REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE
Petitioner,

C.T.A. EB NO. 296
(C.T.A. Case No. 6426)

Present:

-versus-

Acosta, P.J.
Castañeda, Jr.
Bautista,
Uy,
Casanova, and
Palanca-Enriquez, JJ.

MITSUBISHI MOTORS PHILIPPINES CORPORATION,
Respondent.

Promulgated:
DEC 18 2007

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DECISION

BAUTISTA, J.:

Before the Court *En Banc* is a Petition for Review[1] filed by herein petitioner Commissioner of Internal Revenue assailing the Decision

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[1] *Rollo*, pp. 7 – 58, with Annexes.

dated February 15, 2007 of the Second Division of the Court ("Court in Division") in C.T.A. Case No. 6426, partially granting herein respondent Mitsubishi Motors Philippines Corporation's claim for issuance of a tax credit certificate in the amount of P63,388,320.86 representing excess Creditable Withholding Taxes ("CWT") for the calendar year 1999; and the Resolution dated June 27, 2007 of the Court in Division denying herein petitioner's Motion for Partial Reconsideration.

Antecedent Facts

The antecedent facts follow.

Petitioner is the duly appointed Commissioner of Internal Revenue with authority to act as such, including among others, the power to decide, approve, and grant refunds or tax credit of overpaid internal revenue taxes as provided by law, holding office 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 the MMPC Building, Ortigas Avenue Extension, Cainta, Rizal.

On April 13, 2000, respondent filed with the Bureau of Internal Revenue ("BIR") its Annual Corporate Income Tax Return ("ITR") for the Calendar Year ended December 31, 1999. In that ITR, respondent reported a refundable income tax or an excess creditable withholding

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tax in the amount of Sixty Eight Million Two Hundred Twenty Four Thousand Three Hundred Forty Pesos (P68,224,340.00). Respondent also marked the box "To be issued a Tax Credit Certificate."

On March 15, 2002, respondent filed an administrative claim for refund for its excess CWT for the calendar year ended December 31, 1999 with the Large Taxpayers Service, BIR National Office, Diliman, Quezon City, in accordance with Sections 204 and 229 of the National Internal Revenue Code ("NIRC") of 1997.

On April 4, 2002, respondent filed with the Court of Tax Appeals a Petition for Review docketed as C.T.A Case No. 6426.

In turn, petitioner filed his Answer, alleging by way of special and affirmative defenses the following:

> **"Petitioner[2] failed to comply with the provisions of Revenue Regulations 6-85**
>
> 3. Claims for tax credit or refund of income tax deducted and withheld on income payments shall be given due course only when:
>
> a. It is shown on the return that the income payment received has been declared as part of gross income;
>
> b. 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 there from;

[2] Herein Respondent.

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c. The claim for refund is filed within the two (2) year prescriptive period prescribed under Section 230 of the National Internal Revenue Code.

These requirements of law find support in the declarations of this Honorable Court in the cases of *Philippine American Life Insurance Co. vs. Commissioner of Internal Revenue, CTA Case No. 4018 and PDCP vs. Commissioner of Internal Revenue, CTA Case No. 5237* among others.

Assuming that the petitioner's claim was filed within the period provided by law, it, however, failed to establish the fact of withholding. It further failed to allege the dates when the taxes sought to be refunded were actually paid *(Manufacturer's Bank and Trust Co. as Trustees for Gen. Trust Plan vs. Commissioner of Internal Revenue, CTA Case No. 1659).*

4. Petitioner's alleged claim for refund is subject to administrative routine investigation/examination by respondent's Bureau;

5. Taxes paid and collected by the Bureau of Internal Revenue are presumed to have been paid in accordance with law, and the burden of proof to prove otherwise is upon the petitioner;

6. Assuming but without admitting the fact that petitioner is entitled to tax refund, it is incumbent upon the latter to show that it has complied with the provisions under Sections 204 (C) and 230 of the Tax Code. Otherwise, its failure to prove the same is fatal to the claim for refund;

7. Claims for refund are construed strictly against the claimant for the same partake the nature of exemption from taxation *(Commissioner of Internal Revenue vs. Ledesma, 31 SCRA 95)* and as such, they are looked upon with disfavor *(Western Minolco Corp. vs. Commissioner of Internal Revenue 124 SCRA 1211);*"[3]

Trial ensued where both parties presented their respective evidence.

