REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

BUSINESS PROCESS OUTSOURCING INTERNATIONAL, INC.,
Petitioner,

- versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 7605

Members:

BAUTISTA, *Chairperson*
PALANCA-ENRIQUEZ, and
COTANGCO-MANALASTAS, *JJ.*

Promulgated:

MAY 18 2011
ABFernando 9:15 a.m.

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D E C I S I O N

COTANGCO-MANALASTAS, *J.*:

THE CASE

This case is a Petition for Review filed by Business Process Outsourcing International, Inc. on April 13, 2007, pursuant to *Section 11 of Republic Act No. 1125 (R.A.1125), as amended by Section 9 of R.A. No. 9282, and Section 3(a), Rule 8 of the 2005 Revised Rules of the Court of Tax Appeals (RRCTA)*, praying for a refund or the issuance of a tax credit certificate (TCC) in the amount of P13,253,645.00

representing its excess/unutilized creditable withholding income taxes for the taxable years ended December 31, 2004 and 2005.[1]

THE PARTIES

Petitioner Business Process Outsourcing International, Inc. (hereinafter "BPOI" for brevity) is a corporation organized and existing under and by virtue of Philippine laws, with principal office at 6758 Ayala Avenue, 1226 Makati City.[2]

Respondent, on the other hand, is the duly-appointed Commissioner of Internal Revenue (CIR) 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.[3]

THE FACTS

The factual milieu of the case, as culled from the records, and as agreed upon by the parties in their Joint Stipulation of Facts and Issues[4] (JSFI) filed on August 24, 2007, are as follows:

BPOI was organized primarily to engage in the business of providing, design, supply, implement and operate all forms of outsourced business processes and services to enable clients to sharpen their strategic business focus and to assist clients in running their businesses, including their accounting units, by providing people and/or systems and outer outsourced services.

On March 10, 2006, petitioner BPOI filed its Final Corporate Annual Income Tax Return[5] (ITR) for the taxable year ended December 31, 2004, reflecting therein a

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[1] *Docket*, pp. 1-7, Petition for Review.
[2] *Docket*, p. 83of the Joint Stipulation of Facts & Issues (JSFI).
[3] *Docket*, p. 84 of JSFI.
[4] *Docket*, pp. 83-87.
[5] Exhibit "B".

taxable income of P12,928,353.55, which resulted in an income tax due amounting to P4,137,073.00. The income tax due was offset against the P13,519,311 prior year's excess credits and creditable taxes for all the quarters of 2004, thereby leaving an excess tax credit or overpayment of P9,382,238.00, as shown below:

Income Tax Due (for the year 2004)		4,137,073.00
Less: Prior Year's Excess Credits	720,268.00	
Creditable Tax Withheld for the First Three Quarters	10,483,919.00	
Creditable Tax Withheld Per BIR Form No. 2307 for the Fourth Quarter	2,315,124.00	13,519,311.00
Tax Payable/(Overpayment)		(9,382,238.00)

For the P9,382,238.00 overpayment, BPOI opted "*To be refunded.*"

For the taxable year ended December 31, 2005, petitioner BPOI filed its Final Corporate Annual Income Tax Return on May 2, 2006 where it declared a taxable income of P18,646,884.00, which resulted in an income tax due amounting to P6,060,237. After deducting from its income tax due against its creditable taxes for all the quarters of 2005, BPOI was left with a total tax credit or overpayment of P3,871,407.00 detailed as follows:

Income Tax Due (for the year 2005)		6,060,237.00
Less: Creditable Tax Withheld for the First Three Quarters	7,555,029.00	
Creditable Tax Withheld Per BIR Form No. 2307 for the Fourth Quarter	2,376,615.00	9,931,644.00
Tax Payable/(Overpayment)		(3,871,407.00)

Again, BPOI chose "*To be refunded*" for its P3,871,407.00 overpayment.

