REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

Third Division

ACQUIRE ASIA PACIFIC PHILIPPINES, INC.,
Petitioner,

-*versus*-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 8465

Members:
Bautista, *Chairperson*
Fabon-Victorino, *and*
Ringpis-Liban, JJ.

Promulgated:

DEC 13 2013

11:25 a.m.

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DECISION

BAUTISTA, J.:

The Case

This is a petition ("Petition") filed pursuant to Section 229 of the 1997 National Internal Revenue Code (the "Tax Code"), as amended, in order to preserve the right of Acquire Asia Pacific Philippines, Inc. ("AAPPI"), to claim a tax credit certificate for erroneously overpaid income taxes to Revenue District No. 41 of the Bureau of Internal Revenue ("BIR") in the amount of ₱1,726,002.98 for the year ended December 31, 2009,which pertains to the two percent (2%) share of the local government in the preferential tax rate of five percent (5%) accorded to AAPPI as an enterprise registered under the Philippine Economic Zone Authority ("PEZA") that had been remitted to the BIR.

The Parties[1]

Petitioner AAPPI is duly organized and existing under Philippine laws, with principal office located at Lower Ground Floor, Worldwide Corporate Center, Shaw Boulevard cor. EDSA, Mandaluyong City. It is engaged in the call center business.

Respondent Commissioner of Interns Revenue ("CIR") is the head of the Bureau of Internal Revenue ("BIR"), holding office at the BIR National Office Building, BIR Road, Diliman, Quezon City.

The Facts

From the records, it shows that AAPPI is registered with the Philippine Economic Zone Authority ("PEZA") as an Ecozone IT Enterprise.[2]

During taxable year 2009, AAPPI filed its Quarterly Income Tax Returns (BIR Form No. 1702Q), as summarized below:

Date Filed	Period	Taxable Income	Tax Rate	Amount Remitted
May 29, 2009	1st Quarter[3]	11,019,082.26	5%	550,954.11
August 20, 2009	2nd Quarter[4]	9,332,455.09	5%	365,798.23[5]
Nov 27, 2009	3rd Quarter[6]	11,944,577.39	5%	597,228.87

Subsequently, petitioner filed amended Quarterly Income Tax Returns (BIR Form No. 1702Q), as summarized below:

Date Amendment was Filed	Period	Taxable Income	Tax Rate	Amount Previously Remitted	Additional Amount Remitted	Interest Paid	Total Amount Paid
Feb 8, 2010	1st Quarter[7]	15,973,019.08	5%	550,954.11	247,696.84	34,107.85	832,758.80
Feb 8, 2010	2nd Quarter[8]	20,826,596.77	5%	365,798.23	675,531.61	59,244.12	1,100,573.96
Feb 8, 2010	3rd Quarter[9]	23,120,117.66	5%	597,228.87	558,777.01	21,065.89	1,177,071.77
TOTAL		**59,919,733.51**		**1,513,981.21**	**1,482,005.46**	**114,417.86**	**3,110,404.53**

[1]*Records*, p. 7.
[2]*Exhibits "B," "C," and "D."*
[3]*Exhibit "G."*
[4] *Exhibit "K."*
[5]The correct amount is ₱466,622.75.
[6]*Exhibit "O."*
[7]*Exhibit "I."*
[8]*Exhibit "M."*
[9]*Exhibit "Q."*

On April 13, 2010, petitioner filed its Annual Income Tax Return (BIR Form No. 1702)[10] for taxable year 2009, showing a total gross income of ₱86,300,149.00, while paying ₱4,315,007.00, excluding interest. On April 30, 2010 an Amended Annual Income Tax Return was filed, but there were no actual amendments made.[11]

Thus, a summary of the transactions:

Period	Taxable Income	Tax Rate	Amount Remitted
1st Quarter	15,973,019.08	5%	798,650.95
2nd Quarter	20,826,596.77	5%	1,041,329.84
3rd Quarter	23,120,117.66	5%	1,156,005.88
4th Quarter	26,380,415.49	5%	1,319,020.33
Annual	**86,300,149.00**	5%	**4,315,007.00**

On November 24, 2010, AAPPI filed an application for issuance of a tax credit certificate of its overpaid income taxes for the years 2008 to 2010 with Revenue District Office No. 41 of the BIR.[12] Petitioner filed a claim for an aggregate amount of ₱3,238,552.48, with ₱1,726,002.98 pertaining to the overpaid income taxes for taxable year 2009.

