REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-versus-

PHILIPPINE BANK OF COMMUNICATIONS,
Respondent.

CTA EB No. 933
(CTA Case No. 7915)

Present:

DEL ROSARIO, *P.J.*,
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA,
FABON-VICTORINO,
MINDARO-GRULLA, and
COTANGCO-MANALASTAS, and
RINGPIS-LIBAN *JJ.*

Promulgated:

OCT 07 2013 9:15 a.m.

X---X

DECISION

CASANOVA, *J.*:

This is an appeal, by way of Petition for Review filed by Commissioner of Internal Revenue (CIR), from the Decision[1] dated June 6, 2012 (Assailed Decision) and Resolution[2] dated August 28, 2012 (Assailed Resolution), both promulgated by the Court of Tax Appeals (CTA) Third Division, in the case docketed as CTA Case No.

[1] Annex "A", Petition for Review, CTA En Banc Rollo, pp. 28-44.
[2] Annex "B", Petition for Review, CTA En Banc Rollo, pp. 45-48.

7915 and entitled *Philippine Bank of Communications vs. Commissioner of Internal Revenue.*

The facts of the case, as found by the CTA Third Division, are as follows:

> "Petitioner Philippine Bank of Commerce is a domestic corporation organized and existing under the laws of the Republic of the Philippines, with principal office address at PBCOM Tower, 6795 Ayala Avenue corner V. A. Rufino Street, Makati City. It is engaged in the commercial banking business and registered as such with the Bureau of Internal Revenue (BIR), with Tax Identification Number (TIN) 000-263-340-000.
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> Respondent, on the other hand, is the duly appointed Commissioner of the Bureau of Internal Revenue duly authorized to perform the duties of said office including, among others, the power to decide, approve and grant refunds or tax credits of erroneously or excessively paid taxes. She holds office at the BIR National Office Building, BIR Road, Diliman, Quezon City.
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> On April 16, 2007, petitioner filed with the BIR its Annual Income Tax Return (BIR Form No. 1702) for taxable year 2006, through the Electronic Filing and Payment System (EFPS).
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> On May 2, 2007, petitioner filed an Amended Annual Income Tax Return for the year 2006, showing a net loss of P903,582,307.00 and a creditable tax withheld for the fourth quarter of 2006 in the amount of P24,716,655.00. Petitioner also marked the box 'To be issued a Tax Credit Certificate' in Line 31 of the above-mentioned Return, indicating its intention to apply for the issuance of tax credit certificate for its excess/unutilized creditable withholding tax (CWT) for the year 2006, in the amount of P24,716,655.00.
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> On April 3, 2009, petitioner filed with the BIR its letter requesting the issuance of tax credit certificate for the excess creditable tax withheld

covering taxable year 2006, in the amount of P24,716,655.44.

Due to respondent's failure to render a decision on petitioner's claim for tax credit certificate, petitioner filed the instant Petition for Review on April 15, 2009, praying for the issuance of tax credit certificate for its alleged unutilized creditable withholding tax for taxable year 2006, in the amount of P24,716,655.00.

In her Answer, respondent interposed the following special and affirmative defenses:

> 'SPECIAL AND AFFIRMATIVE DEFENSES
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> 4. Petitioner's alleged claim for refund is subject to administrative routinary investigation / examination by the Bureau.
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> 5. The petitioner should fully comply with the provisions stated in Revenue Regulations 6-86 and CIR vs. PERF Realty Corp., GR No. 163345 dated July 4, 2008, which states that:
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> 'The CTA, citing Section 10 of Revenue Regulations 6-85 and Citibank, N.A. v. Court of Appeals, determined the requisites for a claim for refund, thus:
>
> 1) That the claim for refund was filed within the two (2) year period as prescribed under Section 230 of the National Internal Revenue Code;
>
> 2) That the income upon which the taxes were withheld was included in the return of the recipient;
>
> 3) That the fact of withholding is established by a copy of a 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.
>
> x x x
>
> 6. In an action for refund, the burden of proof is on the taxpayer to establish its right to refund, and failure to sustain the burden is fatal to the claim for refund/credit.
>
> 7. Claims for refund are construed strictly against the claimant for the same partake the nature of exemption from taxation (Commissioner of Internal Revenue vs. Ledesma, 31 SCRA 95) and such, they are looked upon with disfavor (Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 1211).'

