REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-versus-

DOOSAN HEAVY INDUSTRIES & CONSTRUCTION CO. LTD. (Philippine Branch),
Respondent.

CTA EB NO. 1422
(CTA CASE NO. 8796)

Present:
Del Rosario, *P.J.,*
Castañeda, Jr.,
Bautista,
Uy,
Casanova,
Fabon-Victorino,
Mindaro-Grulla,
Ringpis-Liban, *and*
Manahan, *JJ.*

Promulgated:
APR 26 2017 2:30p.m.

x- -x

DECISION

RINGPIS-LIBAN, J.

Before the Court *En Banc* is a Petition for Review[1] appealing the Decision[2] of the Second Division of this Court (Court in Division), promulgated on October 16, 2015 in CTA Case No. 8796 entitled, *"Doosan Heavy Industries & Construction Co. Ltd. (Philippines Branch) vs. Commissioner of Internal Revenue,"* the dispositive portion thereof reads:

[1] Rollo, pp. 1- 13, with annexes, CTA EB No. 1422.
[2] Ibid. pp. 14-30.

"**WHEREFORE,** in view of the foregoing, the instant Petition for Review is hereby **GRANTED**. Accordingly, respondent is hereby ordered to refund to petitioner the amount of P5,863,855.60, representing excess creditable withholding taxes for CYs 2011 and 2012.

SO ORDERED."

and the Resolution[3] dated January 6, 2016, the dispositive portion thereof reads:

"**WHEREFORE,** in view thereof, respondent's Motion for Reconsideration (Re: Decision dated 16 October 2015) is hereby **DENIED**, for lack of merit.

SO ORDERED."

THE FACTS

The relevant antecedents stated in the assailed Decision are as follows:

Petitioner[4] is a foreign company organized and existing under the laws of [the] Republic of Korea and was duly licensed by the Securities and Exchange Commission in accordance with the Corporation Code of the Philippines (Batas (sic.) Pambansa Blg. 68) approved on May 1, 1980 and the foreign Investments Act of 1991 (Republic Act No. 7042, as amended) approved on June 13, 1991, with registered offices at Unit Nos. 1109 and 1110, Ayala Tower One, Ayala Triangle, Ayala Avenue, Makati City.

Respondent[5] is the Commissioner of the Bureau of Internal Revenue (BIR), duly appointed to exercise the powers and perform the duties of her office including, *inter alia*, the power to decide disputed assessments, refunds of internal revenue taxes, fees, other charges, and penalties imposed in relation thereto, or other matters arising under the Tax Code. She holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

On December 10, 2007, petitioner entered into a Construction Contract with Kepco SPC Power Corporation (Kepco) for the construction of its Cebu Coal Fired Power Plant,

---

[3] Ibid. pp. 31-36.
[4] Respondent Doosan Heavy Industries & Construction Co. Ltd. in this Petition for Review.
[5] Petitioner Commissioner of Internal Revenue in this Petition for Review.

which construction project was finally completed on December 31, 2011.

Petitioner filed its Annual Income Tax Returns (ITRs) for calendar years (CYs) 2011 and 2012 on the following dates, respectively:

Exhibit	Calendar Year Ended	Date of Filing of Return
P-1	December 31, 2011	April 13, 2012
P-5	December 31, 2012	April 15, 2013

On January 23, 2014, petitioner field with the Revenue District Office No. 083 a formal written administrative application to refund (sic.) its excess creditable withholding taxes (CWT) in the total amount of P5,863,855.60 for taxable years ending December 31,2011 and 2012.

However, respondent failed to act on petitioner's administrative claim. Thus, on April 10, 2014, petitioner filed the instant Petition for Review.

The Commissioner of Internal Revenue (CIR) filed an Answer[6] dated May 6, 2014, and interposed as Special and Affirmative Defenses that: the alleged claim for refund is subject to administrative routinary investigation or examination by the Bureau; the amount of P5,863,855.60 allegedly representing excess creditable withholding taxes for calendar years 2011 and 2012 was not properly documented; it is incumbent upon Doosan Heavy Industries & Construction Co. Ltd. (Philippines Branch) (Doosan) to discharge its burden of proving entitlement to refund, which basically must include the fact of withholding of taxes and its subsequent remittance to the BIR; Doosan must prove that it has complied with the following requisites: (a) the claim is filed with the CIR within the two-year period from the date of payment of the tax; (b) it is shown on the return of the recipient that the income payment received was declared as part of the gross income; and (c) 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 tax withheld therefrom; Doosan must likewise prove that it has not exercised the option to carry over any excess credits in the succeeding quarters as provided under Section 76 of the National Internal Revenue Code of 1997 (NIRC).

