxpayer's excess withholding tax credits for the taxable year shall automatically be allowed as a refund or tax credit for purposes of filing his income tax return for the taxable year succeeding the 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.

Equally settled is the rule that in order 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, 519SCRA 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

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erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, of any sum alleged to have been excessively or in any manner wrongfully 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 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, however, that petitioner failed to present its original ITR for FY 2006, but instead presented only the amended ITR for FY

2006, which was filed on January 25, 2007. The original ITR is vital in determining whether the claim was timely filed.

As aptly ruled by the Second Division:

> "Applying the above-cited jurisprudence, the original return is important in order for this Court to ascertain whether the filing of the administrative and judicial claims for refund or issuance of a tax credit certificate were made within the two-year reglementary period. Absent such document, this Court has no way of determining whether the claim was timely filed." *(Decision, p. 77, original docket of C.T.A. EB no. 860)*

In petitioner's Motion for Reconsideration of the Decision dated October 21, 2011, petitioner attached the original ITR for FY 2006 as Annex "A", which the Second Division ruled as "forgotten evidence" and did not admit as evidence.

Even if the Second Division admitted said evidence, a careful perusal of the original ITR for FY 2006 shows that it was filed on January 12, 2007. Counting two (2) years from January 12, 2007, petitioner had until January 12, 2009, within which to file its claim for refund/tax credit certificate, both administratively and judicially. While the administrative claim was filed within the two-year prescriptive period, the judicial claim, however, was filed three (3) days late on January 15, 2009. Clearly, the first requirement has not been complied with. Thus, the claim for refund of excess/unutilized creditable withholding taxes for the FY 2006 was correctly denied by the Second Division.

Finding no reversible error, we affirm the assailed Decision dated October 21, 2011 and Resolution dated December 26, 2011 rendered by the Second Division.

WHEREFORE, premises considered, the present Petition for Review is hereby **DENIED DUE COURSE**, and accordingly, **DISMISSED** for lack of merit.

SO ORDERED.

OLGA PALANCA-ENRIQUEZ
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

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

LOVELL R. BAUTISTA
Associate Justice

(On Leave)
ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

(On Leave)
ESPERANZA R. FABON-VICTORINO
Associate Justice

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

(On Leave)
AMELIA R. COTANGCO-MANALASTAS
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the above Decision has been reached in consultation with the members of the Court *En Banc* before the case was assigned to the writer of the opinion of the Court.

ERNESTO D. ACOSTA
Presiding Justice