During trial, petitioner presented Mr. Percival Ordejon, Head of its Financial Accounting and Tax Management Unit and Mr. Edwin F. Ramos, the duly appointed Independent Certified Public Accountant (Independent CPA) as its witnesses. Thereafter, petitioner filed its Formal Offer of Documentary Exhibits, submitting Exhibits "A" to "N", inclusive of sub-markings; which this Court admitted in the Resolution dated June 3, 2011. On the other hand, respondent presented her lone witness, Ms. Cecille V. Uy. Subsequently, respondent filed her Formal Offer of Evidence, offering Exhibits "1" to "4"; which were admitted in evidence in the Resolution dated October 13, 2011.

On December 23, 2011, this case was submitted for decision, considering petitioner's Memorandum filed on November 16, 2011 and respondent's Memorandum filed on November 18, 2011.

THE ISSUES

> The following are the parties' jointly stipulated issues submitted for this Court's consideration:

> 'A. Whether or not the claim for the issuance of a tax credit certificate was filed within the two-year prescriptive period prescribed under Section 204 (C), in relation to Section 229 of the NIRC of 1997 as amended;
>
> B. Whether or not petitioner has an unutilized creditable withholding tax in the amount of P24,716,655 for the calendar year 2006, which is a proper subject of a claim for refund/issuance of tax credit certificate pursuant to Section 76 of the NIRC as amended;
>
> C. Whether or not the income from which the subject creditable taxes were withheld were included as part of the gross income in petitioner's annual income tax return for the calendar year 2006; and
>
> D. Whether or not the unutilized creditable withholding tax for the calendar year 2006 in the amount of P24,716,655 was carried-over and applied by petitioner against its tax liabilities in the succeeding taxable year.'
>
> The foregoing issues boil down to the issue of whether or not petitioner is entitled to the issuance of tax credit certificate in the amount of P24,716,655.00, representing unutilized creditable withholding taxes for taxable year 2006.[3]"

After the trial on the merits, the CTA Third Division promulgated the Assailed Decision on June 6, 2012, the dispositive portion of which reads as follows:

> "**WHEREFORE**, the instant Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly,

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[3] Rollo, pp. 28-32.

> respondent is hereby **ORDERED TO ISSUE A TAX CREDIT CERTIFICATE** in the reduced amount of **FOUR MILLION SIX HUNDRED TWENTY-FOUR THOUSAND FIVE HUNDRED FIFTY-FOUR AND 63/100 PESOS (P4,624,554.63)**, representing petitioner's unutilized creditable withholding tax for taxable year 2006."
>
> **SO ORDERED.**"

On June 26, 2012, CIR sought partial reconsideration of the aforementioned Decision, praying that the Decision dated June 6, 2012 be set aside, and another one entered denying the claim in its entirety.

On June 29, 2012, Philippine Bank of Communications (PBCOM) filed a Motion for Partial Reconsideration (re: Decision dated 06 June 2012)[4] and prayed for this Court to modify the Assailed Decision and to issue an Order compelling CIR to issue a tax credit certificate to PBCOM in the amount of P16,367,315.87, which is the same amount proven during trial and verified by the Independent Certified Public Accountant, representing the unutilized creditable withholding taxes for the calendar year ended December 31, 2006.

On July 12, 2012 CIR filed her Comment [Motion for Reconsideration (Re: Decision dated 06 June 2012)][5] while PBCOM filed its Comment [Re: Respondent's Motion for Partial Reconsideration dated 26 June 2012] with Motion for Partial Execution[6] on July 13, 2012.

In a Resolution[7] dated August 28, 2012, the Court denied PBCOM's Motion for Partial Reconsideration and Motion for Partial Execution and CIR's Motion for Partial Reconsideration for lack of merit.