In the Joint Stipulation of Facts and Issues[7], the parties agreed that the issue to be resolved by the Court in Division is whether or not Doosan is entitled to a refund or issuance of tax credit certificate in the total amount of

[6] Docket, CTA Case No. 8796, pp. 170-175.
[7] Filed by the parties on September 17, 2014.

Five Million Eight Hundred Sixty Three Thousand Eight Hundred Fifty-Five Pesos and Sixty Centavos (P5,863,855.60) representing its alleged unutilized excess creditable withholding tax for taxable years 2011 and 2012.

After trial on the merits and upon the parties' submission of their respective memoranda, the case was submitted for decision on February 24, 2015.

On October 16, 2015 and January 6, 2016, the Court in Division rendered the questioned Decision and Resolution respectively.

Aggrieved, petitioner CIR filed before the Court *En Banc* the instant Petition for Review.

On March 28, 2016, the Court *En Banc* issued a Resolution[8] ordering respondent Doosan to file its Comment on the Petition for Review, within 10 days from notice.

On May 2, 2016, Doosan filed its Comment (to Petition for Review).[9]

On May 24, 2016, the Court *En Banc* issued a Resolution[10] submitting the case for decision.

ISSUE

The issue in this case is whether or not the Court in Division erred in finding that petitioner is entitled to a refund or issuance of a tax credit certificate in the amount of Five Million Eight Hundred Sixty Three Thousand Eight Hundred Fifty- Five Pesos and Sixty Centavos (P5,863,855.60), representing respondent's unutilized and excess creditable withholding taxes for calendar years 2011 and 2012.

ARGUMENTS

Petitioner argues that respondent Doosan failed to substantiate its claim that it is entitled to refund; that respondent failed to have its documents and entries therein, identified by the withholding agents; that it was only before the Court of Tax Appeals that respondent submitted and presented the withholding tax certificates allegedly supporting its claim for refund for the first time; that respondent failed to prove the remittance of the amounts alleged to have been withheld to the BIR; and that respondent failed to present

[8] Ibid. pp. 42-43.
[9] Ibid. pp. 44-54.
[10] Ibid. pp. 115-116.

documents that will prove that the income payments related to the claimed Creditable Withholding Tax (CWT) indeed formed part of its gross income in its 2011 and 2012 Annual Income Tax Returns.

On the other hand, respondent avers that it is already settled that the presentation of withholding agents as witnesses is not necessary to entitlement of refund of excess creditable withholding taxes; that the certificate of tax withheld at source is competent proof of the fact that taxes were withheld by the withholding agent, who by law is obliged to remit the amount withheld to the BIR; that proof of actual remittance is not necessary to entitlement to refund of excess CWT; that the Certificates of Creditable Tax Withheld at Source issued by respondent's sole withholding agent are prima facie proof of actual payment by respondent to the petitioner through the withholding agent; that respondent proved actual remittance to the BIR when it presented a BIR certification of remittances made by Kepco SPC Corporation, in CYs 2011 and 2012 as Exhibit P-40; that the alleged failure to submit the Certificates of Creditable Withholding Tax at Source in the administrative level is not fatal in the refund claim as long as the same certificates are submitted in the judicial proceedings for refund; and that respondent proved by substantial evidence that the income payments related to the claimed excess CWT formed part of respondent's income.

RULING OF THE COURT EN BANC

The Petition for Review before the Court in Division was anchored on respondent's claim for tax refund pursuant to Sections 76, 204 (c) and 229 of the NIRC of 1997, as amended.

> ***"Section 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 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 the 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."

"Section 204. Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes. - The Commissioner may-

xxx xxx 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."

"Section 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 to any penalty claimed to have been 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."