On March 30, 2007, petitioner, through its tax counsel, filed with respondent CIR, through Revenue District Office No. 47, a written claim for the refund of or the issuance of a TCC for the excess/unutilized creditable withholding taxes for the taxable years ended December 31, 2004 and 2005 in the aggregate amount of P13,253,645.00, broken down as follows:

Unutilized balance from taxable year 2004 after offsetting against 2004 tax	P9,382,238.00
Unutilized balance from taxable year 2005 after offsetting against 2005 tax	3,871,407.00
TOTAL	**P13,253,645.00**

According to petitioner, to date, respondent has not yet acted with finality on the subject claim for refund. Hence, petitioner elevated its claim to this Court by filing a Petition for Review on April 13, 2007 for the purpose of staying the running the two-year prescriptive period and to preserve the right of BPOI to claim, by judicial action, the refund of or issuance of a tax credit certificate for its excess/unutilized creditable withholding income taxes for the taxable years 2004 and 2005 pursuant to Section 229 of the National Internal Revenue Code (NIRC) of 1997 in relation to Section 204 of the same Code.[6]

In this present Petition for Review, BPOI maintains that during the taxable year of 2004, it had creditable income taxes withheld/paid in the aggregate amount of P12,799,043.00, and that after off-setting its 2004 income tax due from the prior year's excess credits and a portion of the 2004 tax credits, it still had excess/unutilized creditable withholding income taxes from 2004 in the amount of P9,382,238.00. Petitioner further pointed out that, on the face of its 2004 Corporate Annual Income

[6] *Docket*, pp. 4-5.

Tax Return, it indicated its intention of filing a claim for refund for such excess/unutilized creditable withholding income taxes.

Likewise, for the taxable year of 2005, petitioner BPOI claims that it had creditable income taxes withheld/paid in the aggregate amount of P9,931,644.00, and that after off-setting its 2005 income tax due from a portion of the 2005 tax credits, it still had excess/unutilized creditable withholding income taxes from 2005 in the amount of P3,871,407.00. Also, petitioner emphasized that it indicated on the face of its 2005 Corporate Annual Income Tax Return its intention of filing a claim for refund for such excess/unutilized creditable withholding income taxes.

Furthermore, BPOI included in its discussion its assertion that the right to seek for the refund or the issuance of a TCC of the amount of excess/unutilized creditable withholding income taxes for the taxable years ended December 31, 2004 and 2005 finds legal authority under Sections 76 and 204 of the NIRC of 1997; respondent CIR is the appropriate party to whom the instant claim for refund or issuance of a TCC is directed pursuant to Section 204 of the NIRC; this Court has the exclusive appellate jurisdiction to review the instant Petition for Review in accordance with Republic Act No. 1125, as amended by Republic Act No. 9282.

On June 12, 2007, respondent filed his Answer[7] and alleged by way of special and affirmative defense, that:

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> "6. Granting but without admitting that Petitioner filed a claim for refund, the same is still subject to investigation by the Bureau of Internal Revenue;
>
> 7. Petitioner failed to demonstrate that the tax, which is the subject of this case, was erroneously or illegally collected;

[7] *Docket*, pp. 54-56.

8. Taxes paid and collected are presumed to be made in accordance with the laws and regulations, hence, not creditable or refundable;

9. It is incumbent upon the Petitioner to show that it has complied with the provision of Sections[*sic*] 204(C) in relation to Section 229 of the 1997 Tax Code, as amended;

10. In an action for tax credit or refund, the burden is upon the taxpayer to prove that it is entitled thereto, and failure to discharge the said burden is fatal to the claim (*Emmanuel & Zenaida Aguilar v. Commissioner, CA-GR No. Sp. 16432, March 30, 1990 cited in Aban, Law of Basic Taxation in the Philippines, 1st Edition p. 206*);

11. Claims for refund are construed strictly against the claimant, the same partake the nature of exemption from taxation (*Commissioner of Internal Revenue vs. Ledesma, 31 SCRA 95*) and as such, they are looked upon with disfavor. (*Western Minolco Corp. vs. Commissioner of Internal Revenue 124 SCRA 121*)."

Pre-trial ensued. Petitioner filed its pre-trial brief[8] on July 23, 2007, while respondent's pre-trial brief[9] was received by this Court on July 24, 2007.

On August 24, 2007, the parties filed their Joint Stipulation of Facts and Issues[10], which was approved by this Court in a Resolution dated September 5, 2007. Consequently, the pre-trial was terminated and the parties were ordered to proceed with the trial on the merits.

