REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SECOND DIVISION

ROXAS LAND CORPORATION, Petitioner,	**C.T.A. CASE NO. 6918**
	Members:
- versus -	**CASTAÑEDA, JR.,** *Chairperson* **UY,** *and* **PALANCA-ENRIQUEZ,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	**Promulgated:** DEC 1 8 2007 4:00 p.m.

x- -x

DECISION

CASTAÑEDA, JR., *J.*:

Before Us is a Petition for Review filed on April 6, 2004 by petitioner Roxas Land Corporation against respondent Commissioner of Internal Revenue, seeking the issuance of tax credit certificate in the total amount of **FORTY SEVEN MILLION SIXTEEN THOUSAND FIVE HUNDRED TWENTY ONE AND 50/100 PESOS (P47,016,521.50)** allegedly representing its excess and unutilized creditable income tax withheld for taxable year 2001.

Petitioner, Roxas Land Corporation, is a corporation duly organized and existing under the laws of the Republic of the Philippines with principal office at 31/F, Tower One, Ayala Triangle, Ayala Avenue, Makati City. It is engaged in the real estate business, specifically to hold, develop, manage, administer, sell, convey, encumber, purchase, acquire, lease or otherwise deal in and dispose of, for itself or for others, for profit and advantage, real properties intended for residential or commercial condominium projects, office buildings or industrial parks.[1]

Respondent is the duly-appointed Commissioner of Internal Revenue, vested with authority to carry out all the functions, duties and responsibilities of said office, including among others, the power to decide, approve, and grant refunds and/or tax credits of overpaid and erroneously paid or collected internal revenue taxes. He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.[2]

On April 10, 2002, petitioner filed with the Bureau of Internal Revenue (BIR) its Annual Income Tax Return for taxable year 2001[3], showing a net loss and declaring an income tax overpayment in the amount of P92,164,882.50, which consisted of the prior year's excess credits of P45,148,361.00 and creditable taxes withheld during the same year in the amount of P47,016,521.50, as shown hereunder:

Sales/Revenues/Receipts/Fees	P	843,130,025.00
Less: Cost of Sales/Services		1,204,468,221.00
Gross Income from Operation	P	(361,338,196.00)
Add: Non-operating & Other Income		151,061,005.00
Total Gross Income	P	(210,277,191.00)
Less: Deductions		42,804,847.00
Taxable Income	P	(253,082,038.00)
Income Tax Due (32%)		-
Minimum Corporate Income Tax (MCIT) Due		-
Less: Tax Credits		
Prior Years' Excess Credits	P	45,148,361.00
Creditable Tax Withheld for the First Three		45,676,065.15

ga

[1] Paragraph 1, Joint Stipulation of Facts and Issues, Docket, page 83.
[2] Paragraph 2, Joint Stipulation of Facts and Issues, Docket, page 83.
[3] Exhibit "A".

Quarters 2001		
Creditable Tax Withheld for the Fourth Quarter 2001		1,340,456.35
Total Tax Credits	P	92,164,882.50
Overpayment	**P**	**(92,164,882.50)**

On March 19, 2003, however, petitioner amended its 2001 Annual Income Tax Return[4]; this time to report an excess tax credit in the reduced amount of P47,016,521.50, or the amount of its excess creditable taxes withheld for the same year. Subsequently, on March 26, 2003, petitioner filed its second Amended Income Tax Return for the year 2001[5] to indicate its choice of being issued a tax credit certificate[6] as regards the excess tax credits of P47,016,521.50.

Consequently, on April 3, 2003, petitioner filed a letter claim with respondent, requesting issuance of tax credit certificate of its total excess and unutilized creditable taxes withheld for taxable year 2001 in the amount of P47,016,521.50.[7]

Since respondent had not acted with finality on its claim and before it could be barred by prescription, petitioner filed this judicial claim before this Court on April 6, 2004, in accordance with Sections 204(C) and 229 of the National Internal Revenue Code (NIRC) of 1997.

