REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SECOND DIVISION

BPO INTERNATIONAL INC. as Trustee of COMSYS PHILIPPINES, INC., Petitioner,	**C.T.A. CASE NO. 7555**
	Members:
- versus -	**CASTAÑEDA, JR.,** *Chairperson* **UY,** *and* **PALANCA-ENRIQUEZ,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	**Promulgated:** JUN 3 0 2009 9:20 p.m.

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DECISION

UY, J.:

Before the Court is a Petition for Review praying for the refund or issuance of tax credit certificate in favor of petitioner in the amount of P2,372,030.00, representing petitioner's alleged excess/unutilized creditable withholding income taxes for taxable year ended December 31, 2004.

THE FACTS

Petitioner, BPO International Inc., is a corporation organized and existing under and by virtue of the Philippine Laws, with principal office at

6758 Ayala Avenue, 1226 Makati City.[1] Petitioner is the duly appointed trustee of Comsys Philippines, Inc (COMSYS).[2]

COMSYS was a corporation organized and existing under Philippine laws. Prior to its dissolution, it was involved in subcontracting cableworks and civil works to main contractors.[3]

Respondent, on the other hand, is the duly-appointed Commissioner of Internal Revenue who is empowered to perform the duties of said office, including among others, the duty to act upon and approve claims for refund or tax credit as provided by law. He holds office at the 5th Floor, Bureau of Internal Revenue (BIR) National Office Building, Agham Road, Diliman, Quezon City.

On March 2, 2005, COMSYS filed its Annual Corporate Income Tax Return for taxable year 2004, reflecting the following:[4]

Sales/Revenues/Receipts/Fees	-
Less: Cost of Sales/Services	12,913,765
Gross Income from Operation	(12,913,765)
Add: Non-Operating & Other Income	1,484,898
Total Gross Income	(11,428,867)
Less: Deductions	136,713,321
Taxable Income	(148,142,188)
Tax Rate (except MCIT Rate)	32%
Income Tax	NIL
Minimum Corporate Income Tax (MCIT)	NIL
Tax Due	NIL
Aggregate Income Tax Due	NIL
Less: Tax Credits/Payments	
Prior Year's Excess Credits	5,632,472
Creditable Tax Withheld for the First Three Quarters	2,341,302
Creditable Tax Withheld Per BIR Form No. 2307 for the Fourth Quarter	30,728
Total Tax Credits/Payments	8,004,502
Tax Payable/(Overpayment)	(8,004,502)
Total Amount Payable/(Overpayment)	(8,004,502)

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[1] Par. 1, Statement of Facts Admitted, Joint Stipulation of Facts and Issues (JSFI), Docket, p. 67.
[2] Supplemental Affidavit dated July 18, 2007, Exhibit "R", Docket, p. 371; Secretary's Certificate dated December 6, 2009, Exhibit "Q", Docket, pp. 8-9.
[3] Par. 1.1, Statement of Facts Admitted, JSFI, Docket, pp. 67-68.
[4] Exhibit "A", Docket, p. 291.

On February 24, 2006, COMSYS, through its external auditor SGV & Co., sent to respondent a request for refund of unutilized creditable withholding tax in the amount of P2,372,030.00 for taxable year ended December 31, 2004.[5]

As respondent had not acted with finality on its claim and in order to preserve its right to claim refund or issuance of tax credit certificate within the two-year prescriptive period, COMSYS, now herein represented by petitioner BPO International Inc., filed this Petition for Review with this Court on December 28, 2006.

In the Answer filed by respondent on March 1, 2007, the following Special and Affirmative Defenses were raised, to wit:[6]

> "7. The claim for refund is still under examination by the respondent's Bureau;
>
> 8. The burden of proof is upon the petitioner to prove that it is entitled to the claim for refund or issuance of tax credit certificate;
>
> 9. The grant of claim for refund tantamount to an exemption from taxation which is construed strictly against the claimant and in favor of the taxing authority;
>
> 10. The taxes sought to be refunded were paid in accordance with law; the burden of proof to the contrary is upon the petitioner-claimant to show with clear and unambiguous provision of law supporting the same."

After issues were joined, trial proceeded. Petitioner presented documentary and testimonial evidence; while respondent manifested during the May 14, 2008 hearing that the administrative investigation of the present case has not been terminated, and submitted the case for decision without

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[5] Exhibit "F", Docket, p. 318.
[6] Docket, p. 44.

presenting evidence.[7] Upon motion of respondent's counsel, the parties were directed to file their respective memorandum. Petitioner posted its Memorandum on June 23, 2008[8] while respondent's failed to do so within the given period and this case was submitted for decision in the Resolution dated July 7, 2008.[9]

THE ISSUES

The parties submitted the following issues for this Court's resolution:

> "1. Whether the creditable withholding taxes for the taxable year 2004 are duly substantiated by the necessary statements issued by the withholding agents to Petitioner, showing the amount paid and the amount of tax withheld therefrom;
>
> 2. Whether the income upon which the creditable taxes were withheld were included and reported as income in the income tax return of Petitioner for the taxable year 2004;
>
> 3. Whether Petitioner is entitled to the refund and/or credit of the amount of P2,372,030.00 representing its excess/unutilized creditable income taxes as of December 31, 2004."[10]