A Motion for Leave of Court for the Commissioning of an Independent Certified Public Accountant (CPA)[11] was filed by petitioner praying that Ms. Nila N. Mendiola of Nila N. Mendiola and Company be commissioned as Independent CPA to conduct the actual examination, evaluation and audit of the voluminous documents to be offered and presented by petitioner in the instant case. During the hearing held on September 24, 2007, the Court commissioned Ms. Nila N. Mendiola as the

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[8] *Docket*, pp. 58-69.
[9] *Docket*, pp. 70-72.
[10] *Docket*, pp. 83-87.
[11] *Docket*, pp. 92-94.

Independent CPA for this case.[12] A final and consolidated report dated May 26, 2008 was submitted by the Court commissioned Independent CPA, Ms. Nila N. Mendiola, on May 27, 2008.

On August 7, 2008, petitioner filed its Formal Offer of Evidence[13] with a prayer that the attached Exhibits, as well as those appended to the records of the Court and the pre-marked photocopies of original documents verified by the Independent CPA be admitted as evidence for petitioner. In a Resolution[14] dated October 6, 2008, the Exhibits "A" to "HH", inclusive of their submarkings, were admitted subject to this Court's final evaluation and/or appreciation of their purposes, materiality, relevancy, and probative value to the issues involved in this case.

Respondent CIR filed its Formal Offer of Exhibits[15] on June 15, 2009. A Resolution[16] was issued by this Court on February 3, 2010 wherein Exhibits "1", "1-a", "1-b", "1-c", "2", "4", "5", "6", "7", "8", "9", "10", "11", "11-a", and "11-b" were admitted subject to this Court's final evaluation and/or appreciation of their purposes, materiality, relevancy, and probative value to the issues involved in this case. Initially, Exhibits "3", "3-a" and "3-b" were denied for respondent's failure to submit the originals thereof for comparison, however, finding merit in respondent's Motion for Reconsideration, another Resolution[17] was issued by this Court on May 12, 2010 admitting the said exhibits. In the same resolution, the parties were ordered to file their respective Memoranda, within thirty (30) days from receipt of resolution, afterwhich, the case shall be deemed submitted for decision.

[12] Minutes of the Hearing held on September 24, 2007, *Docket*, p. 111.
[13] *Docket*, pp. 269-288.
[14] *Docket*, pp. 405-406.
[15] *Docket*, pp. 459-462.
[16] *Docket*, pp. 477-478.
[17] *Docket*, pp. 487-488.

Considering the report of the Records Division dated June 21, 2010 that the parties failed to file their respective Memorandum within the prescribed period, the present petition was declared submitted for decision.

THE ISSUES

The parties, in their Joint Stipulation of Facts and Issues, submitted the following issues for this Court's resolution, *to wit*:

> "1. Whether Petitioner's claim for refund was filed within the two-year prescriptive period as prescribed under Sections 204 and 229 of the NIRC;
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> 2. Whether the creditable withholding taxes for the taxable years 2004 and 2005 are duly substantiated by the necessary statements issued by the withholding agents to Petitioner, showing the amount paid and the amount of tax withheld therefrom;
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> 3. Whether the income upon which the creditable taxes were withheld were included and reported as income in the income tax returns of Petitioner;
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> 4. Whether Petitioner is entitled to the refund and/or credit of the amount of P13,253,645.00 representing its excess/unutilized creditable withholding income taxes for the taxable years ended December 31, 2004 and 2005;
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> 5. Whether Petitioner has excess and unutilized creditable withholding tax for the year 2004 and 2005 in the aggregate amount of P13,253,645.00;
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> 6. Whether Petitioner had carried over to the succeeding taxable years the alleged excess creditable withholding tax for the year(s) 2004 and 2005."

THE RULING OF THE COURT

The Petition for Review is hinged principally on Section 76 of the NIRC of 1997, in relation to Sections 204 and 229 of the same Code. Section 76 of the NIRC of 1997 is hereunder quoted for ready reference:

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"**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."

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It is readily apparent from the above-cited provision that two (2) options are available to any corporation entitled to a tax credit or refund of the excess estimated quarterly income taxes paid: [1] to carry over the excess credit or [2] to be credited or refunded with the excess amount paid. Also provided in the last sentence of Section 76 is the "irrevocability rule", where it is provided that once the option to carry over the excess credits has been made, the same shall be considered irrevocable for that taxable period. "In exercising its option, the corporation must signify in its annual corporate adjustment return (by marking the option box provided in the BIR form) its intention either to carry over the excess credit or to claim a refund. To facilitate tax collection, these remedies are in the alternative and the choice of one precludes the other."[18] It is significant to note, however, that "failure of the taxpayer to make an