Respondent, in his Answer filed on June 1, 2004, averred the following Special and Affirmative Defenses:

> "4. He reiterates and repleads the preceding paragraphs of this Answer as part of his **Special and Affirmative Defenses**;

---

[4] Exhibit "C".
[5] Exhibit "D".
[6] Exhibit "D-10".
[7] Exhibit "K".

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

6. Be that as it may, the necessity to prove refund claims applies in the instant case. Meaning, a claim for refund partakes the nature of an exemption which cannot be allowed unless granted in the most explicit and categorical language. The Honorable Supreme Court has consistently ruled that **"exemptions from taxations are highly disfavored in law and he who claims exemption must be able to justify his claim by the clearest grant of organic or statutory law. An exemption from common burden cannot be permitted to exist upon the vague implications.** (*Asia Petroleum Co. vs. Llanes, 49 Phil 466*);

7. Being in the nature of an exemption from taxation, a claim for refund is strictly construed against the claimant, and failure to discharge said burden is fatal to the claim."

Both parties having presented their testimonial and documentary evidence in support of their claims, the Court then ordered the parties to simultaneously file their respective Memorandum. This case was submitted for decision on September 4, 2007, with only petitioner filing its Memorandum.

The issues,[8] jointly stipulated by the parties for this Court's resolution, are as follows:

"1. Whether or not petitioner's administrative and judicial claims for refund of its unutilized excess CWT for CY 2001 were filed within the two-year prescriptive period provided under Sections 204 and 229 of the National Internal Revenue Code of 1997;

2. Whether or not the fact of withholding of CWT in the amount of P47,016,521.50 is duly supported by appropriate documents and returns;

3. Whether or not the income upon which the taxes were withheld were included in the income tax returns of the petitioner;

[8] Joint Stipulation Facts and Issues, Docket, pp. 84-85.

4. Whether or not petitioner was able to utilize the amount of P47,016,521.50 CWT withheld from its sales of real property for CY 2001; and

5. Whether or not petitioner has carried over its unutilized excess CWT for CY 2001 to the succeeding taxable periods."

The Court will resolve all the stipulated issues *in seriatim*.

As regards the first issue, **Sections 204(C) and 229 NIRC of 1997** find application, thus:

> "**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.**"
>
> "**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*)

In the cases of **Commissioner of Internal Revenue vs. TMX Sales, Inc.**[9] and **ACCRA Investments Corporation vs. The Honorable Court of Appeals, Commissioner of Internal Revenue and the Court of Tax Appeals**[10], the Honorable Supreme Court held that the two (2)-year prescriptive period should be counted from the filing of the final adjustment return or annual income tax return, because it is only during this date that the exact tax liability or refundability of the tax can be determined.

The instant claim covers taxable year 2001 for which petitioner filed its original Annual Income Tax Return on April 10, 2002. Counting from this date, petitioner then had until April 9, 2004 within which to file its claim in the administrative and judicial levels. Considering that petitioner filed its administrative and judicial claims for refund on April 3, 2003 and April 6, 2004, respectively, both claims were filed within the reglementary period allowed by law.

Going now to the second issue, the Court-commissioned Independent Certified Public Accountant (CPA), Ms. Milagros F. Padernal, submitted her Report dated June 29, 2006[11], showing the following data:

---

[9] *G.R. No. 83736, January 15, 1992.*
[10] *G.R. No. 96322, December 20, 1991.*
[11] Page 3, Exhibit "TT".