[3] *Records*, C.T.A. Case No. 6426, pp. 39 – 40, (Answer dated May 14, 2002, pp. 2-3).

Respondent presented Arnold Almario, Accounting Manager of respondent, and Atty. Rosario Bernaldo, the duly Commissioned Independent CPA, as witnesses, and submitted documentary evidence, marked as *Exhibits "A" to "EEEE."* Petitioner, on the other hand, presented Ma. Theresa Carillo, Revenue Officer III of the National Investigation Division of the Bureau of Internal Revenue, as witness, and submitted documentary evidence, marked as *Exhibits "1" to "6."*

Both parties were then ordered to file their respective memoranda, after which, the case was submitted for decision.

The Ruling of the Court in Division

On February 15, 2007, the Court in Division rendered its Decision partially granting herein respondent's claim for tax credit in the amount of P63,388,320.86 representing excess CWT for the calendar year 1999.

The Court in Division took notice of the fact that respondent in its ITR for taxable year 1999 marked the option "To be issued a Tax Credit Certificate" and the fact that it did not carry-over the excess tax credits of P68,224,340.00 by leaving blank the space provided for "Prior Year's Excess Credits." In view of these facts, the Court in Division ruled that respondent's excess tax credits for the taxable year 1999 in the amount of P68,224,340.00 can be the proper subject of a claim for refund under Section 76 of the 1997 NIRC.

The Court in Division then proceeded to determine whether the respondent complied with the requisites prescribed under Section 2.58.3 of Revenue Regulations No. 2-98, otherwise known as the Withholding Tax Regulations.

It found that the filing of the claim for refund was within the two-year reglementary period for the filing of a claim for refund which commences from the date of filing of the Final Adjustment Return.

However, due to the voluminous nature of the evidence presented, R.S. Bernaldo & Associates was commissioned by the Court in Division to audit the documents and to report on the propriety of the tax refund claimed. Based on the report of the Independent CPA, the Court in Division rendered a decision reducing the amount of refund to P63,388,320.86.

In arriving at the reduced amount, the Court in Division explained that the amounts of P21,075.96 and P13,713.18 were deducted from the creditable taxes withheld stated in respondent's 1999 ITR in the amount P81,765,951.00 as these were not properly supported by the evidence. As a result, the total amount of creditable taxes withheld was reduced to P81,731,161.86. This amount was then applied against the Minimum Corporate Income Tax (MCIT) due in the amount of P18,342,841.00 which resulted to a reduced refundable income tax overpayment of P63,388,320.86.

The dispositive portion of the Decision reads as follows:

> "**WHEREFORE**, premises considered, the Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, respondent Commissioner of Internal Revenue is **ORDERED TO ISSUE A TAX CREDIT CERTIFICATE** in the amount of P63,388,320.86 in favor of petitioner, representing excess creditable withholding taxes for the calendar year 1999.
>
> SO ORDERED."

On March 9, 2007, herein petitioner filed a Motion for Partial Reconsideration[4] of the Decision dated February 15, 2007 to which a Comment/Opposition[5] was filed by herein respondent.

On June 27, 2007, the Court in Division issued a Resolution denying the Motion for Partial Reconsideration for lack of merit.

The Issue

Hence, the instant recourse where petitioner raises the sole issue of whether or not the Court in Division erred in holding that respondent is entitled to the issuance of a tax credit certificate in the amount of P63,388,320.86.

Petitioner's Arguments

Petitioner contends that the administrative and judicial claims for refund were filed outside of the two-year prescriptive period. He is of the view that the prescriptive period should commence to run at the end of the tax year, in this case on December 31, 1999. He claims that

[4] *Records*, C.T.A. Case No. 6426, pp. 632 - 647.
[5] *Id.*, pp. 650 – 664.