To date, respondent has yet to rule on AAPPI's application for issuance of tax credit certificate for its alleged overpaid income taxes for the year ended December 31, 2009.[13]

On January 18, 2012, AAPPI paid to the City of Mandaluyong its two percent (2%) for taxable year 2009, amounting to ₱2,161,202.40.[14]

Thus, petitioner filed its judicial claim for erroneously overpaid income taxes through a Petition for Review on April 12, 2012,[15] with respondent filing her Answer on May 22, 2012,[16] stating the following Special and Affirmative Defenses:

[10] *Exhibit "S."*
[11] *Exhibit "T."*
[12] *Records*, pp. 81-83; Joint Stipulation of Facts and Issues dated July 6, 2012.
[13] *Ibid.*
[14] *Exhibit "Z."*
[15] *Records*, pp. 6-14.
[16] *Id.*, at pp. 50-53.

"**SPECIAL AND AFFIRMATIVE DEFENSES**

4. Petitioner contends that they are entitled to a tax credit certificate in the amount of PESOS: ONE MILLION SEVEN HUNDRED TWENTY SIX THOUSANDTWO AND 98/100 (₱1,726,007.98) on their alleged overpaid income taxes for the taxable year ended 31 December 2009;

5. Petitioner's alleged claim for refund is subject to administrative routinary investigation/examination by the Bureau;

6. Petitioner must show that it has complied with the provisions of Sections 204(c) and 229 of the 1997 National Internal Revenue Code on the prescriptive period for claiming tax credit;

7. In an action for a claim of tax credit certificate, the burden of proof is on the taxpayer to establish its right to claim a tax credit certificate, and failure to sustain the burden is fatal to the claim for a tax credit certificate;

8. Well-established is the rule that refunds/tax credits are construed strictly against the taxpayer as they partake the nature of tax exemptions;

9. In ***COMPAIGNIE FINCANCIERE SUCRES ET DENREES VS.COMMISSIONER OF INTERNAL REVENUE; GR No. 133834 August 28, 2006*** the Honorable Supreme Court ruled, to wit:

> *'xxx Tax refunds are a derogation of the State's taxing power. Hence like tax exemptions, they are construed strictly against the taxpayer and liberally in favor of the State. Consequently, he who claims a refund or exemption from taxes has the burden of justifying the exemption by words too plain to be mistaken and too categorical to be misinterpreted.'"*

Petitioner filed its corresponding Reply on June 1, 2012.[17]

After submitting their respective Pre-Trial Briefs, the Court issued a Resolution ordering the parties to file their Joint Stipulation of Facts and Issues on June 26, 2012.[18] The parties then complied with the Resolution on July 6, 2012.[19]

On July 16, 2012, the Court issued the Pre-Trial Order.[20]

On August 24, 2012, petitioner filed its Formal Offer of Evidence,[21] which was resolved by the Court on October12, 2012.[22]

On November 26, 2012, respondent filed her Formal Offer of Evidence,[23] which was resolved by the Court on January 21, 2013,[24] with the Court ordering the parties to file their respective Memoranda within thirty (30) days.

On January 28, 2013, respondent filed a Motion for Reconsideration (Resolution Promulgated on January 21, 2013), asking the Court to admit several exhibits.[25]

In the meantime, respondent filed her Respondent's Memorandum on February 12, 2013.[26]

On February 25, 2013, petitioner filed a Comment (on Motion for Reconsideration dated 25 January 2013).[27]

On March 18, 2013, the Court promulgated a Resolution granting the Motion for Reconsideration (Resolution Promulgated on January 21, 2013), as well as ordering petitioner to submit its Memorandum within thirty (30) days from notice.[28]

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[17] *Id.*, at pp. 55-68.
[18] *Id.*, at p. 80.
[19] *Id.*, at pp. 81-83.
[20] *Id.*, at pp. 89-94.
[21] *Id.*, at pp. 180-190, with Annexes.
[22] *Id.*, at pp. 272-273.
[23] *Id.*, at pp. 322-324, with Annexes.
[24] *Id.*, at pp. 378-379.
[25] *Id.*, at pp. 380-382, with Annexes.
[26] *Id.*, at pp.388-391.
[27] *Id.*, at pp. 392-395.
[28] *Id.*, at pp. 398-399.

