REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**C.T.A. E.B. NO. 205 (C.T.A. CASE NO. 6648)**
	Present:
- versus -	**ACOSTA,** *P.J.* **CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA,** *and* **PALANCA-ENRIQUEZ,** *JJ.*
ASIAN TRANSMISSION CORPORATION, Respondent.	**Promulgated:** JUL 16 2007

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DECISION

UY, J.:

This is a Petition for Review before the Court of Tax Appeals *En Banc* filed on September 6, 2006 under Republic Act No. 9282, seeking a review of the Decision and Amended Decision by the First Division of this Court (Court in Division) in CTA Case No. 6648, entitled "Asian Transmission Corporation vs. Commissioner of Internal Revenue", to wit:

1) Decision promulgated on March 20, 2006 partially granting herein respondent's claim for the issuance of tax credit certificate in its favor in the reduced amount of TWENTY FOUR MILLION THREE HUNDRED TWENTY FIVE THOUSAND EIGHT HUNDRED FIFTY SIX AND 58/100 PESOS

(P24,325,856.58) representing the unutilized creditable withholding taxes for taxable year 2001; and

2) Amended Decision promulgated on August 4, 2006 denying herein petitioner's Motion for Reconsideration of the aforesaid Decision for lack of merit; while granting herein respondent's Motion for Partial Reconsideration which, therefore, entitles the latter the refund or issuance of a tax credit certificate in its favor the increased amount of TWENTY SEVEN MILLION THREE HUNDRED TWENTY FIVE THOUSAND EIGHT HUNDRED FIFTY SIX AND 58/100 PESOS (P27,325,856.58) representing the unutilized creditable withholding taxes for taxable year 2001.

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 BIR National Office Building, Agham Road, Diliman, Quezon City. Respondent is a corporation organized and existing under and by virtue of Philippine laws, with principal office at Carmelray Industrial Park, Canlubang, Calamba, Laguna. It is principally engaged in the manufacture of automotive parts, such as transmission, engine and axle.

On April 10, 2001, respondent filed its 2000 Annual Income Tax Return reflecting a net loss from operation but with a minimum corporate income tax due (MCIT) in the amount of P7,410,642.00 which was offset against the total tax credits in the amount of P38,301,198.00 thereby leaving an excess tax credit of P30,890,556.00 as of December 31, 2000, computed as follows:

MCIT		P7,410,642.00
Less: Tax Credits/Payments		
a. Prior Year's Excess Credits	P23,250,734.00	
b. Creditable Tax Withheld for First Three Quarters	11,868,132.00	

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c.	Creditable Tax Withheld for for the Fourth Quarter	3,121,256.00	
d.	Foreign Tax Credits	61,076.00	38,301,198.00
Total Overpayment			*P30,890,556.00*

In the said 2000 return, respondent manifested its intention "To be issued a Tax Credit Certificate" for the said overpayment.

On April 15, 2002, respondent filed its 2001 Annual Income Tax Return declaring, among others, MCIT in the amount of P6,456,796.00 and an excess income tax payment in the amount of P51,760,312.00, detailed as follows:

MCIT			P6,456,796.00
Less: Tax Credits/Payments			
a.	Prior Year's Excess Credits	P30,890,556.00	
b.	Creditable Tax Withheld for First Three Quarters	12,405,573.00	
c.	Creditable Tax Withheld for for the Fourth Quarter	14,920,979.00	58,217,108.00
Total Overpayment			P51,760,312.00

On the face of the 2001 annual income tax return, respondent again opted "To be issued a Tax Credit Certificate" for the excess income tax payment.

