**REPUBLIC OF THE PHILIPPINES**
**Court of Tax Appeals**
**QUEZON CITY**

## ***SECOND DIVISION***

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| **ORION PROPERTY DEVELOPMENT, INC.,** Petitioner, | **C.T.A. CASE NO. 7000** |
| | Members: |
| - versus - | **CASTAÑEDA, JR.,** *Chairperson* **UY,** *and* **PALANCA-ENRIQUEZ,** *JJ.* |
| **COMMISSIONER OF INTERNAL REVENUE,** Respondent. | **Promulgated:** SEP 1 2 2008 3:07 p.m. |

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# AMENDED DECISION

**UY, *J.*:**

On January 9, 2008, this Court rendered a Decision denying petitioner's claim for refund or issuance of tax credit certificate in the amount of P31,118,710.00, allegedly representing excess and unutilized creditable withholding tax for fiscal year ending June 30, 2002. Petitioner received a copy of the said Decision on January 15, 2008.

Subsequently, petitioner filed its **"Motion for Reconsideration"** and **"Supplemental Motion"** on January 30, 2008 and February 21, 2008, respectively, of the subject Decision on the following grounds:

1. The offsetting of the Minimum Corporate Income Tax (MCIT) liability against the refund claim of petitioner has no basis in law because the government and the taxpayer are not mutually creditors and debtors of each other;

2. Elementary is the principle in taxation that an assessment is not an obstacle to a claim for refund;

3. The crux of the denial of this Court of the claim for refund of petitioner in the January 9, 2008 Decision is the lack of substantiation of its claim, which can easily be refuted by the evidence submitted by petitioner; and

4. As long as the taxpayer has complied with the substantiation requirements of the law and its regulations, the former is not obligated to prove each and every item in his Income Tax Return before his claim for refund may be given due course.

Inasmuch as petitioner's **"Supplemental Motion"** praying for leave of court to present additional witness and evidence had already been granted, this Court deems it no longer necessary to discuss the same.

Being interrelated, the first, second, and fourth grounds shall be discussed jointly.

In the assailed Decision, this Court ruled that, save for the amount of P570,007.00, petitioner has failed to substantiate the existence of its prior year's excess credits in the amount of P9,201,458.00. Thus, it was resolved that the MCIT liability amounting to P9,073,806.00 had to be deducted from the claimed creditable withholding taxes of P31,118,710.00.

Petitioner argues that the prior year's credit in the amount of P9,201,458.00, which amount was applied to its MCIT liability for 2002 in the amount of P9,073,806.00, is immaterial to the case at bar and was never raised as an issue in this case. Petitioner alleges that since the prior year's credit does not form part of its claim for refund because it was applied against its MCIT liability, there is no need for petitioner to substantiate the prior year's credit of P9,201,458.00.

This Court finds petitioner's arguments misplaced.

In the case of **Commissioner of Internal Revenue vs. Nissan Motor Philippines, Inc.**[1], the Court *En Banc* ruled that there was a need for petitioner Nissan Motor Phils. Inc. to substantiate its prior year's excess credit because it formed part of its claimed income tax overpayment reflected in its final adjustment return. For easy reference:

> "By asserting that it is not required to substantiate its prior year's excess tax credits, Nissan Motor in effect admits the finding of the Court in Division that it failed to substantiate the same. It may have lost sight of the fact that its Petition for Review in C.T.A. CASE No. 6622 is a judicial claim for refund which partakes of the nature of an exemption which is strictly construed against the claimant. It is well-settled that the claimant has the burden of proof to establish the factual basis of its claim for refund and the failure to discharge said burden is fatal to its claim. Nissan Motor, being the claimant, is duty-bound to prove its entitlement to the entire amount of its claim for refund.
>
> Secondly, contrary to what Nissan Motor wants this Court to believe that there is no need to substantiate its prior year's excess credits, the Supreme Court had ruled that if the claim for refund is based on the taxpayer's final adjustment tax return, said claim should not be treated as a claim for refund of overpaid withholding taxes *per se*, thus:
>
> > The petitioner corporation is not claiming a refund of overpaid withholding taxes, *per se*. **It is asking for the recovery of** the sum of P82,751.91, **the refundable or creditable amount determined upon the petitioner corporation's filing of its final adjustment return** on or before 15 April 1982 when its tax liability for the year 1981 fell due. The distinction is essential in the resolution of this case for it spells the difference between being barred by

[1] CTA EB No. 137, October 6, 2006.

prescription and entitlement to refund. (*Emphasis supplied*)