On April 18, 2013, petitioner filed its Memorandum.[29]

Thus, on April 22, 2013, the Court promulgated a Resolution submitting the case for decision.[30]

Hence, this Decision.

The Issues

The lone issue stipulated in the Joint Stipulation of Facts and Issues[31] filed by the parties on July 6, 2012 is:

> "2.1 WHETHER AAPPI IS ENTITLED TO A TAX CREDIT IN THE AMOUNT OF ₱1,726,002.98 FOR ITS REMITTANCE TO THE BIR OF THE TAXES DUE TO MANDALUYONG CITY."

The Ruling of the Court

At the onset, We must determine whether or not the claim for issuance of tax credit certificate was filed within the reglementary period allowed by law.

The pertinent provisions of the 1997 National Internal Revenue Code ("NIRC of 1997"), as amended, are:

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

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[29] *Id.*, at pp. 400-406.
[30] *Id.*, at p. 409.
[31] *Id.*, at pp. 81-83.

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 xxx 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, 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."

Also significant are the cases of *ACCRA Investments Corporation v. The Honorable Court of Appeals, et al.*;[32] *Commissioner of Internal Revenue v. Philippine American Life Insurance Co.*,[33] and *Philippine Bank of Communications v. Commissioner of Internal Revenue, Court of Tax Appeals and Court of Appeals*,[34] which all state that the reckoning of the two-year prescriptive period for filing a claim for refund or tax credit of excess income tax paid/withheld should commence from the date of filing of the final adjustment return, as the refund can only be ascertained from this point.

In this instance, petitioner filed its Annual Income Tax Return (BIR Form No. 1702)[35] for taxable year 2009 on April 13, 2010. Then,

[32] G.R. No. 96322, December 20, 1991, 204 SCRA 957.
[33] G.R. No. 105208, May 29, 1995, 244 SCRA 446.
[34] G.R. No. 112024, January 28, 1999, 302 SCRA 250.
[35] *Exhibit "T."*

it filed an application for issuance of tax credit certificate of its overpaid income taxes for the year ended December 31, 2009 with Revenue District Office No. 41 of the BIR on November 24, 2010,[36] while its judicial claim was filed on April 12, 2012.[37]

The Final Adjustment Return for Corporate Annual Income Tax Returns must be filed on or before April 15, or on or before the fifteenth (15th) day of the fourth (4th) month following the close of the fiscal year, as the case may be.[38] Since petitioner filed its Annual Income Tax Return on April 13, 2010, the start of the two (2)-year period wherein it is within petitioner's right to file for a refund or a claim for issuance of tax credit certificate begins on April 15, 2010, which is the time petitioner was required to file its return.

Thus, it is clear that both the administrative and judicial claim were filed within the two (2)-year period allowed under the law.

To begin with, it bears stressing that tax refunds are in the nature of tax exemptions. As such, they are regarded as in derogation of sovereign authority and to be construed in *strictissimi juris* against the person or entity claiming the exemption.[39] Thus, the claimant must be able to establish clearly and convincingly that it is entitled to such exemption.

Under the Registration Agreement signed by PEZA and petitioner on June 18, 2008, specifically Section 13.2 of Article XIII, which states that:

> "**ARTICLE XIII**
> **SPECIAL CONDITIONS**
>
> xxx xxx xxx
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> 13.2 The REGISTRANT's existing operations subject of this Agreement shall not be entitled to the Income Tax Holiday (ITH) incentive. Instead, this project shall be entitled to the 5% Gross Income Tax (5% GIT) incentive, in

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[36] *Records*, pp. 81-83; Joint Stipulation of Facts and Issues dated July 6, 2012.
[37] *Id., at* pp. 6-14.
[38] Section 77(B) of the NIRC of 1997, as amended.
[39] Commissioner of Internal Revenue *v.* Procter and Gamble Phil. Mfg. Corp., G.R. No. 66838, December 2, 1991, 204 SCRA 377; Commissioner of Internal Revenue *v.* S.C. Johnson & Son, Inc., G.R. No. 127105, June 25, 1999, 309 SCRA 87.

lieu of all national and local taxes, and to duty and tax free importation … xxx"[40]

Under Republic Act No. 8748,[41] Section 24 states that:

"SEC. 24. *Exemption from National and Local Taxes.* — Except for real property taxes on land owned by developers, no taxes, local and national, shall be imposed on business establishments operating within the ECOZONE. In lieu thereof, five percent (5%) of the gross income earned by all business enterprises within the ECOZONE shall be paid and remitted as follows:

(a) Three percent (3%) to the National Government;

(b) Two percent (2%) which shall be directly remitted by the business establishments to the treasurer's office of the municipality or city where the enterprise is located."