[18] *Systra Philipines, Inc., vs. Commissioner of Internal Revenue*, G.R. No. 176290, September 21, 2007.

appropriate marking of its option in the ITR does not automatically mean that the taxpayer has opted for a tax credit."[19]

In the cases of *Citibank, N.A. v. Court of Appeals*[20] and *Banco Filipino Savings and Mortgage Bank vs. Court of Appeals, et al.*[21] the Supreme Court had the occasion to pronounce the three conditions for the grant of a claim for refund of creditable withholding tax, *to wit*:

1) the claim is filed with the CIR within the two-year period from the date of payment of the tax;

2) 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. The second condition is specifically imposed under Section 10 of Revenue Regulation No. 6-85 (as amended), *viz*:

> 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 supplied)

3) it is shown on the return of the recipient that the income payment received was declared as part of the gross income

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[19] *Commissioner of Internal Revenue vs. Bank of the Philippine Islands*, G.R. No. 178490, July 7, 2009 citing *Philam Asset Management, Inc. v. Commissioner of Internal Revenue*, G.R. No. 156637, December 14, 2005.

[20] G.R. No. 107434, October 10, 1997, 280 SCRA 459.

[21] G.R. No. 155682, March 27, 2007 citing Jose C. Vitug and Ernesto D. Acosta, Tax Law and Jurisprudence, 329 (2006), citing *Gibb v. Collector,* 107 Phil. 230 (1960); Calamba Steel Center, Inc. v. Commissioner on Internal Revenue, G.R. No. 151857, April 28, 2005, 457 SCRA 482.

After having discussed the established and prevailing laws, rules, and enunciated jurisprudential principles in this jurisdiction, applicable to the grant of a claim for refund of creditable withholding tax, this Court shall now proceed in determining whether petitioner was able to satisfactorily meet the terms or the three conditions for the grant of a claim for refund of creditable withholding tax.

First, a perusal of the records of this case shows that petitioner meets the first condition. Pertinent to the first requisite are Sections 204(C) and 229 of the NIRC of 1997, which read as follows:

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

Relative to the foregoing provisions, noteworthy is the case of *ACCRA Investments Corporation vs. The Honorable Court of Appeals, et al.*[22] where the Supreme Court held that the two-year prescriptive period for the filing of a claim for refund or tax credit of excess income tax paid/withheld should be reckoned from the date of filing of the final adjustment return.

In the instant case, petitioner is claiming for the refund or the issuance of a TCC for its excess/unutilized creditable withholding income taxes for the taxable years 2004 and 2005. For the taxable years ended December 31, 2004 and 2005, petitioner filed its Final Corporate Annual Income Tax Returns on March 10, 2006 and May 2, 2006, respectively. Petitioner filed its administrative claim for refund for the taxable years 2004 and 2005 on March 30, 2007; while its judicial claim via the instant Petition for Review was filed with this Court on April 13, 2007. Clearly, both filings of claim for refund and Petition for Review were made within the two-year prescriptive period.

Anent the second requisite, Petitioner submitted Schedule of Certificate of Taxes Withheld at Source/BIR Forms 2307,[23] and Certificates of Taxes Withheld at Source/BIR Forms 2307[24] which were examined by the Court-commissioned Independent CPA, Ms. Nila N. Mendiola.

[22] G.R. No. 96322, December 20, 1991.
[23] Exhibit J-1 to J-45.
[24] Exhibits N-1 to N-983.

In her report dated May 26, 2008, Ms. Mendiola found that of the P13,253,645.00 creditable taxes, Petitioner may validly claim only P12,667,730.33, computed as follows:[25]

Amount of disallowed creditable taxes withheld in 2004 and 2005 per audit	P	585,914.67
Amount of excess creditable taxes withheld which are being claimed for issuance of tax credit certificates per Petition for Review		13,253,645.00
Should-be excess creditable taxes withheld for the issuance of tax credit certificates based on audit findings and verification		**P 12,667,730.33**

The difference of P585,914.67 represents recorded or claimed creditable taxes withheld at source without the corresponding Certificates of Taxes Withheld or BIR Forms 2307 as summarized in Exhibit K-1.[26]

Upon further examination of the documents submitted in support of Petitioner's claim, the undersigned found that Certificates of Taxes Withheld at Source (BIR Forms 2307) presented as evidence and marked as Exhibits N-1 to N-983 cover only the four quarters of 2004 and the first quarter of 2005, supporting creditable withholding taxes in the amount of P15,437,244.62. Thus, creditable taxes in the amount of P6,707,527.71, as computed hereafter, should likewise be disallowed for being unsupported with documentary evidence.