Respondent explained that the 2000 creditable withholding taxes of P15,050,464.00 was applied against the 2000 MCIT of P7,410,642.00. The balance of P7,639,822.00 was carried over and partially applied against the 2001 MCIT of P6,456,796.00, leaving an unapplied 2000 creditable taxes of P1,183,026.00, broken down as follows:

	Amount
Creditable Tax Withheld for the First Three Quarters of 2000	P 11,868,132.00
Creditable Tax Withheld for the Fourth Quarter of 2000	3,121,256.00
Foreign Tax Credits for 2000	61,076.00
Total	P 15,050,464.00

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Less: 2000 MCIT		7,410,642.00
Unutilized 2000 Creditable Taxes Withheld	P	7,639,822.00
Less: 2001 MCIT		6,456,796.00
Remaining Unutilized 2000 Creditable Taxes Withheld	P	1,183,026.00

On April 9, 2003, respondent filed with petitioner's Large Taxpayers Assistance Division II an administrative claim for the issuance of tax credit certificate or cash refund in the amount of P28,509,578.00 representing excess/unutilized creditable income taxes withheld as of December 31, 2001, to wit:

Remaining Unutilized 2000 Creditable Taxes Withheld		P 1,183,026.00
Unapplied 2001 Creditable Taxes Withheld:		
a. Creditable Tax Withheld for the First Three Quarters of 2001	P 12,405,573.00	
b. Creditable Tax Withheld for the Fourth Quarter of 2001	14,920,979.00	27,326,552.00
Total		P28,509,578.00

On April 10, 2003, or just a day after, respondent filed the instant 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 March 20, 2006, 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 TWENTY FOUR MILLION THREE HUNDRED TWENTY FIVE THOUSAND EIGHT HUNDRED FIFTY SIX AND 58/100 PESOS (P24,325,856.58) representing the unutilized creditable withholding taxes for taxable year 2001.

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Subsequently, the Court in Division found cogent reason to modify its assailed Decision and granted respondent's Motion for Partial Reconsideration thereof in the Amended Decision dated August 4, 2006, thereby granting respondent the refund or issuance of a tax credit certificate in its favor in the increased amount of TWENTY SEVEN MILLION THREE HUNDRED TWENTY FIVE THOUSAND EIGHT HUNDRED FIFTY SIX AND 58/100 PESOS (P27,325,856.58) representing the unutilized creditable withholding taxes for taxable year 2001.

Hence, this recourse before the Court *en banc* praying that the assailed Decision and Amended Decision of the Court in Division promulgated on March 20, 2006 and August 4, 2006, respectively, be reversed/set aside and a new one be issued denying respondent's claim for refund.

In support of his Petition for Review, petitioner submits that respondent is not entitled to the refund of the unutilized creditable withholding taxes for taxable year 2001 based on the following grounds:

> "A. Respondent failed to prove that the creditable withholding taxes amounting to P27,325,856.58 are duly supported by valid Certificates of Creditable Tax Withheld at Source.
>
> B. Respondent failed to prove actual remittance of the alleged withheld taxes to the BIR.
>
> C. Respondent failed to discharge its burden of proving its entitlement to a refund."

Meanwhile, respondent filed its "Comment [Re: Petition for Review dated 31 August 2006]" on October 23, 2006 and prayed for the dismissal of the present petition considering that the arguments raised by petitioner have already been exhaustively discussed by the Court in Division in the assailed Decision and Amended Decision.

THE ISSUE

The sole issue being raised by petitioner in the instant petition for review is "[w]hether or not respondent is entitled to the refund in the amount of P27,325,856.58 representing alleged unutilized creditable withholding taxes for taxable year 2001".

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 his previous arguments raised before the Court in Division which had already been exhaustively discussed and passed upon in its assailed Decision and Amended Decision promulgated on March 20, 2006 and August 4, 2006, respectively.

However, with the end view of further clarifying the conclusions reached by the Court in Division, We adopt its main legal basis in granting respondent's claim for refund or issuance of a tax credit certificate (TCC) in its favor, quoted hereunder as follows:

> "In the case of ***Citibank N.A. vs. Court of Appeals***,[1] the Supreme Court emphasized that the burden of proving the factual basis of his claim for tax credit or refund is upon claimant. Thus, for a claim tax credit or refund to be granted, the taxpayer must establish that:

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[1] 280 SCRA 459 (1997).