This provision was implemented by Revenue Regulation No. 01-00,[42] which states that:

"SECTION 5. *Returns and Payment of the Tax.* —

(a) *Quarterly and Final Adjustment Tax Return.* — Every ECOZONE registered enterprise subject to the herein 5% special income tax shall file a quarterly and a final adjustment income tax return showing, among others, (1) its 'gross income earned' for such period; (2) the amount representing the 5% tax on such 'gross income earned;' (3) the amount representing the aforementioned 2% share of the city/municipality; (4) in case the enterprise occupies a parcel of land situated within the territorial boundaries of two or more cities/municipalities, the area of land within the jurisdiction of each city/municipality and the share from the tax of each city/municipality.

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[40] *Records*, p. 197.
[41] An Act Amending Republic Act No. 7916, otherwise known as the "Special Economic Zone Act of 1995," dated June 1, 1999.
[42] Amends the Provision of RR No. 12-97 in Respect of Sharing, Distribution and Manner of Disposition of the 2% Share of the Local Government Units from the 5% Special Tax Paid by PEZA-Registered Enterprises, dated January 6, 2000.

The aforesaid enterprise shall file quarterly income tax return within sixty (60) days after the close of each of the first three (3) quarters and a final adjustment income tax return covering the entire taxable year, not later than the fifteenth (15th) day of the fourth (4th) month following the close of its taxable year, whether a calendar or a fiscal year accounting period, in accordance with Title II, Chapter XII, of the National Internal Revenue Code of 1997: *Provided, however*, that it shall prepare and accomplish at least five (5) copies thereof for filing, as follows: (1) Original and duplicate original copies thereof for filing with the duly authorized representative of the Commissioner of Internal Revenue, for the purpose of payment of the aforementioned 3% share of the National Government; (2) two (2) copies thereof for the purpose of payment of the aforesaid 2% share of the city/municipality; and (3) one (1) copy thereof for the file of the said enterprise: *Provided, further*, that if two or more cities/municipalities are entitled to a share in the two percent (2%) tax share of cities/municipalities, as many copies shall be accomplished for the purpose of filing at least two (2) copies thereof with the concerned cities/municipalities.

(b) *Filing Procedure*. — The ECOZONE enterprise shall present and submit its aforementioned tax return to the duly authorized representative of the Commissioner of Internal Revenue. After payment of the 3% tax share of the National Government, all copies thereof shall be stamped received the said duly authorized representative of the Commissioner shall secure the original and duplicate original copies thereof for BIR purposes. The remaining copies thereof shall be returned to the said enterprise, one (1) copy thereof for its file, and the remaining copy, duly stamped received by the said authorized representative, shall be submitted to the concerned city/municipal treasurer.

xxx xxx xxx"

Clearly, the implementing regulation shows that there shall be at least two separate payments: one to the Bureau of Internal Revenue for the 3% share of the National Government, and a separate payment covering the 2% for the local government units involved.

In this case, it is apparent from the returns and the payment forms that petitioner remitted the full 5% tax to the BIR, including interest payments when petitioner amended the returns.[43] Had petitioner followed the implementing regulation, it should have remitted a total of ₱2,589,004.47 to the BIR, while ₱1,726,002.98 should have been paid to the City of Mandaluyong, as follows:

Period	Taxable Income	Tax Rate	Amount Remitted	3% to BIR	2% to LGU
1st Quarter	15,973,019.08	5%	798,650.95	479,190.57	319,460.38
2nd Quarter	20,826,596.77	5%	1,041,329.84	624,797.90	416,531.94
3rd Quarter	23,120,117.66	5%	1,156,005.88	693,603.53	462,402.35
4th Quarter	26,380,415.49	5%	1,319,020.33	39,570.61	26,380.41
ANNUAL	**86,300,149.00**	5%	**4,315,007.45**	**2,589,004.47**	**1,726,002.98**

In fact, to correct this mistake, petitioner paid the City of Mandaluyong a total of ₱1,726,002.98 on January 18, 2012, as evidenced by the official receipt issued by the Office of the City Treasurer.[44]

Thus, the Court is convinced that with the circumstances in the present case, petitioner is entitled to a refund or to be issued a Tax Credit Certificate in the amount of ₱1,726,002.98.