CWT	2004	2005	Total
Per Schedule of Certificate of Taxes Withheld at Source/BIR Forms 2307 *(Exh. J-20 and J-45)*	P 12,559,398.03	P 9,585,374.30	P 22,144,772.33
With FOE of supporting documents *(Exh. N 1 to N 763 and N 764 to 983)*[27]	12,559,398.03	2,877,846.59	15,437,244.62
CWT without FOE of supporting documents	**P -**	**P 6,707,527.71**	**P 6,707,527.71**

Furthermore, additional disallowances amounting to P849,167.61 were found by the Court, itemized as follows:

Exh.	Period Covered	Payor	CWT
1) No signature of authorized representative of payor			
N-7	Jan-04	Australia and New Zealand Banking Group Ltd.	P 700.00
N-8	Feb-04	Australia and New Zealand Banking Group Ltd.	700.00
N-9	Mar-04	Australia and New Zealand Banking Group Ltd.	700.00
N-12	Jan-Mar 2004	Ayala Corporation	2,300.00

[25] Exhibit FF, Page 6.
[26] Exhibit FF, Page 7.
[27] See Exhibits J-1 to J-20 and Exhibits N-764 to 983 for details of CWT with FOE of supporting documents for the year 2004 and Annex A of this Report for the year 2005.

N-34	Jan-Mar 2004	Calyon Corporate and Investment Bank		1,258.36
N-57	Feb-04	Finacor Finance Corporation		61.60
N-58	Mar-04	Finacor Finance Corporation		61.60
N-77	Jan-04	Japan PNB Leasing & Finance Corp.		565.00
N-78	Feb-04	Japan PNB Leasing & Finance Corp.		565.00
N-79	Mar-04	Japan PNB Leasing & Finance Corp.		565.00
N-80	Jan-Mar 2004	Jardine Davies, Inc.		14,471.50
N-116	Jan-Mar 2004	Paragon Travel Ltd.		1,500.00
N-117	Jan-Mar 2004	Perfetti Van Melle Phils. Inc.		459.00
N-127	Jan-Mar 2004	PTT Phils., Inc.		450.00
N-154	Jan-Jun 2004	ABN Amro Bank, Inc.		1,150.00
N-767	Apr-Jun 2005	Duracom Mobile Power Corporation		5,229.00
N-770	Apr-Jun 2005	East Asia Dieselpower Corporation		5,103.00
N-778	Jan-Mar 2005	Ayala Aviation Corporation		1,292.00
N-808	Jan-Mar 2005	Calyon Corporate and Investment Bank		901.00
N-816	Jan-Mar 2005	CitiFinancial Corp.		1,177.40
N-838	Jan-Mar 2005	eTelecare Global Solutions, Inc. (PH)		3,820.00
N-843	Mar-05	Finacor Finance Corporation		62.70
N-898	Jan-Mar 2005	Meridian Telekoms, Inc.		4,068.00
N-946	Jan-Mar 2005	Quezon Power (Phils.) Ltd. Company		5,602.26
N-952	Jan-Mar 2005	Schering Plough Animal Health, Inc.		1,377.60
N-959	Jan-Mar 2005	Sykes Asia, Inc.		3,780.00
N-960	Jan-Mar 2005	Syngenta Philippines, Inc.		2,460.00
		Sub-total	*P*	*60,380.02*