(i) The claim for refund was filed within two years as prescribed in Sec. 230 (now 229) of the Tax Code;

(ii) The income upon which the taxes were withheld were included in the return of the recipient; and

(iii) The fact of withholding is established by a copy of a statement (BIR Form 1743-A) duly issued by the payer (withholding agent) to the payee showing the amount paid and the amount of tax withheld therefrom."

Relevant thereto, Section 2.58.3(B) of Revenue Regulations No. 2-98, explicitly provides:

"SECTION 2.58.3. *Claims for Tax Credit or Refund.* –

(A) x x x

(B) Claims for tax credit or refund of any creditable income tax which was deducted and withheld on income payments shall be given due course only <u>when it is shown that the income payment 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</u>.

<u>Proof of remittance is the responsibility of the withholding agent</u>." *(Underscoring Ours)*

Undoubtedly, from the foregoing, a claimant is entitled to the refund or issuance of tax credit certificate in his favor the moment he has satisfactorily complied with the above-enumerated requisites.

As to the first requirement, the reckoning of the two (2)-year prescriptive period for the filing of a claim for refund/TCC of excess creditable withholding tax/quarterly income tax payment starts from the date of filing of the annual income tax return.[2] Based on the findings of the Court in Division, respondent filed its 2000 and 2001 original annual income tax returns on April 10, 2001 and April 15, 2002, respectively. Counting from these dates, respondent had until April 10, 2003 and April 15, 2004 within which to file its claims for the issuance of a TCC both administratively and judicially. Considering that its administrative and judicial claims for refund were filed on April 9, 2003 and April 10, 2003, respectively, the same are within the two (2)-year period prescribed under Section 204 (C) in relation to Section 229 of the NIRC of 1997, as amended. Therefore, the first requirement has been complied with.

As to the second and third requirements, respondent was able to present its 2000 and 2001 Certificates of Creditable Withholding Tax At Source; and, upon verification of the records, the substantiated amounts stated therein (income payments and withholding taxes) were declared in its 2000 and 2001 income tax returns. Hence, as correctly found by the Court in Division, respondent likewise complied with the second and third requirements set forth by the Supreme Court.

It is worthy to note that proof of actual remittance by respondent is not needed in order 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

[2] ACCRA Investments Corporation vs. Court Appeals, 204 SCRA 957 (1991); Commissioner of Internal Revenue vs. TMX Sales, Inc., 205 SCRA 184 (1992).

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. 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 prove the actual remittance by the withholding agent (payor) to the BIR.

In this regard, We do not agree with petitioner's allegation that respondent failed to prove that the creditable withholding taxes were duly supported by valid Certificates of Creditable Tax Withheld At Source. As aptly ruled by the Court in Division, and We reiterate, the evidence on record in which herein petitioner interposed no objection to its admission and was consequently admitted by the Court in Division, show that respondent was able to substantiate its claim through the presentation of Exhibits "J" to "P"[3] and "R" to "Z",[4] the Certificates of Creditable Tax Withheld At Source. The documentary evidence presented were sufficient to establish that respondent was withheld taxes and that there was an excess which remain unutilized and now subject for refund.

With all the foregoing, the facts and the applicable laws, and contrary to petitioner's argument, respondent has sufficiently discharged its burden of proving its entitlement to the refund sought for. Thus, respondent is entitled to its claim for refund or, in the alternative, 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 justify his claim by the clearest grant of the organic or statute law.[5] 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.[6]

However, as earlier pointed out, We are convinced that respondent was able to establish its claim for refund or 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.

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[3] CTA Case No. 6648, Docket, pp. 235-241.
[4] Ibid. at pp. 242-250.
[5] China Banking Corporation vs. Court of Appeals, 403 SCRA 634 (2003).
[6] 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).

In the light of the foregoing considerations, this Court finds no reversible error committed by the Court in Division when it rendered the assailed Decision dated March 20, 2006, and Amended Decision dated August 4, 2006. Accordingly, We rule that respondent has sufficiently substantiated its reported creditable withholding taxes for taxable year 2001, 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 SEVEN MILLION THREE HUNDRED TWENTY FIVE THOUSAND EIGHT HUNDRED FIFTY SIX AND 58/100 PESOS (P27,325,856.58).

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

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