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[4] CTA Case No. 7915, Division Docket, pp. 305-316.
[5] Docket, pp. 324-330.
[6] Docket, pp. 331-341.
[7] See Note 2.

On September 10, 2012, CIR filed a Motion for Extension (to file Petition for Review)[8] with CTA En Banc which was resolved favorably by the Court on September 13, 2012, giving CIR a final non-extendible period of fifteen (15) days from September 14, 2012 or until September 29, 2012 within which to file her Petition for Review.

On October 1, 2012 CIR filed the instant Petition for Review[9] with CTA En Banc, praying that the same be given due course and judgment be rendered denying the claim of PBCOM in its entirety.

On October 11, 2012, the CTA En Banc promulgated a Resolution[10] ordering PBCOM to file its comment on CIR's Petition for Review. PBCOM filed its Comment (re: Petition for Review dated 25 September 2012)[11] on November 15, 2012, praying that the Court: a) affirm both the Decision promulgated on 06 June 2012 and the Resolution dated 28 August 2012; and dismiss the Petition for Review dated 25 September 2012; and b) order petitioner to issue a tax credit certificate to herein respondent in the amount of P4,624,554.63, the amount proven during trial, representing the unutilized creditable withholding taxes for the calendar year ended December 31, 2006.

On November 29, 2012, the CTA En Banc promulgated a Resolution[12] giving due course to the Petition for Review and directing both parties to submit their respective memorandum within thirty (30) days; with or without such memorandum, the Petition for Review shall be deemed submitted for decision.

On January 7, 2013, CIR filed a Motion for Extension of Time to File Memorandum[13] which was resolved by this Court on January 9, 2013, giving petitioner a final and non-extendible period of thirty (30) days from January 6, 2013 or until February 5, 2013.

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[8] CTA En Banc Rollo, pp. 1-5.
[9] Rollo, pp. 12-27.
[10] *Ibid.*, pp. 52-53.
[11] *Id.*, pp. 54-64.
[12] *Id.*, pp. 66-67.
[13] *Id.*, pp. 68-71.

On January 11, 2013, PBCOM filed its Memorandum[14] and on March 13, 2013, CTA En Banc promulgated a Resolution[15] submitting the case for decision, considering the Records Verification Report[16] dated March 12, 2013 from the Judicial Records Division stating that CIR failed to file her Memorandum.

The CIR, in the instant Petition for Review, raised the following issues:

> 1. Whether or not the claim for the issuance of a tax credit certificate was filed within the two-year prescriptive period prescribed under Section 204(C), in relation to Section 229 of the NIRC of 1997 as amended.
>
> 2. Whether or not respondent has unutilized creditable withholding tax in the amount of P24,716,655 for the calendar year 2006, which is a proper subject of a claim for refund/issuance of tax credit certificate pursuant to Section 76 of the NIRC as amended.
>
> 3. Whether or not the income from which the subject creditable taxes were withheld were included as part of the gross income in petitioner's annual income tax return for the calendar year 2006.
>
> 4. Whether or not the unutilized creditable withholding tax for the calendar year 2006 in the amount of P24,716,665 was carried-over and applied by petitioner against its tax liabilities in the succeeding taxable year.

In her petition, CIR alleged that PBCOM's claim for tax refund is tainted with procedural infirmity on the ground that the latter failed to submit the complete documents in support of its administrative claim for refund. CIR posited that it was only during the proceedings for PBCOM's judicial claim that the latter submitted documents in relation to its claim, which is contrary to what is

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[14] *Id.*, pp. 74-88.
[15] *Id.*, pp. 91-92.
[16] *Id.*, p. 89.

prescribed under the rules on the administrative claims for refund. CIR further alleged that PBCOM failed to exhaust administrative remedies before elevating the instant case to this Honorable Court, thereby not giving the administrative body the opportunity to process and decide on the present claim. Hence, CIR prayed that the Assailed Decision and Assailed Resolution be reversed and a judgment be rendered denying the entire judicial claim for refund of PBCOM.