2) CWT claimed twice or CWT claimed pertain to one supporting document only

N-45a	Jan-Mar 2004	Dart (Phils.) Inc.	P	533.80
N-49a	Jan-Mar 2004	Duracom Mobile Power Corporation		2,985.00
N-120	Jan-Mar 2004	Philip Morris Philippines Mfg., Inc.		63,604.08
N-123a	Jan-Mar 2004	Procter & Gamble Asia Pte. Ltd.		40,129.78
N-123b	Jan-Mar 2004	Procter & Gamble Asia Pte. Ltd.		40,129.78
N-123c	Jan-Mar 2004	Procter & Gamble Asia Pte. Ltd.		40,129.78
N-124a	Jan-Mar 2004	Procter & Gamble Distributing		2,477.98
N-124b	Jan-Mar 2004	Procter & Gamble Distributing		2,477.98
N-124c	Jan-Mar 2004	Procter & Gamble Distributing		2,477.98
N-150a	Jan-Mar 2004	Trust International Paper Corp.		2,016.00
N-151a	Dec. 28, 2003-Mar. 27, 2004	Tupperware Phils., Inc.		6,311.65
N-156a	Jan-Mar 2004	Visteon Phils., Inc.		3,315.00
N-774a	Jan-Mar 2005	AACI Transport, Inc.		217.00
N-786a	Jan-Mar 2005	Bank of America		1,100.00
N-828a	Jan-Mar 2005	Duracom Mobile Power Corporation		5,974.50
N-829a	Jan-Mar 2005	East Asia Dieselpower Corporation		5,836.50
N-853a	Jan-Mar 2005	Grand Plaza Hotel Corporation		2,309.00
N-883a	Jan-Mar 2005	L'Oreal Philippines, Inc.		6,849.75
N-919a	Jan-Mar 2005	Perfetti Van Melle Phils. Inc.		720.00
N-922a	Jan-Mar 2005	Philex Mining Corporation		3,600.00
N-941a	Jan-Mar 2005	Procter & Gamble Distributing		181,671.05
N-941b	Jan-Mar 2005	Procter & Gamble Distributing		181,671.05
N-941c	Jan-Mar 2005	Procter & Gamble Distributing		181,671.05
N-942a	Jan-Mar 2005	Procter & Gamble Distributing		2,532.36
N-942b	Jan-Mar 2005	Procter & Gamble Distributing		2,532.36
N-942c	Jan-Mar 2005	Procter & Gamble Distributing		2,532.36
		Sub total	*P*	*785,805.79*

3) Name of payee not indicated in certificate of tax withheld

N-45	Jan-Mar 2004	Dart (Phils.) Inc.	P	533.80
		Sub-total	*P*	*533.80*

4) No supporting documents			
N-21a	Jan-Mar 2004	Baxter Healthcare Phils. Inc.	P 2,448.00
		Sub total	*P 2,448.00*
		TOTAL	**P 849,167.61**

In sum, Petitioner was able to substantiate its creditable withholding taxes for the years 2004 and 2005 in the amount of P14,588,077.01, computed as follows:

Creditable tax withheld:		
2004	P 12,799,043.00	
2005	9,931,644.00	P 22,730,687.00
Less: Disallowances		
Per ICPA Findings	P 585,914.67	
CWT without FOE of supporting documents	6,707,527.71	
Additional disallowance per this Court's findings	849,167.61	8,142,609.99
Substantiated CWT for 2004 and 2005		**P 14,588,077.01**

Finally, petitioner, however, failed to prove that it complied with the third requisite. A comparison of Petitioner's gross revenues declared in its Annual Income Tax Returns for the taxable years 2004 and 2005 with the total income payments for the same period per BIR Forms No. 2307 showed the following discrepancies:

Gross Income	**2004**	**2005**
Per Schedule of Certificate of Taxes Withheld at Source/BIR Forms 2307 *(Exh. J 20 and J 45)*	P 172,030,077.01	P 176,374,092.11
Gross revenue per ITR	139,784,325.00	152,327,084.00
Difference	**P 32,245,752.01**	**P 24,047,008.11**

The independent CPA found that Petitioner's several invoices/income pertaining to the taxes withheld at source being claimed for tax credits formed part of its gross income in previous years, to wit:[28]

Gross Income (Pertaining to Taxes Withheld at Source)

	2003	**2004**	**2005**
(1)	(a) 11,188,839.00		
(2)		(a) 11,698,273.00	
(3)	(b) 1,256,342.00	(a) 72,234,545.00	
(4)			(a) 84,518,533.00
Total for the year	**P 12,445,181.00**	**P 83,932,818.00**	**P 84,518,533.00**

Note:
(1a) 2003 invoices collected in 2004.
(2a) 2004 invoices collected in 2005.
(3a) 2004 invoices collected in 2004.
(3b) 2003 invoices collected in 2005.
(4a) 2005 invoices collected in 2005.