Exhibit No.	BIR Form No. 1606	Amount
KK	Supported by photocopies marked as certified true copy by BIR	P 17,750,437.01
LL	Supported by photocopies not marked as certified true copy by BIR	21,997,799.43
	Subtotal	P 39,748,236.44
	No supporting BIR Form No. 1606	7,268,285.07
	Total	**P 47,016,521.51**

Upon thorough examination by this Court, it is established that the claim of creditable withholding taxes in the amount P17,750,437.01[12], found by the Independent CPA as properly marked by the BIR as certified true copies from the original Withholding Tax Remittance Returns (BIR Form No. 1606), is valid. This Court, however, finds that while the creditable withholding taxes in the amount of P21,997,799.43 were supported by photocopies of Withholding Tax Remittance Returns (BIR Form No. 1606) not marked as "CERTIFIED TRUE COPY FROM THE ORIGINAL" by the BIR, the actual remittance thereof can be traced to the Certification dated November 18, 2003 issued by Carmelita SJ. Pascual, Chief of the BIR, Revenue Accounting Division[13]. As verified by Ms. Pascual, Roxas Land Corporation duly remitted the tax payments pertaining to the collections listed and the same check payments were not included in the list of dishonored checks.

Nonetheless, out of the total creditable withholding taxes of P21,997,799.43, the amount of P474,919.59 pertaining to December 2000 should be denied outright for being outside the subject period of the instant Petition. Below is the breakdown of the said amount of P474,919.59:

[12] Exhibit "KK".
[13] Exhibits "EE-1" to "EE -4".

Exh	Period Covered	Payor	Amount of Tax
LL-1	Dec-00	Sharon Pureta in trust for a corp.	P 10,000.00
LL-2	Dec-00	Gary E.P. Cheng/Monica Consing	10,000.00
LL-3	Dec-00	Sylvia H. Lopez in trust for a corp.	90,503.59
LL-4	Dec-00	Patricia Zobel de Ayala in trust for a corp.	165,127.95
LL-5	Dec-00	Beatriz Susana Zobel de Ayala in trust for a corp.	154,136.53
LL-6	Dec-00	VGL Realty Holdings, Inc.	25,000.00
LL-7	Dec-00	VRJ Holdings	20,151.52
		Total	**P 474,919.59**

As to the creditable withholding taxes in the amount of P7,268,285.07, the same was accounted for by the commissioned Independent CPA as follows:[14]

Exhibit No.	BIR Form No. 1954	Amount
MM	Supported with original copies of BIR Form No. 1954	P 7,237,159.09
	No supporting BIR Form No. 1954	31,125.98
	Total	**P 7,268,285.07**

The Court was able to determine the accuracy of the creditable withholding taxes reflected in the Certificates Authorizing Registration (BIR Forms No. 1954) upon verification of the buyer's name, purchase unit, and purchase price shown in the applicable Deeds of Absolute Sale and Contracts to Sell[15] and schedule of creditable withholding taxes submitted by petitioner.

As to the creditable withholding taxes of P31,125.98 which were found by the commissioned Independent CPA to be without Certificates Authorizing Registration (BIR Forms No. 1954), the same shall be denied. A close scrutiny of petitioner's Schedule of Creditable Withholding Taxes[16], shows that the amount of P31,125.98 (P49,875.98 - P18,750.00) actually pertains to documentary stamp taxes (DST) erroneously recorded by petitioner as creditable withholding taxes.

---

[14] Page 4, Exhibit "TT".
[15] Exhibits "OO-1" to "OO-46".
[16] Page 3, Exhibit "JJ".

In sum, out of the total claim of P47,016,521.50, petitioner was only able to substantially prove the fact of withholding and subsequent remittance to the BIR of the amount of P46,510,475.93, computed as follows:

Claimed Creditable Withholding Taxes		P 47,016,521.50
Less: Disallowances		
a. Creditable withholding taxes outside the subject period of claim	P	474,919.59
b. DST erroneously recorded/claimed as creditable withholding taxes		31,125.98
Total Disallowances	P	506,045.57
Validly Substantiated Creditable Withholding Taxes	**P**	**46,510,475.93**

Anent the third issue, **Section 2.58.3(B) of Revenue Regulations No. 2-98**, as amended, states that:

> "(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." (*Emphasis supplied*)

