REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SECOND DIVISION

PHILAM INSURANCE AGENCY AND CALL CENTER SERVICES, INC., Petitioner,	**CTA CASE NO. 7904** Members: **CASTAÑEDA, JR.,** *Chairperson* **CASANOVA,** *and* **MINDARO-GRULLA,** *JJ.*
- versus -	
COMMISSIONER OF INTERNAL REVENUE, Respondent.	**Promulgated:** MAR 2 1 2011 4:10 p.m.

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DECISION

CASTAÑEDA, JR., J.:

Before this Court is a Petition for Review filed on April 13, 2009 by Philam Insurance Agency and Call Center Services, Inc. (Petitioner), praying for the refund of the total amount of Seven Hundred Forty-Two Thousand Nine Hundred Thirty-Seven Pesos and 12/100 (P742,937.12) representing its alleged excess/unutilized creditable withholding taxes for taxable year 2006.

Petitioner is a corporation duly organized and existing under and by virtue of the laws of the Philippines, with principal office at 5th Floor, Philamlife Bldg., UN Avenue, Ermita, Manila.[1]

While respondent is the Commissioner of the Bureau of Internal Revenue (BIR) who was duly appointed and empowered to perform the duties of his office, including, among others, the duty to act and approve claims for refund or tax credit as provided by law. He holds office at the BIR National Office Building, Diliman, Quezon City.

On April 16, 2007, petitioner filed its Corporate Annual Income Tax Return for taxable year 2006.[2] The said return showed excess tax credits of P7,976,197.00, prior year's excess credits of P7,247,300.00, creditable taxes withheld during the year 2006 in the amount of P877,000.00, and a net loss amounting to P15,908,715.00.[3] In the same Annual Income Tax Return, petitioner has chosen the tax refund option.[4]

In view of the existence of the alleged creditable withholding taxes for taxable year 2006, petitioner filed an administrative claim for refund with the BIR Revenue District Office (RDO) No. 33 in the amount of P742,937.12 on March 23, 2009.[5]

Due to respondent's failure to act on the said administrative claim, petitioner filed the instant Petition for Review on April 13, 2009.

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[1] Exhibit "A"; Par. 1, Facts and Issues Admitted, Joint Stipulation of Facts and Issues (JSFI), docket, p. 77.
[2] Par. 4, Facts and Issues Admitted, JSFI, docket, p. 78.
[3] Exhibit "B".
[4] Exhibit "B-11"; Par. 5, Facts and Issues Admitted, JSFI, docket, p. 78.
[5] Exhibit "GG".

In his Answer[6] filed on May 13, 2009, respondent raised the following Special and Affirmative Defenses:

> "5. Petitioner's claim for refund is still pending administrative investigation;
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> 6. Petitioner has the *burden of proof* to show that it is entitled to the refund of the amounts claimed as refundable because taxes are *presumed* to have been collected in accordance with laws and regulations (*Caltex Phils., Inc. vs. Commissioner of Internal Revenue, CTA Case No. 2871, January 29, 1986*).
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> 7. Claims for refund are to be construed strictly against the petitioner, the same being in the nature of an exemption from taxation. Failure on the part of the petitioner to prove the same is fatal to its claim for tax refund. (*Meralco Electric Co. vs. Commissioner of Internal Revenue, 67 SCRA 351; Commissioner of Internal Revenue vs. Ledesma, 31 SCRA 95*).
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> 8. Petitioner must prove that the alleged refundable taxes were not automatically applied against its tax liability for the succeeding quarters of the succeeding year nor included as creditable taxes declared or applied to the succeeding taxable years.
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> 9. Under Section 76 of the 1997 Tax Code, petitioner's excess creditable tax withheld for taxable year 2006 may either be refunded, claimed as tax credit or carried over/applied to the succeeding taxable years. However, once an option has been made, the same becomes irrevocable for that taxable period and no application for tax refund and/or tax credit shall be allowed.
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> 10. In the case at bar, it is unclear whether petitioner has chosen an option. Nonetheless, assuming that it opted to claim a tax credit/tax refund, it is clear that the petitioner's claim of refund was done partially when it claimed only the unutilized creditable taxes withheld for taxable year 2006

[6] Docket, pp. 61-64.

amounting to P742,937.12 but excluded in its claim the prior years excess tax credits. Petitioner has explicitly violated Section 76 of the 1997 Tax Code for claiming partial tax refund instead of the whole amount indicated in Item 31 of the petitioner's Income Tax Return (ITR). Said petitioner's claim of *partial tax refund* is highly irregular, improper and erroneous.