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the Court in Division erred in applying the case of *Commissioner of Internal Revenue v. TMX Sales, Inc and the CTA, G.R. No. 83736, January 15, 1992* as that case involves a refund of corporate quarterly income tax while the instant case involves a refund of unutilized creditable taxes. He insists that the more relevant cases are *Citibank, N.A. v. CA and Commissioner of Internal Revenue, G.R. No. 107434, October 10, 1997* and *Gibbs v. Commissioner of Internal Revenue, 15 SCRA 318, November 29, 1965.*

Petitioner further avers that assuming that the claim for refund was filed within the prescriptive period, respondent is still not entitled to a refund for the following reasons: (1) respondent filed a *pro forma* administrative claim for refund; and (2) respondent failed to prove actual remittance of the alleged unutilized CWT.

Respondent's Counter-Arguments

For its part, respondent submits that the instant Petition for Review must be dismissed as it was filed out of time. According to respondent, the "Motion for Partial Reconsideration" filed by petitioner before the Court in Division is defective and a mere scrap of paper since petitioner failed to set the same for hearing on a definite date and time. Consequently, the filing of petitioner's Motion, sans any date and time of hearing, did not stop the running of the prescriptive period.

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Respondent likewise insists that the prescriptive period for filing a claim for refund is reckoned not from the end of the taxable year but from the date of filing of a Final Adjustment Return citing the case of *ACCRA Investment Corporation v. Court of Appeals, G.R. No. 963222, December 20, 1991.*

In addition, respondent avers that, contrary to the claim of petitioner, its administrative claim for refund is not *pro forma*. It further argues that proof of actual remittance has never been required by the Court and that, under prevailing jurisprudence, the testimony of various payors need not be presented to validate the authenticity of the certificate.

The Ruling of the Court En Banc

The Petition for Review is bereft of merit.

At the outset, We resolve to dispose of respondent's contention that the Petition for Review in this case was filed out of time as this has been rendered moot by the fact that the Court in Division already gave due course to petitioner's "Motion for Partial Reconsideration."

As to the merits of the case, Section 2.58.3 of Revenue Regulations No. 2-98 (Withholding Tax Regulations), as amended, reads:

> "SECTION 2.58.3. *Claim for Tax Credit or Refund.* —
>
> (A) The amount of creditable tax withheld shall be allowed as a tax credit against the income tax liability of the payee

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in the quarter of the taxable year in which income was earned or received.

(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 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. Proof of remittance is the responsibility of the withholding agent.

(C) Excess Credits — An individual or corporate taxpayer's excess expanded withholding tax credits for the taxable quarter/year shall automatically be allowed as a credit against his income tax due for the taxable quarters/years immediately succeeding the taxable quarters/years in which the excess credit arose, provided he submits with his income tax return, a copy of the first page of his income tax return for the previous taxable period showing the amount of his excess withholding tax credits, and on which return he has not opted for a cash refund or tax credit certificate."

Thus, in order for a taxpayer to be entitled to a refund of excess CWT, it must show that:

1. 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;

2. 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

3. The income upon which the taxes were withheld was included in the return of the recipient. [6]

[6] United International Pictures AB v. Commissioner of Internal Revenue, C.T.A. CASE NO. 7244, June 12, 2007.

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In the case at bar, We find that respondent indeed complied with all the foregoing requirements.

As to the first requirement, it is already well-settled in our jurisprudence that the two-year prescriptive period within which to claim a refund commences to run, at the earliest, on the date of the filing of the adjusted final tax return.[7] The reason is obvious: it is only when the Adjustment Return covering the whole year is filed that the taxpayer would know whether a tax is still due or a refund can be claimed based on the adjusted and audited figures.[8]

Hence, the contention of petitioner that the prescriptive period should commence to run at the end of the tax year must fail as it goes against the grain of established jurisprudence.

Likewise, his contention that respondent failed to comply with the condition precedent of filing an administrative claim for refund as its administrative complaint is merely *pro forma* holds no water.

The fact that the judicial claim for refund was filed by respondent only on April 4, 2002 or barely twenty (20) days after it filed its administrative claim for refund on March 15, 2002 does not make the administrative claim *pro forma*.