In the above-quoted decision, the Supreme Court categorically made a distinction between a claim for refund of overpaid withholding taxes *per se* and a claim for refund of the refundable or creditable amount reflected on *the taxpayer's final adjustment return*. Nissan Motor's claim for refund is of the latter type, that is, based on the refundable amount indicated on Nissan Motor's final adjustment return for the taxable year 2000. A component of the refundable amount reflected on its final adjustment return is its prior year's excess credits of P478,645.00. The other components are Nissan Motor's Minimum Corporate Income Tax (MCIT) amounting to P3,958,694.00 and the total amount of withheld taxes for the taxable year 2000 amounting to P8,656,236.00. These components are shown on Nissan Motor's Annual Income Tax Return as follows:

| | | |
|---|---|---|
| Aggregate Income Tax Due | | P 3,958,694.00 |
| Less: Tax Credits/Payments | | |
| Prior Year's Excess Credits | 478,645.00 | |
| xxx xxx xxx | | |
| xxx xxx xxx | | |
| Creditable Tax Withheld per BIR Form No. 2307 for the Fourth Quarter | 8,656,236.00 | |
| **Total Tax Credits/Payments** | | **9,134,881.00** |
| Tax Payable/(Overpayment) | | **(P5,176,187.00)** |

It is undeniable that Nissan Motor's prior year's excess credits formed part of its *Total Tax Credits/Payments* amounting to P9,134,881.00 that was used or applied to cover its MCIT liability for the taxable year 2000 and that the *Tax Overpayment* of P5,176,187.00 resulted from its Total Tax Credits/Payments less its MCIT liability. Clearly, **its prior year's excess credit is a part of Nissan Motor's *Tax Overpayment* reflected on its Annual Income Tax Return.**

In one case, the Supreme Court had explained that 'money is fungible property' and the amount to be applied against the income tax due in the final adjustment return of petitioner may be taken from its excess credits in a prior year or from those withheld in the current year or from both. This emphasizes that a ***Tax Overpayment*** **is composed of the taxpayer's prior year's credits, current year's tax payments, creditable taxes withheld for the current year and even foreign tax credits (if applicable). It is therefore necessary to prove or substantiate each and every component of the**

> ***Total Tax Credits/Payments* reflected on Nissan Motor's final adjustment return, including its prior year's excess tax credits, because ultimately the remaining balance of the *Total Tax Credits/Payments* after deducting its *MCIT* liability becomes the *Tax Overpayment*** which is precisely the subject of Nissan Motor's claim for refund in C.T.A. CASE No. 6622.
>
> Nissan Motor failed to substantiate its prior year's excess tax credits, thus, it failed to meet the burden of proof required in order to establish the factual basis of its claim for refund insofar as its prior year's excess credits in the amount of P478,645.00 is concerned. xxx" (*Emphasis supplied*)

The present case is no different from the afore-quoted case. The subject claim in the amount of P31,118,710.00 (P40,192,516.00[2] total tax credits - P9,073,806.00 MCIT liability) actually represents petitioner's *excess tax credits* or *income tax overpayment* as shown in its final adjustment return for taxable year 2002. Clearly, petitioner's prior year's excess credits formed part of its total tax credits of P40,192,516.00, which was used to pay petitioner's MCIT liability for 2002, and that the claimed excess amount of P31,118,710.00 resulted from the total tax credits less the MCIT liability shown in petitioner's Income Tax Return. Thus, contrary to petitioner's assertion, the prior year's excess credits of P9,201,458.00 formed part of petitioner's claim for refund.

It bears stressing that the subject claim pertains to ***excess*** tax credits, *i.e.*, ***undiminished*** by any income tax liability. In this regard, petitioner must prove that, other than the claimed amount of P31,118,710.00, it had enough prior year's excess credits to cover its declared MCIT liability of

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[2] P9,201,458.00 (prior year's excess credits) + P30,991,058.00 (creditable taxes withheld).

P9,073,806.00 for taxable year 2002. A mere allegation that it has prior year's excess credits in its Income Tax Return for 2002 will not suffice.

Petitioner further avers that the deduction of the MCIT liability of P9,073,806.00 from its claim for refund is tantamount to offsetting of taxes. Such move is violative of the law and existing jurisprudence; and that by deducting the said amount, in effect, the Court is indirectly upholding an assessment of MCIT liability against petitioner, in violation of the rules laid down in the National Internal Revenue Code of 1997.

Again, this Court finds petitioner's contentions devoid of merit.