11. The irrevocability of option is already well-settled. Once an option was made, it is deemed irrevocable. Splitting of option, such as where petitioner opted for tax refund of its excess and unutilized creditable withholding taxes of petitioner for taxable year 2006 amounting to P742,937.12 while automatically carrying over the remaining amount specified under Item 31 of the petitioner's ITR consisting of petitioner's prior years excess tax credit less MCIT due, is violative of Section 76 of the 1997 Tax Code.

12. Moreover, the existence of an excess creditable withholding taxes alone does not per se entitle petitioner to a refund. The petitioner must prove that, (1) its claim for refund is filed with the respondent within the two (2) year period from the date of payment of the tax required under Section 204 of the 1997 Tax Code; (2) it must be shown on petitioner's return that the income payment received was declared as part of its gross income; and (3) the fact of withholding is established by copies of statement duly issued by petitioner's payors showing the amount paid and the amount of taxes withheld (*Citytrust Finance Corporation vs. Commissioner of Internal Revenue, CTA Case No. 4134, November 11, 1991; Paseo Realty & Development Corporation vs. Commissioner of Internal Revenue, CTA Case No. 4254, August 10, 1993).*"

On May 15, 2009, a Notice of Pre-Trial Conference was issued by this Court setting the case for pre-trial conference on May 29, 2009 and requiring both parties to be present at the pre-trial and to file with the Court and serve on the adverse party their pre-trial briefs.[7]

Accordingly, petitioner and respondent filed their pre-trial briefs on May 25, 2009[8] and May 26, 2009, respectively.[9]

On July 3, 2009, the parties filed their Joint Stipulation of Facts and Issues[10], which the Court approved in a Resolution dated July 13, 2009. In the same resolution, the pre-trial was considered terminated.[11]

During trial, petitioner was able to present and formally offer its documentary and testimonial evidence, specifically, Exhibits "A" to "OO". The said exhibits were admitted in a Resolution[12] dated February 24, 2010.

On the other hand, respondent manifested that he has no witness to present and that he is submitting the case for decision based on the pleadings.[13]

On July 16, 2010[14] and July 27, 2010[15], respondent and petitioner respectively filed their Memoranda.

After the filing of the parties' memoranda, the case was considered submitted for decision on July 30, 2010.[16]

The parties submitted the following issues[17] for this Court's disposition:

"1. Whether or not Petitioner is entitled to the tax credit/refund of its excess/unutilized creditable withholding taxes amounting

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[7] Docket, p. 65.
[8] Docket, pp. 66-70.
[9] Docket, pp. 71-73.
[10] Docket, pp. 77-79.
[11] Docket, p. 80.
[12] Docket, pp. 289-290.
[13] Minutes of the Hearing held on June 2, 2010, docket, p. 296.
[14] Docket, pp. 303-310.
[15] Docket, pp. 311-321.
[16] Resolution dated July 30, 2010, docket, p. 322.
[17] Docket, p. 78.

to P742,937.12 under Section 204 in relation to Sections 229 and 76 of the National Internal Revenue Code, as amended?

2. Whether or not Petitioner's claim for refund/tax credit certificate of its alleged excess/unutilized creditable withholding tax for CY 2006 is fully substantiated by documentary evidence, specifically:

   A) Whether or not it was shown in petitioner's ITR for taxable year 2006 that its income payments received was declared as part of its gross income?

   B) Whether or not the claim of withholding is duly supported by copies of the payors' statement showing the amount paid and the amount of taxes withheld for and in behalf of Petitioner for taxable year 2006?

3. Whether or not Petitioner has violated Section 76 of the 1997 Tax Code when it partially claimed only the unutilized creditable taxes withheld for taxable year 2006 amounting to P742,937.12 but excluded in its claim the Petitioner's prior year's excess tax credits less MCIT due?"

Since the foregoing stipulated issues are interrelated, the Court shall resolve them simultaneously and in detail.

Petitioner anchors its claim on Section 76 of the National Internal Revenue Code (NIRC) of 1997, as amended, in relation to Sections 204 and 229 of the same Code; quoted hereunder for easy reference:

> "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:
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> (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.
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> In case the corporation is entitled to a tax credit or refund of the excess estimated quarterly income taxes paid, gc

the excess amount shown on its final adjustment return may be carried over and credited against the estimated quarterly income tax liabilities for the taxable quarters of the succeeding taxable years. **Once the option to carry-over and apply the excess quarterly income tax against income tax due for the taxable quarters of the succeeding taxable years has been made, such option shall be considered irrevocable for that taxable period and no application for cash refund or issuance of a tax credit certificate shall be allowed therefor**." *(Emphasis supplied)*

"SEC. 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**. xxx" (*Emphasis supplied)*

"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, 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." (*Emphasis supplied)*

Based on the foregoing, the corporate taxpayer's excess tax credits or overpaid income tax in a given taxable year may either be refunded (in the form of cash or tax credit certificate) or carried over/applied to the succeeding taxable years. In the case of a claim for refund, it should be made within the two–year period allowed by law.