A taxpayer must establish the following requirements before a claim of tax credit or refund of creditable withholding tax will be granted:

1) The claim must be filed within the two-year prescriptive period as provided under Sections 204 (C) and 229 of the NIRC of 1997, as amended;
2) The fact of withholding must be established by a copy of a statement duly issued by the payor (withholding agent) tot eh payee, showing the amount paid and the amount of tax withheld therefrom; and
3) The income upon which the taxes were withheld must be included in the return of the recipient.[11]

On April 13, 2012, respondent filed its Annual ITR for CY 2011.[12] On April 15, 2013, respondent filed its Annual ITR for Calendar Year 2012.[13] On January 23, 2014, respondent filed its administrative claim for refund before the BIR.[14] Petitioner failed to act on the respondent's administrative claim, hence on April 10, 2014, respondent filed a Petition for Review before the Court in Division.[15] Thus, the filing of the administrative claim for refund before the BIR and the Petition for Review before the Court in Division both fell within the prescriptive period allowed by law.

After a careful review of petitioner's arguments and the records of the case, the Court *En Banc* finds no reason to reverse or modify the Decision and Resolution of the Court in Division. The records of the case show that the Court in Division had fully and exhaustively resolved the issue raised in the petition, which this Court notes that the same are mere rehash of the arguments presented by petitioner in his Motion for Reconsideration.

The pertinent portions of the Decision[16] are quoted below:

"xxx, petitioner presented Certificates of Creditable Tax Withheld at Source (BIR Forms No. 2307) duly issued to it by its client, Kepco SPC Power Corporation (Kepco), for the CYs 2011 and 2012. It showed creditable withholding taxes in the amounts of P2,249,240.80 and P3,614,614.80, respectively, or in the aggregate sum of P5,863,855.60, detailed as follows:

Exhibit No.	Period Covered	Income Payments	Tax Withheld
P-1-12	January 2011	P21,262,440.00	P 425,248.80
P-1-13	February 2011	P21,262,440.00	425,248.80
P-1-14	March 2011	15,808,460.00	316,169.20
P-1-15	April 2011	10,631,219.50	212,624.39

[11] Section 2.58, Revenue Regulations No. 2-98, as amended; *Citibank N.A. vs. Court of Appeals, et al.,* G.R. No. 107434, October 10, 1997; *ACCRA Investments Corporation vs. The Honorable Court of Appeals*, et al., G.R. No. 96322, December 20, 1991.
[12] Exhibit "P-1".
[13] Exhibit "P-5".
[14] Exhibit "P-38".
[15] Docket, CTA Case No. 8796, pp. 17-24, with Annexes.
[16] Citations omitted.

P-1-16	May 2011	7,087,480.50	141,749.61
P-1-17	August 2011	36,410,000.00	728,200.00
Subtotal		***112,462,040.00***	***2,249,240.80***
P-5-12	April to June 2012	**180,730,740.00**	***3,614,614.80***
TOTAL		**P 293,192,780.00**	**P 5,863,855.60**

On this score alone, respondent contends that the law and the BIR issuances provide that in order for any claim for refund to prosper, it is incumbent to prove actual remittance of the taxes withheld to the BIR.

Likewise, respondent asserts that petitioner failed, in the administrative level, to submit the BIR copies of the withholding tax certificates which could have shown its entitlement to refund. It was only before this Court when petitioner presented the same.

In the case of Commissioner of Internal Revenue v. Doosan Heavy Industries & Construction Co. Ltd. (Philippine Branch), the Court En Banc held that petitioner need not prove that there is an actual remittance of the taxes withheld, as follows:

> 'As pronounced by the Court in Division in the assailed Resolution, respondent need not prove that there was actual remittance of the taxes withheld to the BIR. Pursuant to Section 2.58.3 of RR No. 2-98, the remittance of the taxes withheld to the BIR is the responsibility of the withholding agent and not the payee. xxx xxx xxx'

xxx xxx xxx

On the other hand contrary to respondent's claim, petitioner submitted the pertinent BIR certificates at the time the letter claims were filed on January 13, 10`14 and February 6, 2014, respectively. In the said letters, petitioner indicated that it enclosed, among others, the Annual ITRs for CY 2011 and 2012 including the attachments (Audited Financial Statements, Certificates of Creditable Tax Withheld at Source and SAWT).

Considering the foregoing, the Court finds that petitioner satisfied the second requisite, i.e. the fact of withholding of CWT for CYs 2011 and 2012 in the total amount of P5,863,855.60.