In order to bolster its claim, petitioner submitted a "Sales Report" for the year 2001 which enumerated the gross selling prices of the condominium units sold and the related gross revenues it recognized for the same period based on percentage of completion method.[17] Records reveal that the gross revenues of P843,130,024.98[18] or P843,130,025.00 as reflected on the "Sales Report", is the very same figure reported by petitioner as "Sales/Revenues/Receipts/Fees (Sch. 1)" under item 14C, Part II of its 2001 second Amended Income Tax Return[19]. While there is a difference of P7,892,969.00 between the gross revenues of P851,022,994.00 as appearing

[17] Exhibit "SS".
[18] Page 3, Exhibit "SS".
[19] Exhibit "D-1".

second Amended Income Tax Return[19]. While there is a difference of P7,892,969.00 between the gross revenues of P851,022,994.00 as appearing on its Computation of Gross Profit Rate and Realized Gross Profit for 2001[20] and the reported gross "Sales/Revenues/Receipts/Fees (Sch. 1)" of P843,130,025.00, such discrepancy is found to have formed part of the reconciling item described as "difference between installment and percentage of completion" in the amount of P143,990,135.00[21] which was declared as "Other Income" by petitioner in its 2001 Annual Income Tax Return.[22] In other words, petitioner had properly declared the income related to the substantiated creditable withholding taxes of P46,510,475.93.

Proceeding now to the fourth issue, this Court finds that indeed petitioner was not able to fully utilize the substantiated creditable taxes withheld in the amount of P46,510,475.93 in its second Amended Income Tax Return for the year 2001[23].

In its 2001 Annual Income Tax Return, petitioner reported a "Net Loss" of P253,082,038.00[24]; thus, had no income tax liability at the regular rate of 32%. Moreover, since petitioner's return also reflected a "Gross Loss From Operations" in the amount of P210,277,191.00[25], no Minimum Corporate Income Tax (MCIT) liability may be declared considering that the 2% MCIT is computed based on gross income from operations.

---

[19] Exhibit "D-1".
[20] Exhibit "QQ".
[21] Exhibit "QQ"; Page 6, Exhibit "TT".
[22] Schedule 4, Section A of Exhibit "D".
[23] Exhibit "D".
[24] Exhibit "D-3".
[25] Exhibit "D-2".

Petitioner's 2002 Annual Income Tax Return[26] shows that under the item "Prior year's excess credits", no amount was declared. This being so, it is clear that petitioner did not utilize nor chose to carry-over any of the substantiated creditable withholding taxes in the amount of P46,510,475.93 in the year 2002 or in any of the succeeding years. Section 76 of the NIRC of 1997, provides that:

> "**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
> (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."

Inasmuch as petitioner chose to be issued a tax credit certificate, evidently, the fully substantiated creditable withholding taxes in the amount of P46,510,475.93 constitutes excessively paid tax which is refundable to petitioner.

[26] Exhibit "H-1".

WHEREFORE, petitioner's Petition for Review is hereby **GRANTED**. Accordingly, respondent is **ORDERED TO ISSUE** a tax credit certificate in favor of petitioner in the amount of **FORTY SIX MILLION FIVE HUNDRED TEN THOUSAND FOUR HUNDRED SEVENTY FIVE AND 93/100 PESOS** (P46,510,475.93) representing petitioner's excess and unutilized creditable withholding taxes for taxable year 2001, with breakdown as follows:

Sales/Revenues/Receipts/Fees	P	843,130,025.00
Less: Cost of Sales/Services		1,204,468,221.00
Gross Income from Operation	P	(361,338,196.00)
Add: Non-operating & Other Income		151,061,005.00
Total Gross Income	P	(210,277,191.00)
Less: Deductions		42,804,847.00
Taxable Income	P	(253,082,038.00)
Income Tax Due	P	-
Less: Creditable Taxes Withheld during the year		46,510,475.93
Excess Tax Credits	**P**	**(46,510,475.93)**

SO ORDERED.

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

WE CONCUR:

ERLINDA P. UY
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