The Court is not assessing petitioner of any income tax liability. The denial of petitioner's claim for refund was based on its failure to prove its entitlement thereto. As this Court held:

> "Moreover, petitioner has failed to substantiate the existence of the prior year's excess credits in the amount of P9,201,458.00. Save for the amount of P570,007.00, records are wanting of petitioner's withholding tax certificates corresponding to the creditable taxes withheld of P9,596,867.00. It is crucial for petitioner to prove that it has enough prior year's excess credits to cover its reported fiscal year 2002 MCIT liability in the amount of P9,073,806.00; otherwise, the said MCIT liability shall have to be deducted from petitioner's claimed fiscal year 2002 creditable withholding taxes in the amount of P30,991,058.00."

Furthermore, petitioner questions this Court's finding that it failed to show that the income payments, to which the claimed excess creditable withholding taxes pertain, were declared as part of its gross income. Petitioner asserts that it presented and formally offered its duly registered journals and general ledger for the fiscal years ending June 30, 1998 until June 30, 2002[3] to prove such claim.

A re-examination of Exhibits "N", "N-1" until "N-10" showed that the same merely consisted of the pages where the stamp of registration of the books of accounts appeared. The foregoing only proved that petitioner's general journals and ledger were duly registered. The pertinent pages where petitioner's transactions were supposed to be recorded were not submitted as documentary evidence; thus, making it impossible for the Court to verify whether the income payments were actually recorded in its books and reported in its Income Tax Return.

In support of its Motion for Reconsideration, however, petitioner submitted and formally offered in evidence its entire sales journals, general ledgers, and general journals covering fiscal years 1998 to 2002[4], including its audited financial statements for fiscal years 1998 to 2002[5], journal vouchers[6], schedule of petitioner's creditable withholding tax certificates as of June 30, 1999[7], withholding tax certificates for FY 1999[8], and the Judicial Affidavit of Mr. Ronald P. Sugapong[9].

A scrutiny of the documents presented shows that petitioner declared its income payments upon which the claimed creditable taxes were withheld, but only in the amount of P30,680,575.41 out of the reported creditable taxes withheld for the year 2002 in the amount of P30,991,058.03. As shown in

[3] Exhibits "N", "N-1" until "N-10".
[4] Exhibits "V" to" Z" and "AA" to "JJ".
[5] Exhibits "Q" to "U".
[6] Exhibits "FF -1" to "FF-16", "GG-1" to "GG-8", "HH-1", "HH-2", "II-1", "II-2" ,and "JJ-1" to "JJ-3".
[7] Exhibit "KK".
[8] Exhibits "KK-1" to "KK-10".
[9] Exhibit "LL".

petitioner's Certificates of Creditable Tax Withheld at Source (BIR Form 2307)[10], for the fiscal year ending June 30, 2002, petitioner received income payments amounting to P624,644,600.88 and creditable taxes withheld therefrom amounting to P30,991,058.03, detailed as follows:

| EXH. | WITHHOLDING AGENT/PAYOR | PERIOD COVERED | INCOME PAYMENTS | TAX WITHHELD |
|---|---|---|---|---|
| *On sale, exchange or transfer of real property other than capital assets* | | | | |
| D-2 | Isagani & Ofelia Dayao | 7/1/01 to 9/30/01 | P 624,448.43 | P 18,733.45 |
| D-11 | Roberto & Janet Escueta | 7/1/01 to 9/30/01 | 699,767.53 | 20,993.03 |
| D-12 | Florencia M. Mendoza | 7/1/01 to 9/30/01 | 552,927.27 | 16,587.82 |
| D-13 | Ferdinand & Nancy Mercado | 7/1/01 to 9/30/01 | 636,363.64 | 19,090.91 |
| D-10 | Valentino R. Patron | 7/1/01 to 9/30/01 | 620,000.00 | 18,600.00 |
| D-8 | Corazon R. Briones | 10/1/01 to 12/31/01 | 656,964.13 | 19,708.92 |
| D-9 | Sophia V. Valencia | 10/1/01 to 12/31/01 | 613,800.00 | 18,414.00 |
| D-4 | Asian Micro Realty Dev't. Inc. | 1/1/02 to 3/31/02 | 3,966,816.14 | 119,004.49 |
| D-6 | Jesson C. Fabico | 1/1/02 to 3/31/02 | 1,880,808.87 | 56,424.27 |
| D-7 | Miriam C. Fabico | 1/1/02 to 3/31/02 | 1,111,704.87 | 33,351.14 |
| D-5 | Antonio B. Torrijos | 1/1/02 to 3/31/02 | 1,245,000.00 | 37,350.00 |
| D-1 | Philippine National Bank | 4/1/02 to 6/30/02 | 611,816,000.00 | 30,590,800.00 |
| | **Subtotal** | | **P 624,424,600.88** | **P 30,969,058.03** |
| *On professional fees paid to juridical persons* | | | | |
| D-3 | Luck Hock Venture Holdings | 4/1/02 to 6/30/02 | P 220,000.00 | P 22,000.00 |
| | **Subtotal** | | **P 220,000.00** | **P 22,000.00** |
| | **TOTAL** | | **P 624,644,600.88** | **P 30,991,058.03** |