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[7] Atlas Consolidated Mining and Development Corporation v. Commissioner, G.R. Nos. 141104 & 148763, 524 SCRA 73, June 8, 2007; Commissioner of Internal Revenue v. Court of Appeals, Court of Tax Appeals, and Bank of the Philippine Islands as liquidator of Paramount Acceptance Corporation, G.R. No. 117254, January 21, 1999; Commissioner of Internal Revenue v. Philippine American Life Insurance Co., G.R. No. 105208, 244 SCRA 446, 453, May 29, 1995; Commissioner of Internal Revenue v. TMX Sales, Inc., G.R. No. 83736, 205 SCRA 184, January 15, 1992; ACCRA Investments Corporation v. Court of Appeals, G.R. No. 96322, 204 SCRA 957, December 20, 1991.

[8] Commissioner of Internal Revenue v. TMX Sales, Inc., *supra*, note 7.

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It bears stressing that when the two-year period is about to prescribe and the claim for refund with the Commissioner of Internal Revenue has not been acted upon, for the protection of the interest of the taxpayer, **he should file a petition for review with this Court within the said two-year period**; otherwise, if the decision of the Commissioner is adverse to the taxpayer and it was made after the two-year period he can no longer appeal the same to this Court.[9] This is precisely what respondent did and it cannot be faulted for doing so.

A taxpayer cannot not be faulted for taking advantage of the full two-year period set by law for filing his claim for refund for there is no provision in the Tax Code requiring the claim for refund to be filed at the earliest instance in order to give the Commissioner an opportunity to rule on it and the Court to review the ruling of the Commissioner of Internal Revenue on appeal.[10]

Records show that respondent filed its ITR for the taxable year ended December 31, 1999 on April 13, 2000. Accordingly, We agree with the ruling of the Court in Division that the filing of the administrative claim on March 15, 2002 and the judicial claim on April 4, 2002 are well within the two-year prescriptive period.

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[9] Commissioner of Internal Revenue v. Mirant Pagbilao Corporation (formerly Southern Energy Quezon, Inc.), C.T.A. EB No. 251 (C.T.A. Case Nos. 6628 & 6732), May 30, 2007, *citing Commissioner of Internal Revenue v. Hitachi Computed Products (Asia) Corporation, CA-G.R. SP No. 63340, February 7, 2002.*

[10] Commissioner of Internal Revenue v. Mirant Pagbilao Corporation, *supra,* note 9.

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Regarding the second and third requirements, We have examined the records and We find that respondent was able to present Certificates of Creditable Tax Withheld at Source duly issued to it by various withholding agents for the year 1999 and that respondent properly declared in its ITR the gross income related to the CWT of P81,731,161.86.

Thus, We quote with approval the following excerpt from the assailed Decision of the Court in Division:

> **"Petitioner[11] has complied with the second requisite.** In compliance with the second requisite, petitioner presented the Certificates of Creditable Tax Withheld at Source duly issued to it by various withholding agents for the year 1999 *(Exhibits 'B' to 'Z', 'AA' to 'ZZ', 'AAA' to 'LLL')* showing creditable withholding taxes in the aggregate sum of P81,744,875.04, with the related income payment of P8,204,688,569.76 *(Annex A, Exhibit 'RRR')*. As certified by the duly commissioned independent CPA, R.S. Bernaldo & Associates, in its report dated October 28, 2003, these certificates were found to be certified true copies of the originals, except for the certificate marked as *Exhibit 'LLL'* supporting the claimed creditable withholding taxes of P13,713.18.
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> However, We note that the total creditable taxes withheld of P81,744,875.04 reflected in the certificates is lower by P21,075.96, when compared with the creditable taxes withheld of P81,765,951.00 reported per petitioner's 1999 income tax return. Since the amount of P21,075.96 is not supported by withholding tax certificates, the same shall be deducted from petitioner's claim.
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> **In sum, the Court finds that petitioner has sufficiently complied with the second requisite to the extent of P81,731,161.86 (P81,765,951.00 less P21,075.96 and P13,713.18), out of the total reported creditable withholding taxes of P81,765,951.00.**

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[11] Herein respondent.