THE COURT'S RULING

Section 76 of the National Internal Revenue Code (NIRC) of 1997 provides:

> "**SEC. 76. Final Adjustment Return.** — Every corporation liable to tax under Section 27 shall file a final adjustment return covering the total taxable income for the preceding calendar or fiscal year. If the sum of the quarterly tax payments made during the said taxable year is not equal to the total tax due on the entire taxable income of that year, the corporation shall either:
>
> (A) Pay the balance of tax still due; or
> (B) Carry-over the excess credit; or

[7] Minutes of May 14, 2008 hearing, Docket, p. 460.
[8] Minutes, pp.467-482.
[9] Docket, p. 484.
[10] Pars. 1 to 3, Statement of Issues Admitted, JSFI, Docket, p. 69.

(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."

Pursuant to the foregoing provision, a corporation entitled to a tax credit or refund of the excess income taxes paid in a given taxable year is allowed two options, namely: (1) to be credited or refunded (either in the form of cash or tax credit certificate) with the excess amount paid; or (2) to carry-over the excess credit to the quarters of the succeeding taxable years.

In this regard, the Supreme Court ruled in the case of ***Phil-Am Asset Management, Inc. vs. Commissioner of Internal Revenue, G.R. Nos. 156637 and 162004, December 15, 2005***, that under Section 76 of the National Internal Revenue Code, a taxable corporation with excess quarterly income tax payments may apply for either a tax *refund* or a tax *credit*, but not both. The choice of one precludes the other. It further held that the carry-over option under Section 76 is permissive. A corporation that is entitled to a tax refund or a tax credit for excess payment of quarterly income taxes may carry over and credit the excess income taxes paid in a given taxable year against the estimated income tax liabilities of the succeeding quarters. Once chosen, the carry-over option shall be considered irrevocable for that taxable period, and no application for a tax refund or issuance of a tax credit certificate shall be allowed. The "taxable period" referred to in the afore-quoted Section is that taxable period which the taxpayer made the choice of carry-over and not to the next taxable year when the said excess or unutilized tax credits be carried-over.

The corporation must signify in its Annual Corporate Adjustment Return (by marking the option box provided in the BIR form) its intention, whether to request a refund or claim an automatic tax credit for the succeeding taxable year. These remedies are in the alternative, and the choice of one precludes the other.[11]

In the present case, COMSYS filed its Annual Income Tax Return for taxable year 2004[12] on March 2, 2005, reflecting a net loss of P148,142,188.00 and total tax overpayment of P8,004,502.00; which consisted of the prior year's excess credits of P5,632,472.00 and creditable taxes withheld during the year 2004 in the amount of P2,372,030.00, as shown below:

Sales/ Revenues/Receipts/Fees (Sch.1)		-
Less:	Cost of Sales/Services (Sch.2/3)	P 12,913,765.00
Gross Income from Operation		P (12,913,765.00)
Add:	Non-Operating & Other Income (Sch.4)	1,484,898.00
Total Gross Income		P (11,428,867.00)
Less:	Deductions (Section E)	136,713,321.00
Taxable Income		**P (148,142,188.00)**
Tax Due		NIL
Less:	Tax Credits/Payments	
	Prior Years Excess Credits	P 5,632,472.00
	Creditable Tax Withheld for the First Three Quarters	**2,341,302.00**
	Creditable Tax Withheld Per BIR Form No.2307 for the Fourth Quarter	**30,728.00**
	Total Tax Credit/Payments	8,004,502.00
Tax Payable/(Overpayment)		**P (8,004,502.00)**

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[11] *Philippine Bank of Communications vs. Commissioner of Internal Revenue, G.R. No. 112024, January 28, 1999, 302 SCRA 241.*
[12] Exhibit "A", Docket, p. 291.

COMSYS opted to have the total overpayment of P8,004,502.00 (inclusive of the subject claim of P2,372,030.00) refunded. This fact is evidenced by a tick mark in the box corresponding to the choice "To be refunded" in its Annual Income Tax Return for 2004. Furthermore, in the Quarterly Income Tax Return for the first quarter of 2005[13] and the Annual Income Tax Return for taxable year 2005,[14] COMSYS did not carry-over and/or utilize the subject claim of P2,372,030.00. Hence, it may be a proper subject of a claim for refund under Section 76 of the NIRC of 1997.

Nonetheless, petitioner must prove compliance with the following basic requirements in order to be entitled to the refund claim of P2,372,030.00:

1. That the claim for refund was filed within the two-year prescriptive period provided under Section 204(C), in relation to Section 229 of the NIRC of 1997;

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

3. That the income upon which the taxes were withheld was included in petitioner's income tax return.[15]

Records show that petitioner and respondent jointly admitted that both petitioner's administrative and judicial claims for refund were filed within the two-year prescriptive period counted from the filing of COMSYS' Annual Corporate Income Tax Return for taxable year 2004.[16] Thus, the first requisite had been satisfied.