PBCOM counter-argued that it complied with all the requisites in claiming tax refund of its excess creditable withholding tax payments for the taxable year 2006. PBCOM posited that it presented and filed with this Honorable Court sufficient evidence and supporting documents to prove compliance with the said requisites and its entitlement to a refund.

After a careful and thorough evaluation and consideration of the records of the case, including both parties' arguments in their respective pleadings, this Court finds no merit in the instant petition.

The crux of the controversy is the CTA Third Division's ruling partially granting PBCOM's claim for refund of its excess creditable withholding tax payments for the year ended December 31, 2006.

The Supreme Court, in the consolidated cases of *Commissioner of Internal Revenue vs. Mirant (Philippines) Operations, Corporation and Mirant (Philippines) Operations Corporation (formerly: Southern Energy Asia – Pacific Operations (Phils.) Inc.) vs. Commissioner of Internal Revenue* [17], enumerated the requisites for claiming a tax credit or a refund of creditable withholding tax:

> 1) The claim must be filed with the CIR within the two-year period from the date of payment of the tax;
>
> 2) It must be shown on the return that the income received was declared as part of the gross income; and

[17] G.R. Nos. 171742 and 176165, June 15, 2011 *citing* Commissioner of Internal Revenue v. Far East Bank & Trust Company (now Bank of the Philippine Islands), G.R. No. 173854, March 15, 2010.

> 3) The fact of withholding must be 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.

We affirm the CTA Third Division's ruling that PBCOM complied with the aforementioned requisites. Thus, We quote with approval the pertinent portions of the Assailed Decision:

> " xxx The present claim covers taxable year 2006 for which petitioner filed its Annual Income Tax Return on April 16, 2007. Counting from this date, the administrative claim field by petitioner on April 3, 2009 and the Petition for Review filed on April 15, 2009 fall within the two-year prescriptive period. Clearly, the first requirement has been satisfied.
>
> xxx xxx xxx
>
> Based on the above findings and the Court's ruling on strict compliance with the required Certificates of Creditable Tax Withheld at Source or BIR Form No. 2307 in claiming for CWT refund, petitioner was able to satisfy the second requirement in the amount of P7,738,179.01, xxx
>
> However, out of the amount of P7,738,179.01, which was supported with BIR Form No. 2307, only the amount of P4,624,554.63 CWT shall be granted considering that this is the amount which corresponds to the income payments in the aggregate amount of P100,231,922.69; which the Court verified to have been included in petitioner's General Ledger and Annual Income Tax Return for the taxable year 2006, in compliance with the third requisite, xxx'
>
> In sum, petitioner has sufficiently proven compliance with the three requisites for the refund of unutilized creditable withholding taxes, but only to the extent of P4,624,554.63 out of the total claimed CWT of P24,716,655.00.

xxx xxx xxx

Records reveal that in its Final Income Tax Return for taxable year 2006, petitioner reflected a net loss of P903,582,307.00 and income tax overpayment of P65,800,469.00, which petitioner marked as "To be Issued a Tax Credit Certificate.'

A perusal of the said Return shows that the income tax overpayment of P65,800,469.00 consists of the following:

Prior year's excess credits	P 41,083,814.00
Creditable tax withheld during the year	24,716,655.00
Total	P 65,800,469.00

Petitioner was unable to utilize the total tax credits of P65,800,469.00 because it had no income tax liability due to losses incurred in its operations.

In petitioner's 2007 Quarterly Income Tax Returns for the first, second and third quarters as well as in its 2007 Annual Income Tax Return, only the amount of P41,083,814.00 was reflected as 'Prior Year's Excess Credits. Clearly, the claimed CWT amounting to P24,716,655.00 for the year 2006 was not carried over to the succeeding quarters or taxable year.'

Anent CIR's argument that the instant claim for refund is tainted with procedural infirmity due to PBCOM's failure to submit complete documents in support of its administrative claim for refund, We likewise find the same bereft of merit.