The Court finds respondent's argument that petitioner is not entitled to the refund or issuance of a Tax Credit Certificate because it failed to substantiate the administrative claim filed with the BIR to have no merit.

There is no specific regulation enumerating the documents needed to be presented when filing an administrative claim for refund for erroneous payment of the 5% special income tax for PEZA-registered entities, such as petitioner, unlike that for VAT refunds. As such, so long as a taxpayer is able to fully substantiate the amount to be refunded, as well as show its entitlement for said refund, then the Court sees no reason not to grant said request.

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[43] *Exhibits* "G," "H," "I," "J," "K," "L," "M," "N," "O," "P," "Q," "R," "S," and "T."
[44] *Exhibit* "Z."

A simple perusal of the application for refund or issuance of a tax credit certificate dated November 24, 2010[45] shows clearly that petitioner submitted all the relevant documents which will enable respondent to determine petitioner's entitlement to its claim. In its administrative claim, petitioner submitted the following documents to substantiate the portion covering the taxable year 2009 of its claim:

"1. Duly accomplished BIR Form 1914 (Application for Tax Credits/Refunds);

2. BIR Certificate of Registration of Acquire;

3. PEZA Registration Agreement dated 12 February 2008;

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8. Annual Income Tax Return for the year 2009;

9. Quarterly Income Tax Return for the 1st Quarter of 2009;

10. Quarterly Income Tax Return for the 2ndQuarter of 2009;

11. Quarterly Income Tax Return for the 3rdQuarter of 2009;"[46]

In the Court's opinion, these are already sufficient to determine whether or not petitioner's claim is valid or not. Respondent's allegation that petitioner failed to submit the documents requested in the letter sent by BIR on June 13, 2012,[47] should not be given any merit. In this particular case, the BIR requested for documents which would have been reasonable had this case been an audit investigation and not a refund based on an erroneous payment.

To deny the claim for refund or issuance of a tax credit certificate in this case would be an unjust enrichment on the part of the Government.

In *Commissioner of Internal Revenue v. Acesite (Philippines) Hotel Corporation*, the Supreme Court held that:

[45] *Exhibits* "E" and "F."
[46] *Records*, pp. 22-23; *Annex* "B."
[47] *Id.*, at p. 282.

> "Tax refunds are based on the principle of quasi-contract or *solutio indebiti* and the pertinent laws governing this principle are found in Arts. 2142 and 2154 of the Civil Code, which provide, thus:
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> > Art. 2142. Certain lawful, voluntary, and unilateral acts give rise to the juridical relation of quasi-contract to the end that no one shall be unjustly enriched or benefited at the expense of another.
> >
> > Art. 2154. If something is received when there is no right to demand it, and it was unduly delivered through mistake, the obligation to return it arises.
>
> When money is paid to another under the influence of a mistake of fact, that is to say, on the mistaken supposition of the existence of a specific fact, where it would not have been known that the fact was otherwise, it may be recovered. The ground upon which the right of recovery rests is that money paid through misapprehension of facts belongs in equity and in good conscience to the person who paid it.
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> The Government comes within the scope of *solutio indebiti* principle as elucidated in *Commissioner of Internal Revenue v. Fireman's Fund Insurance Company*, where we held that: 'Enshrined in the basic legal principles is the time-honored doctrine that no person shall unjustly enrich himself at the expense of another.' It goes without saying that the Government is not exempted from the application of this doctrine."[48]

WHEREFORE, in view of the foregoing, the Court hereby **GRANTS** the Petition for Review. Accordingly respondent is hereby **ORDERED** to **ISSUE** a **TAX CREDIT CERTIFICATE** in favor of petitioner Acquire Asia Pacific Philippines, Inc. in the amount of **₱1,726,002.98**, representing the two percent (2%) share of the local

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[48] G.R. No. 147295, February 16, 2007, 516 SCRA 93, citing *Commissioner of Internal Revenue v. Fireman's Fund Insurance Company* G.R. No. L-30644, March 9, 1987, 148 SCRA 315, 324-325.

government in the preferential tax rate of five percent (5%) accorded to petitioner as an enterprise registered under the Philippine Economic Zone Authority which was erroneously remitted to the BIR.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

ESPERANZA R. FABON-VICTORINO
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
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 of Article VIII of the Constitution, and the Division's 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's Division.

ROMAN G. DEL ROSARIO
Presiding Justice