[28] Exhibit FF, Page 7

Even so, the discrepancies of P32,245,752.01 and P24,047,008.11 are still not fully accounted for. Thus, for failure to prove that the income from which the taxes were withheld were included in the return of the recipient, Petitioner cannot claim for refund the unutilized excess creditable withholding taxes for the taxable years 2004 and 2005.

Moreover, based on Section 76 of the National Internal Revenue Code (NIRC) of 1997, as amended, the corporate taxpayer's excess tax credits or overpaid income tax in a given taxable year may either be refunded (either in the form of cash or tax credit certificate) 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.

Petitioner's claim of P13,253,645.00 consists of the following:

Excess credits in 2004	P 9,382,238.00
Excess credits in 2005	3,871,407.00
Excess Tax Credits Claimed for Refund	**P 13,253,645.00**

A perusal of Petitioner's amended and original Annual Income Tax Return for taxable years 2004[29] and 2005,[30] respectively, shows the following:

	2004	**2005**
Income tax due for the taxable year	P 4,137,073.00	P 6,060,237.00
Less: Tax credits		
Prior year's excess credits	P 720,268.00	P -
Creditable tax withheld for the first three quarters	10,483,919.00	7,555,029.00
Creditable tax withheld for the fourth quarter	2,315,124.00	2,376,615.00
Total tax credits	P (13,519,311.00)	P (9,931,644.00)
Tax overpayment	**P(9,382,238.00)**	**P(3,871,407.00)**

Petitioner marked the option "To be refunded" in the face of its Annual Income Tax Returns for the taxable years 2004 and 2005. However, Petitioner did not present its originally filed 2006 and 2007 Annual Income Tax Returns showing that it did not carry over the excess CWT of the previous taxable years. The Court cannot

[29] Exhibit "B"
[30] Exhibit "C"

ascertain whether or not Petitioner originally carried over the claimed excess creditable withholding taxes.

In the case of *Commissioner of Internal Revenue vs. Bank of Philippine Islands*,[31] the Supreme Court clarified and expounded the irrevocability rule through the following pronouncements:

xxx

> The Court categorically declared in Philam that: "Section 76 remains clear and unequivocal. Once the carry-over option is taken, actually or constructively, it becomes irrevocable." It mentioned no exception or qualification to the irrevocability rule.
>
> Hence, the controlling factor for the operation of the irrevocability rule is that the taxpayer chose an option; and once it had already done so, it could no longer make another one. Consequently, after the taxpayer opts to carry-over its excess tax credit to the following taxable period, the question of whether or not it actually gets to apply said tax credit is irrelevant. Section 76 of the NIRC of 1997 is explicit in stating that once the option to carry over has been made, "no application for tax refund or issuance of a tax credit certificate shall be allowed therefor".
>
> xxx
>
> *Philam* reveals a meticulous consideration by the Court of the evidence submitted by the parties and the circumstances surrounding the taxpayer's option to carry over or claim for refund. When circumstances show that a choice has been made by the taxpayer to carry over the excess income tax as credit, it should be respected; but when indubitable circumstances clearly show that another choice — a tax refund — is in order, it should be granted. "Technicalities and legalisms, however exalted, should not be misused by the government to keep money not belonging to it and thereby enrich itself at the expense of its law-abiding citizens."
>
> Therefore, as to which option the taxpayer chose is generally a matter of evidence. It is axiomatic that a claimant has the burden of proof to establish the factual basis of his or her claim for tax credit or refund. Tax refunds, like tax exemptions, are construed strictly against the taxpayer. (*Paseo Realty and Development Corporation v. Court of Appeals*, G.R. No. 119286, 13 October 2004, 440 SCRA 235, 247.)
>
> xxx There can be no doubt that BPI opted to carry over its excess income tax credit from 1998; it only subsequently changed its mind — which it was barred from doing by the *irrevocability rule*."

xxx

[31] G.R. No. 178490, July 7, 2009.

WHEREFORE, premises considered, petitioner's claim for refund or the issuance of a tax credit certificate in the amount of P13,253,645.00, representing its excess/unutilized creditable withholding income taxes for the taxable years ended December 31, 2004 and 2005, is hereby **DENIED**.

SO ORDERED.

AMELIA R. COTANGCO- MANALASTAS
Associate Justice

WE CONCUR:

LOVELL R. BAUTISTA
Associate Justice

OLGA PALANCA-ENRIQUEZ
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, Article VIII 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.

ERNESTO D. ACOSTA
Presiding Justice