In the case of *Commissioner of Internal Revenue vs. Manila Mining Corporation*[18], the Supreme Court emphasized that it is the evidence presented by the parties before the Court which is vital in proving their judicial claim:

"Under Section 8 of RA 1125, the CTA is described as a court of record. As cases filed before it are litigated de novo, party litigants should prove every minute aspect of their cases. xxx"

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[18] G.R. No. 153204. August 31, 2005.

Furthermore, this issue has been settled in a number of cases decided by this Honorable Court, where We ruled that the failure to submit documents in support of the taxpayer's administrative claim is not fatal to his judicial claim. In the case of *Commissioner of Internal Revenue vs. Philippine Airlines, Inc.,*[19] this Honorable Court held that:

> "It has been settled in several CTA en banc cases that **judicial claims should not be denied on the sole ground that the taxpayer allegedly failed to submit before the BIR the complete documents in support of its administrative claim for refund**. In the case of Philippine Bank of Communications vs. Commissioner of Internal Revenue.[20] We passed upon the issue on the non-submission of supporting documents in the administrative level as NOT fatal to a claim for refund. The pertinent portion of the Decision provides:
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>> '**Non-submission of supporting documents in the administrative level is not fatal to a claim for refund. Judicial claims are litigated de novo and decided based on what has been presented and formally offered by the parties during the trial.** In the case of CIR vs. Manila Mining Corporation, it was explained that 'Under Section 8 of RA 1125, the CTA is described as a court of record. As cases filed before it are litigated de novo, party litigants should prove every minute aspect of their cases.' Finally, pieces of evidence submitted in the administrative proceeding have no evidentiary value unless presented and formally offered before the Court.'

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[19] CTA EB Case No. 775, November 13, 2012 *citing Commissioner of Internal Revenue vs. San Roque Power Corporation,* CTA EB 657, April 4, 2012, *Commissioner of Internal Revenue vs. Panay Power Company,* CTA EB No. 683, November 29, 2011, *Commissioner of Internal Revenue vs. Team Energy Corporation (formerly Mirant Pagbilao Corporation and Southern Energy Quezon, Inc.),* CTA EB No. 652, October 4, 2011, *Consolidated cases of CE Luzon Geothermal Power Company, Inc. vs. Commissioner of Internal Revenue,* CTA EB No. 553 *and Commissioner of Internal Revenue vs. CE Luzon Geothermal Power Company, Inc.,* CTA EB No. 554, July 20, 2010, *Commissioner of Internal Revenue vs. San Roque Power Corporation,* CTA EB No. 523, April 15, 2010, *Commissioner of Internal Revenue vs. CE Luzon Geothermal Power Company, Inc.,* CTA EB No. 474, September 1, 2009.
[20] CTA EB Nos. 560 & 586, June 1, 2011.

> xxx The CTA being a court of record, the cases filed before it are litigated de novo and party litigants should prove every minute aspect of their cases. Otherwise stated, **judicial claims are being decided based on what has been presented and formally offered by party litigants during the trial of the case before the Court and not on the mere allegation of non-submission of complete documents before the BIR.**" (Emphasis supplied)

Hence, the argument of CIR on the procedural infirmity of the instant petition has no legal support to stand on.

On the issue of non-exhaustion of administrative remedies, We likewise find no merit in CIR's arguments. PBCOM duly filed its administrative claim within the reglementary period thus, CIR was given ample opportunity to resolve PBCOM's claim.

Finally, as to the issue raised by CIR that the claims for refund should be strictly construed against the taxpayers and in favor of the Government, We reiterate that this Honorable Court affirms the CTA Third Division's finding that PBCOM was able to prove the factual and legal bases of its judicial claim for refund in the reduced amount of P4,624,554.63. Hence, We affirm the partial grant of PBCOM's judicial claim for refund of its unutilized creditable withholding tax.

WHEREFORE, the instant Petition for Review is hereby **DENIED** for lack of merit. The Assailed Decision dated June 6, 2012 and Assailed Resolution dated August 28, 2012 are both **AFFIRMED *in toto.***

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

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

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution and the Division Chairperson's Attestation, 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.

ROMAN G. DEL ROSARIO
Presiding Justice