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[13] Exhibit "G", Docket, p. 343.
[14] Exhibit "B-1", Docket, p. 345.
[15] *Citibank, N.A. vs. Court of Appeals and Commissioner of Internal Revenue, G.R. No. 107434, October 10, 1997, 280 SCRA 459*; *ACCRA Investment Corporation vs. Court of Appeals, G.R. No. 96322, December 20, 1991, 204 SCRA 957*; Section 2.58 of Revenue Regulations No. 2-98, as amended, dated April 17, 1998.
[16] Par. 8, Statement of Facts Admitted, JSFI, Docket, p. 69.

Proceeding now to the second requisite, petitioner submitted various Certificates of Creditable Tax Withheld at Source issued to Comsys, showing creditable withholding taxes for taxable year 2004 in the amount of P2,372,030.40, to wit:

Exhibit	Payor/ Withholding Agent	Period Covered			Income Payments	Tax Withheld
A-8/J	Maynilad Water Services	1/1/2004	To	3/31/2004	P 811,489.50	P 16,229.79
A-9/I	Maynilad Water Services	1/1/2004	To	3/30/2004	217,223.50	4,344.47
A-10/K	Globe Telecom	1/1/2004	To	3/31/2004	303,998.50	6,079.97
A-11/L	Globe Telecom	4/1/2004	To	6/30/2004	109,948.50	2,198.97
A-12/M	Globe Telecom	7/1/2004	To	9/30/2004	93,759.00	1,875.18
E-1	Mitsubishi Corp	7/1/2004	To	9/30/2004	72,183,186.19	1,443,663.73
E-2	MG Exeo Network, Inc.	4/1/2004	To	6/30/2004	152,257.00	1,522.57
E-3	**MG Exeo Network, Inc.**	**10/1/2003**	**To**	**12/31/2003**	**282,005.00**	**2,820.05**
D-1	Mitsubishi Corp	4/1/2004	To	4/30/2004	11,977,802.00	239,556.04
C-1	Mitsubishi Corp	1/1/2004	To	3/31/2004	32,686,982.35	653,739.63
TOTAL					**P 118,818,651.54**	**P 2,372,030.40**

It appears from the above table that the amount of P2,820.05 (Exhibit "E-3") for the year 2003 is outside the period of subject claim (2004) and must therefore be disallowed. After deducting said amount from the total amount of P2,372,030.40 creditable withholding taxes, the Court finds that petitioner was able to substantiate by proper withholding tax certificates only the creditable withholding taxes of P2,369,210.35, with the corresponding income payments of P118,536,646.54 for taxable year 2004.

As to the third requisite, a perusal of COMSYS' Income Tax Return for 2004 shows that no amount of revenue was declared therein.[17] In the Supplemental Judicial Affidavit[18] of Mr. Emmanuel Fernandez, Treasurer of COMSYS, he testified that:

> "A25: In taxable year 2004, Comsys Philippines, Inc. no longer had additional contracts executed with its customers. That is why Comsys no longer had any revenue to

[17] Exhibit "A", Docket, p. 291.
[18] Exhibit "R", Docket, p. 371.

> declare in taxable year 2004. Comsys only had collections from contracts executed in previous years but no additional source of income. The same holds true for taxable year 2005.
>
> That is why there is no MCIT due for the taxable years 2004 and 2005. In fact in 2006, Comsys Philippines, Inc. decided to formally cease commercial operations and proceed with the shortening of its corporate term subject to the necessary approvals from the government agencies concerned and appointed BPO International as a trustee."

Mr. Fernandez further explained that the gross income payments of P118,536,646.54, related to the substantiated creditable withholding taxes of P2,369,210.35, arose from collections of prior years' contracts which were declared in COMSYS' Income Tax Returns for taxable years 2001, 2002, and 2003.[19]

Likewise, in order to reconcile the discrepancy between the amounts of gross income as reflected in the certificates and as reported in COMSYS' prior years Income Tax Returns, COMSYS presented its Reconciliation of Withholding Tax Certificate Received vs. Revenue Recognized for the Year 2004 with attached Annexes "1", "2", and "3".[20]

After careful scrutiny of the aforesaid documents, including all other documentary evidence presented and admitted before this Court, and after careful consideration of the testimony of petitioner's witness, Mr. Emmanuel Fernandez, as contained in the Judicial and Supplemental Judicial Affidavits[21], which were all uncontroverted by respondent, petitioner is found to have sufficiently complied with the third requisite.

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[19] Exhibits "O", "P", and "H", Docket, pp. 415-417, 433-435, and 393-395, respectively.
[20] Exhibit "N", Docket, pp. 388-392.
[21] Exhibits "T" and "R", respectively.

Accordingly, upon compliance with all the requirements set by law, petitioner is therefore entitled to the refund/issuance of tax credit certificate representing unutilized creditable withholding taxes for taxable year 2004, but only in the reduced amount of P2,369,210.35.

WHEREFORE, the instant Petition for Review is hereby **PARTIALLY GRANTED.** Accordingly, respondent is hereby **ORDERED TO REFUND** or **TO ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the reduced amount of P2,369,210.35, representing unutilized creditable withholding taxes for taxable year 2004.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

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

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