As can be gleaned from the documentary evidence submitted before this Court, petitioner's Annual Income Tax Return for taxable year 2006 shows that the excess tax credits of P7,976,198.00 as of December 31, 2006 consisted of the balance of the prior year's excess credits of P7,247,300.00 and creditable taxes withheld during the year 2006 in the amount of P877,000.00, computed as follows:

Income Tax Due (MCIT)		P 148,102.00
Less:	Prior Year's Excess Credits	7,247,300.00
Balance of Prior Year's Excess Credits		P 7,099,198.00
Add:	Creditable Taxes Withheld - Year 2006	877,000.00
Excess Tax Credits as of December 31, 2006		**P 7,976,198.00**

Petitioner opted to be refunded for its tax credits in the amount of P742,937.12[18] for taxable year 2006, as shown by the "x" mark in the box corresponding to the said choice in the return.[19] Moreover, in its Annual Income Tax Return for taxable year 2007, petitioner reflected as "Prior Year's

[18]Petitioner alleged that the difference of P134,062.88 (P877,000 less P742,937.12) represents certificates of creditable tax for CY 2006 which petitioner was not able to collect from its clients (Exhibit "H", A26, docket, p. 259).
[19] Exhibit "B-11".

Excess Credits other than MCIT" only the amount of P7,099,198.00[20], instead of the total excess credits of P7,976,198.00.

On the other hand, to prove the existence of the prior year's excess tax credits of P7,247,300, petitioner submitted various Certificates of Creditable Tax Withheld at Source issued by its withholding agents for taxable year 2005. However, petitioner was able to substantiate excess tax credits of only P476,263.57, to wit:

Withholding Agent	Exhibit	Income Payment	Withholding Tax
Philam Life and General Insurance Company	LL	P 924,086.00	P 138,612.00
Philam Life and General Insurance Company	MM	3,002,918.35	60,058.36
Philam Life and General Insurance Company	NN	6,959,389.42	139,187.78
Philam Life and General Insurance Company	OO	6,920,271.50	138,405.43
Total		**P 17,806,665.27**	**P 476,263.57**

Nevertheless, the substantiated excess tax credit of P476,263.57 is enough to cover the tax liability/MCIT of P148,102.00; thus, petitioner's reported tax credits for taxable year 2006 may be a proper subject of a claim for refund or issuance of tax credit certificate pursuant to Section 76 of the NIRC of 1997, as amended.

Petitioner must however satisfy the following requisites in order that the subject claim may be granted:

1. That the claim for refund 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. That the fact of withholding is established by a copy of a statement duly issued by the payor (withholding agent) to the payee showing the amount paid and the amount of tax withheld therefrom; and

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[20] Exhibit "C-2".

3. That it is shown on the return of the recipient that the income payment received was declared as part of the gross income.[21]

Record shows that the claimed excess creditable withholding taxes involve taxable year 2006, for which petitioner filed its corresponding Annual Income Tax Returns[22] on April 16, 2007. Counting from the said date, petitioner had until April 16, 2009 within which to file its claim for refund or issuance of tax credit certificate for taxable year 2006, both in the administrative and judicial levels. Petitioner's administrative claim for refund was filed on March 23, 2009[23] and its judicial claim through its Petition for Review was filed on April 13, 2009. Clearly, petitioner's administrative and judicial claims for refund were filed well within the two-year prescriptive period. It may also be noted that petitioner and respondent jointly admitted that both the administrative and the judicial claims for refund were filed within the two-year period prescribed under the NIRC.[24]

In compliance with the second requisite, petitioner presented various Certificates of Creditable Tax Withheld at Source[25] duly issued by its clients/affiliates for taxable year 2006, showing creditable withholding taxes in the aggregate amount of P728,386.24; broken down as follows:

Withholding Agent	**Exhibit No.**	**Income Payments**	**Income Tax Withheld**
AIG Credit Card Co. Phils. Inc.	F	P 1,181,194.00	P 23,623.88
Philam Plans, Inc.	Q/R	363,582.17	7,271.65
Philam Plans, Inc.	S	363,961.47	7,279.23

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[21] *Section 2.58, Revenue Regulations No. 2-98, as amended; Citibank N.A. vs. Court of Appeals and CIR,* G.R. No 107434, October 10, 1997, 280 SCRA 459; *ACCRA Investment Corporation vs. The Honorable Court of Appeals, et. al.*, G.R. No. 96322, December 20, 1991, 204 SCRA 957.
[22] Par. 4, Facts and Issues Admitted, JSFI, docket, p. 78.
[23] Exhibit "GG".
[24] Par. 7, Facts and Issues Admitted, JSFI, docket, p. 78.
[25] Exhibits "E" to "FF".