Likewise, upon verification of petitioner's Amended Income Tax Return[11] and Audited Financial Statements for fiscal year 2002[12], the same reflected an amount of P562,038,237.00 representing its Sales from Real Estate. Meanwhile, its general ledger and general journal entries showed the same amount, broken down as follows:

| Date | Buyer | Reference | Unit Sold | Sales |
|---|---|---|---|---|
| 31-Jul-01 | Mariano Viñas | Sales Journal *Exh. Z* | B3 L11 | P 691,159.09 |
| 31-Jul-01 | Mariano Viñas | Sales Journal *Exh. Z* | B3 L12 | 691,159.09 |
| 31-Jul-01 | Mariano Viñas | Sales Journal *Exh. Z* | B3 L13 | 691,159.09 |
| | | | | P 2,073,477.27 |
| 31-Mar-02 | Jesson Falico | Sales Journal *Exh. Z* | B4 L19 | P 776,095.85 |

[10]Exhibits "D-1" to "D-13".
[11] Exhibit "C".
[12] Exhibit "U".

| | | | | |
|---|---|---|---|---|
| 31-Mar-02 | Jesson Falico | Sales Journal *Exh. Z* | B4 L18 | 562,844.29 |
| 31-Mar-02 | Jesson Falico | Sales Journal *Exh. Z* | B9 L3 | 541,868.73 |
| | | | | P 1,880,808.87 |
| 31-Mar-02 | Miriam Falico | Sales Journal *Exh. Z* | B4 L22 | P 555,852.43 |
| 31-Mar-02 | Miriam Falico | Sales Journal *Exh. Z* | B4 L3 | 555,852.44 |
| | | | | P 1,111,704.87 |
| 30-Apr-02 | Nick Yanga | Sales Journal *Exh. Z* | B3 L16 | P 775,881.82 |
| 30-Apr-02 | PNB | JV#2776 *Exh. JJ-1* | Mandaue Property | P 556,196,363.64 |
| | **TOTAL** | | | **P 562,038,236.47** |

From the aforementioned schedule, only the following income payments corresponding to petitioner's claim of creditable taxes in the amount of P30,680,575.41 withheld from petitioner's Sale/Exchange of Real Property were reported as part of petitioner's taxable gross income:

| EXH. | WITHHOLDING AGENT/PAYOR | PERIOD COVERED | INCOME PAYMENTS | TAX WITHHELD |
|---|---|---|---|---|
| D-6 | Jesson C. Fabico | 1/1/02 to 3/31/02 | P 1,880,808.87 | P 56,424.27 |
| D-7 | Miriam C. Fabico | 1/1/02 to 3/31/02 | 1,111,704.87 | 33,351.14 |
| D-1 | Philippine National Bank | 4/1/02 to 6/30/02 | 611,816,000.00[13] | 30,590,800.00 |
| | **TOTAL** | | **P614,808,513.74** | **P 30,680,575.41** |

As to the income payments of P9,616,087.14[14] relating to the remaining claimed creditable taxes of P288,482.62 withheld from petitioner's Sale/Exchange of Real Property, the Court cannot ascertain whether petitioner declared the same in its Income Tax Returns for 1998 to 2001, considering petitioner's failure to account for the discrepancies in its Sales figures as shown in its Income Tax Returns, Audited Financial Statements, general ledger, general journal, and sales journal, to wit:

| **Sales** | **1998** | **1999** | **2000** | **2001** |
|---|---|---|---|---|
| Per ITR | P15,578,328.00 | N/A | P23,471,933.00 | P7,974,572.00 |
| Per Audited FS | P24,617,831.00 | P20,592,521.00 | P31,390,300.00 | P7,974,572.00 |
| Per General Ledger | P24,617,831.07 | P20,717,259.44 | P31,390,300.24 | P8,607,165.73 |

[13] inclusive of 10% VAT.
[14] P624,424,600.88 less P 614,808,513.74.