As to the third requisite, i.e. that the income upon which the taxes were withheld must be included in the return of the recipient, petitioner entered into a construction contract on December 10, 2007 with Kepco for the construction and installation of the latter's Cebu Coal Fire Power Plant to be completed by June 30, 2011. The original contract price amounted to P3,968,988,800.00 inclusive of VAT, but was subsequently adjusted by the issuance of Change Orders, for additional scope of services not covered in the original contract or reduction in scope of services originally agreed.

Petitioner used the percentage of completion (POC) method in computing its contract revenues under Section 48 of the NIRC of 1997, as amended, to report its revenues for long term contracts. xxx xxx xxx

As indicated in the Progress Rate for Construction Work, the cumulative percentage of completion of the construction contracts are as follows:

Year	Percentage of Completion
December 31, 2008	11.596%
December 31, 2009	54.235%
December 31, 2010	95.310%
December 31, 2011	100.000%
December 31, 2012	-

Meanwhile, petitioner's Audited Financial Statements (AFS) for the year ended December 31, 2011 show that, indeed, the construction project was already completed by December 31, 2011.

Incorporating the Change Orders and the corresponding revenues recognized in the previous years, the ICPA verified petitioner's computed contract revenues for CY 2011 in the amount of P203,763,161.58, xxx

xxx xxx xxx

For CY 2012, petitioner did not recognize any revenue form the construction project due to its completion in 2011, xxx

xxx xxx xxx

The Court notes that there is a P2,000.04 difference between the contract revenues as computed by petitioner in its Schedule of Sales, as against the revenues declared per Annual ITR for CY 2011. According to the ICPA, this amount was due to the rounding-off differences in recording the yearly contract revenues based on percentages of completion.

On the other hand, there are apparent discrepancies between the income payments reflected per BIR Forms No. 2307 and the revenues declared per the Annual ITRs for CYs 2011 and 2012, xxx

xxx xxx xxx

The amount of P91,303,121.62 difference in income for CY 2011 pertains to uncollected realized revenues as of December 31, 2011 which, together with the Accounts receivable Trade Balance on P89,430,061.00 as of December 31, 2010 in the total amount of P180,733,182.62, were collected and subjected to CWT in the CY 2012. However, the income payments received/collected by petitioner in CY 2012 per BIR Form No. 2307 in the amount of P180,730,740.00 were lower by P2,442.62.

Meanwhile, the Court observes that considering the total adjusted contract price in the amount of P3 ,571,511,764.72 had been fully reported in petitioner's Annual ITRs for CY 2008, 2009, 2010 and 2011 when the construction project was 100% completed, the Accounts receivable Trade balance as of December 31, 2010 in the amount of P89,430,061.00 (included in the total collections of P180,730,740.00 in the CY 2012) is deemed to form part of petitioner's reported contract revenues in years prior to 2011.

Thus, petitioner proved that it declared in its Annual ITRs for CY 2011 and in prior years, the income payments related to the claimed creditable withholding taxes for CYs 2011 and 2012 amounting to P2,249,240.80 and P3,614,614.80, respectively, or in the total amount of P5,863,855.60.

To conclude, petitioner was able to show this Court that it is entitled to its claim for refund. Hence, the refund of the total amount of P5,863,855.60 representing petitioner's excess creditable withholding taxes for CYs 2011 and 2012, is in order.

The rule is that actions for tax refund, as in this case, are in the nature of a claim for exemption and the law is construed in *strictissimi juris* against the taxpayer. The pieces of evidence presented entitling a taxpayer to an exemption are also *strictissimi* scrutinized and must be duly proven.[17] In this case, respondent Doosan heavy Industries & Construction Co. Ltd. was able to prove that it is entitled to a refund or issuance of a tax credit certificate for its excess creditable withholding taxes for CYs 2011 and 2012.

There being no new matters or issues raised in the Petition for Review before the Court *En Banc* and there being no reversible error committed by the Court in Division, hence, the Court *En Banc* finds no cogent reason to reverse the assailed Decision and Resolution.

WHEREFORE, premises considered, the Petition for Review is **DENIED for lack of merit.** Accordingly, the Decision dated October 16, 2015 and Resolution dated January 6, 2016 are hereby affirmed *in toto.*

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

[17] *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue,* G.R. No. 159490, February 18, 2008.

CATHERINE T. MANAHAN
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 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.

ROMAN G. DEL ROSARIO
Presiding Justice