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With regard to the third requisite, the certificates show that the subject creditable income taxes were withheld on sales of motor vehicles, parts and miscellaneous income payments received by petitioner for taxable year 1999 in the total amount of P8,204,688,569.76 *(Annex A, Exhibit 'RRR')*. In its 1999 income tax return, petitioner's reported revenues from sales of goods and miscellaneous income amounted to P9,487,113,286.00 and P12,844,769.00, respectively, *(page 262, CTA Records)* or in the sum of P9,499,958,055.00. While the total gross income payment of P8,204,688,569.76 appearing in the certificates is lower than the gross income of P9,499,958,055.00 reflected in petitioner's 1999 income tax return, such discrepancy was brought about by certain factors, namely: (1) the ad valorem taxes or value-added taxes were included by petitioner's customers in the tax base upon which the withholding taxes were computed; (2) the timing difference between the point at which petitioner recognized/reported its sales revenues as against the time when the corresponding tax was actually withheld by its customers; and (3) income payments received by petitioner in 1999 which were not subjected to withholding tax. This was clearly illustrated by petitioner in its Reconciliation of Sales per ITR and Income Payment Subject to EWT for the year 1999 *(Exhibit 'QQQ')* and explained on direct examination by petitioner's Senior Accounting Manager, Mr. Arnold Almario *(TSN, June 23, 2003, pp. 12-19)*.

Clearly, therefore, petitioner properly declared in its income tax return the gross income related to the creditable withholding taxes of P81,731,161.86.

Having complied with the three requisites previously set forth with respect to the creditable withholding taxes of P81,731,161.86, We now determine petitioner's refundable amount.

In arriving at the income tax overpayment of P68,224,340.00, petitioner's minimum corporate income tax (MCIT) due in the amount of P18,342,841.00 was partially offset against the quarterly income tax payments of P4,801,230.00 indicated in its 1999 income tax return *(line 26B, Exhibit 'A')*. Upon verification by the commissioned independent CPA, it was disclosed however, that the amount of P4,801,230.00 represents final withholding tax on interest income and should not have been applied against the MCIT due. This resulted to petitioners claiming that the final withholding taxes on interest were creditable withholding taxes, thus, increasing the amount of the claim for tax refund. This erroneous application was, in

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> fact, on direct examination admitted by petitioner's Senior Accounting Manager, Mr. Arnold Almario *(TSN, June 23, 2003, pp. 29-33)*. **Hence, petitioner can validly claim as tax credits only the amount of P81,731,161.86 representing creditable taxes withheld for the year 1999, which when applied against the MCIT due in the amount of P18,342,841.00 results to a reduced refundable income tax overpayment of P63,388,320.86, computed as follows:**
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> | | |
> |---|---|
> | Minimum Corporate Income Tax (MCIT) | P18,342,841.00 |
> | Less: Substantiated Creditable Taxes Withheld | 81,731,161.86 |
> | **Refundable Income Tax Overpayment** | **P63,388,320.86"[12]** |
>
> *(Emphasis ours)*

Anent the contention of petitioner that respondent failed to prove actual remittance of the alleged unutilized CWT to the BIR, this has been squarely resolved in the case of *Commissioner of Internal Revenue v. Asian Transmission Corporation,*[13] where We ruled:

> "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 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

[12] *Rollo,* pp. 47 – 51, (Decision dated February 15, 2007, pp. 14 – 18).

[13] Commissioner of Internal Revenue v. Asian Transmission Corporation, C.T.A. E.B. Case No. 205 (C.T.A. Case No. 6648), July 16, 2007.

> 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.**" *(Emphasis ours)*

In sum, We find no cogent justification to disturb the findings and conclusion of the Court in Division as it is supported by the evidence on record and is consistent with prevailing law and jurisprudence.

WHEREFORE, the instant petition is hereby **DISMISSED.** Accordingly, the assailed Decision dated February 15, 2007 and Resolution dated June 27, 2007, are hereby **AFFIRMED**.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

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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 above Decision has been reached in consultation with the members of the Court *En Banc* before the case was assigned to the writer of the opinion of this Court.

ERNESTO D. ACOSTA
Presiding Justice

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