| | | | | |
|---|---|---|---|---|
| Per General Journal | P20,079,951.97 | P21,025,590.90 | P31,456,908.25 | P 8,607,165.73 |
| Per Sales Journal | P 5,762,463.68 | P22,501,392.47 | P21,850,821.38 | P11,590,261.47 |

The same finding holds true with the income payments relating to the claimed creditable taxes of P22,000.00 withheld from petitioner's Professional Fees received from Luck Hock Venture Holdings. This Court cannot determine whether petitioner actually declared the corresponding income payment of P220,000.00, because of petitioner's failure to account for the discrepancies in the "Other Income" figures shown in its Income Tax Return, Audited Financial Statements, general ledger, and general journal for the fiscal year 2002, as follows:

| **Other Income** | **2002** |
|---|---|
| Per ITR | P728,587.00 |
| Per Audited FS | P792,446.00 |
| Per General Ledger | P728,586.96 |
| Per General Journal | P220,000.00 |

In this regard, out of the reported creditable taxes withheld for taxable year 2002 in the amount of P30,991,058.03, the amounts of P288,482.62 and P22,000.00 or a total of P310,482.62 should be disallowed for petitioner's failure to prove that the corresponding income payments formed part of its taxable gross income. Consequently, only the remaining amount of P30,680,575.41 duly represents petitioner's creditable withholding taxes for taxable year 2002.

Finally, as regards petitioner's unsubstantiated prior year's excess credits which were applied against petitioner's MCIT liability for the year 2002, the same should likewise be deducted from this instant claim. Records disclose that the prior year's excess credits of P9,201,458.00 came about as a result of petitioner's reported creditable taxes withheld for the years 1998, 1999, 2000, 2001 in the total amount of P9,596,867.00, less its income tax payables for the years 1999 and 2001 in the amount of P395,408.00, as shown below:

| Exhibit | Year | Income Tax Payable | CWT for the year | Excess Tax Credits |
|---|---|---|---|---|
| I-5 | 1998 | - | 5,854,434.00 | 5,854,434.00 |
| I-6 | 1999 | 327,640.00 | 1,898,103.00 | 1,570,463.00 |
| I-7 | 2000 | - | 1,274,323.00 | 1,274,323.00 |
| I-8 | 2001 | 67,768.00 | 570,007.00 | 502,239.00 |
| | | **395,408.00** | **9,596,867.00** | **9,201,459.00** |

Petitioner did not submit withholding tax certificates to prove the existence of the excess credits for fiscal years 1998 and 2000 in the respective amounts of P5,854,434.00 and P1,274,323.00. While petitioner submitted withholding tax certificates corresponding to the 1999 excess credits of P1,570,463.00[15], the same were denied admission by this Court for petitioner's failure to compare the same with the originals thereof. However, as regards the excess tax credits for fiscal year 2001 in the amount of P502,239.00, petitioner was able to present valid withholding tax certificates[16]. Therefore, out of the reported prior year's excess credits of P9,201,458.00, only the substantiated amount of P502,239.00 should be applied against petitioner's MCIT liability for fiscal year 2002 in the amount of P9,073,806.00.

In sum, petitioner has sufficiently proven its entitlement to a partial refund or issuance of a tax credit certificate, representing unutilized excess creditable withholding taxes for fiscal year 2002 in the amount of P22,109,008.41, computed as follows:

[15] Exhibits "KK-1" to "KK-10".
[16] Exhibits "D-14" to "D-33".

| | | |
|---|---|---|
| Minimum Corporate Income Tax (MCIT) Due | | P 9,073,806.00 |
| Less: | Tax Credits | |
| | Prior Year's Excess Credits | P 502,239.00 |
| | Creditable Taxes Withheld for the year 2002 | 30,680,575.41 |
| | Total Tax Credits | P 31,182,814.41 |
| **Refundable Excess Tax Credits** | | **P 22,109,008.41** |

**WHEREFORE**, premises considered, petitioner's **"Motion for Reconsideration"** is hereby **PARTIALLY GRANTED** and this Court's Decision of January 9, 2008 denying petitioner's Petition for Review is hereby **MODIFIED.** Accordingly, respondent is hereby **ORDERED to REFUND or ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner the amount of **TWENTY TWO MILLION ONE HUNDRED NINE THOUSAND EIGHT AND 41/100 PESOS (P22,109,008.41)**, representing petitioner's unutilized and excess creditable withholding taxes for fiscal year 2002.

**SO ORDERED.**

**ERLINDA P. UY**
Associate Justice

WE CONCUR:

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

**OLGA PALANCA-ENRIQUEZ**
Associate Justice

## ATTESTATION

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

**ERNESTO D. ACOSTA**
Presiding Justice