Philam Insurance Company, Inc.	CC	695,223.50	13,904.47
The Phil. American Life and General Insurance Company	Y	5,144,902.47	102,898.05
Philam Care Health Systems, Inc.	E	1,026,411.50	20,528.23
Philam Plans, Inc.	T	363,582.17	7,271.65
Subtotal		**P 9,138,857.28**	**P 182,777.16**
AIG Credit Card Co. Phils. Inc.	G	P 1,600,890.50	P 32,017.81
Philam Plans, Inc.	O	363,961.47	7,279.23
Philam Plans, Inc.	P	363,961.47	7,279.23
Philam Insurance Company, Inc.	BB	2,940,870.00	58,817.40
The Phil. American Life and General Insurance Company	X	1,905,280.40	38,105.61
Philam Care Health Systems, Inc.	FF	1,343,861.64	26,877.23
Subtotal		**P 8,518,825.48**	**P 170,376.51**
AIG Credit Card Company Phils. Inc.	H	P 1,710,839.50	P 34,216.79
Philam Plans, Inc.	K / L	363,961.47	7,279.23
Philam Plans, Inc.	M	363,961.47	7,279.23
Philam Plans, Inc.	N	363,961.47	7,279.23
Philam Insurance Company, Inc.	AA	1,523,459.43	30,469.19
The Phil. American Life and General Insurance Company	V	2,466,181.78	49,323.64
The Phil. American Life and General Insurance Company	W	2,977,984.92	59,559.70
Philam Care Health Systems, Inc.	EE	1,786,252.32	35,725.05
Subtotal		**P 11,556,602.36**	**P 231,132.06**
AIG Credit Card			-
Philam Plans, Inc.	I	P 363,961.47	P 7,279.23
Philam Plans, Inc.	J	363,961.47	7,279.23
The Phil. American Life and General Insurance Company	Z	993,301.50	19,866.03
The Phil. American Life and General Insurance Company	U	4,338,932.12	86,778.64
Philam Care Health Systems, Inc.	DD	1,144,868.86	22,897.38
Subtotal		**P 7,205,025.42**	**P 144,100.51**
TOTAL		**P 36,419,310.54**	**P 728,386.24**

However, the certificate marked as Exhibit "T", reflecting creditable withholding taxes in the amount of P7,271.65, shall be disallowed because it does not pertain to petitioner's account. Hence, petitioner was able to substantiate by proper certificates only the amount of P721,114.59 *jc*

(P728,386.24 less P7,271.65) out of the total claimed creditable withholding taxes of P742,937.12.

Moving on to the third requisite, this Court shall now determine whether the income upon which the subject taxes were withheld were included and reported by petitioner in its 2006 Annual Income Tax Return.

A perusal of the withholding tax certificates revealed that the creditable withholding taxes of P721,114.59 were withheld on gross income payments of P36,055,728.37 (P36,419,310.54 less P363,582.17).

On the other hand, petitioner's gross income in its 2006 Annual Income Tax Return[26] and Audited Statement of Operations[27] amounted to P40,042,227.00. There is a discrepancy between the income payments per Income Tax Return and per Certificates of Creditable Tax Withheld at Source. Petitioner failed to present proof, such as, but not limited to, detailed general ledger, sales register, reconciliation schedules or any other document whereby the Court can trace the discrepancy and that the income payments related to the claimed creditable withholding taxes formed part of its taxable gross income in its 2006 Annual Income Tax Return.

Petitioner's non-compliance with the third requisite is fatal to its claim. A claimant has the burden of proof to establish the factual basis of his or her claim for tax credit or refund.[28] Tax refunds are in the nature of tax exemptions. As such, they are regarded as in derogation of sovereign authority and to be construed *strictissimi juris* against the person or entity

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[26] Exhibit "B-3".
[27] Docket, p. 156; Exhibit "B-12".
[28] *Citibank, N.A. vs. Court of Appeals and the Commissioner of Internal Revenue*, G.R. No. 107434, October 10, 1997, 280 SCRA 459.

claiming the refund.[29] Considering petitioner's failure to discharge such burden of proof, the instant claim for tax refund must necessarily fail.

WHEREFORE, premises considered, the instant Petition for Review is hereby **DENIED** due to insufficiency of evidence.

SO ORDERED.

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

WE CONCUR:

CAESAR A. CASANOVA
Associate Justice

Cielito N. Mindaro-Grulla
CIELITO MINDARO-GRULLA
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.

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

[29] *Commissioner of Internal Revenue vs. S.C. Johnson & Son, Inc., et al.*, G.R. No. 127105, June 25, 1999, 309 SCRA 87.

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.

ERNESTO D. ACOSTA
Presiding Justice