REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SECOND DIVISION

PHILIPPINE NATIONAL BANK,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 7444

Members:

CASTAÑEDA, JR., *Chairperson*
UY, *and*
PALANCA-ENRIQUEZ, *JJ.*

Promulgated:
APR 2 3 2009
4:05 p.m.

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DECISION

UY, *J.*:

This is a Petition for Review filed by petitioner Philippine National Bank seeking refund of the amount of **FORTY MILLION FIVE HUNDRED TWENTY FIVE THOUSAND SEVEN HUNDRED EIGHTY SIX AND 04/100 PESOS** (P40,525,786.04), representing unutilized excess creditable withholding taxes for taxable year 2003.

THE FACTS

Philippine National Bank (Petitioner) is a corporation duly organized and existing under the laws of the Republic of the Philippines, with principal office at the PNB Financial Center, President Diosdado Macapagal Boulevard, Pasay City.

Respondent, on the other hand, is the duly appointed Commissioner of Internal Revenue, vested with authority to carry out all the functions, duties, and responsibilities of said office, including, *inter alia*, the power to decide, approve, and grant refunds and / or tax credits of overpaid and erroneously paid or collected internal revenue taxes under the National Internal Revenue Code (NIRC) of 1997. He holds office at BIR National Office, Diliman, Quezon City.

Petitioner filed its Annual Income Tax Return[1] for taxable year 2003 on April 15, 2004, through the Bureau of Internal Revenue's Electronic Filing and Payment System (EFPS), with the following details:

Minimum Corporate Income Tax (MCIT)	P	175,720.62
Less: Tax Credits / Payments		
Prior Year's Excess Credits	P	5,106,339.00
Tax Payments for the first three quarters		-
Creditable Tax Withheld for the first three quarters		28,168,024.00
Creditable Tax Withheld for the fourth quarter		-
Subtotal	P	33,274,363.00
Tax Payable (Overpayment)	P	(33,098,642.38)

On October 25, 2004, petitioner filed its first Amended Annual Income Tax Return[2] reporting therein the amount of P40,114,328.38, representing its excess and unutilized income tax, computed as follows:

[1] Exhibit "A".
[2] Annex "D", Petition for Review, Docket, pp. 34-39.

Minimum Corporate Income Tax (MCIT)	P	175,720.62
Less: Tax Credits / Payments		
Prior Year's Excess Credits	P	5,106,339.00
Tax Payments for the first three quarters		-
Creditable Tax Withheld for the first three quarters		35,183,710.00
Creditable Tax Withheld for the fourth quarter		-
Subtotal	P	40,290,049.00
Tax Payable (Overpayment)	P	(40,114,328.38)

Subsequently, a second Amended Annual Income Tax Return[3] was filed on November 8, 2004, reporting the following amounts:

Minimum Corporate Income Tax (MCIT)	P	175,720.62
Less: Tax Credits / Payments		
Prior Year's Excess Credits	P	5,106,339.00
Tax Payments for the first three quarters		-
Creditable Tax Withheld for the first three quarters		15,258,457.00
Creditable Tax Withheld for the fourth quarter		19,976,253.00
Subtotal	P	40,341,049.00
Tax Payable (Overpayment)	P	(40,165,328.38)

On February 17, 2005, petitioner filed its administrative claim for refund.[4] However, on March 29, 2005, petitioner again filed its third Amended Annual Income Tax Return[5], showing the following amounts:

Minimum Corporate Income Tax (MCIT)	P	175,720.62
Less: Tax Credits / Payments		
Prior Year's Excess Credits	P	5,106,339.00
Tax Payments for the first three quarters		-
Creditable Tax Withheld for the first three quarters		20,522,533.60
Creditable Tax Withheld for the fourth quarter		20,003,252.44
Subtotal	P	45,632,125.04
Tax Payable (Overpayment)	P	(45,456,404.42)

On the same date, petitioner filed its amended administrative claim for refund or issuance of tax credit certificate[6]; thus, superseding its earlier

[3] Annex "E", Petition for Review, Docket, pp. 40-46.
[4] Exhibit "K".
[5] Annex "F", Petition for Review, Docket, pp. 47-52.
[6] Annex "I", Petition for Review, Docket, p. 65.

administrative claim for refund of its alleged unutilized creditable withholding taxes for taxable year 2003 in the amount of P40,525,786.04[7], claiming that it had carried over the amount of P4,930,618.38[8] as "prior year's excess credits".

As respondent has not acted on petitioner's claim, the latter filed the instant Petition for Review on April 12, 2006 for the refund or issuance of tax credit certificate representing petitioner's excess and unutilized creditable withholding taxes for calendar year 2003, pursuant to Sections 76 and 229 of the NIRC of 1997.

A responsive pleading by way of an Answer[9] was filed by respondent on June 5, 2006, averring that:

> "4. Petitioner's alleged claim for refund of creditable withholding tax is subject to administrative routinary investigation/examination by the Bureau;
>
> 5. In an action for refund, the burden of proof is on the taxpayer to establish its right to refund and failure to sustain the burden is fatal to the claim for refund/credit;
>
> 6. Petitioner must show that it has complied with the provisions of Sections 204 (C) and 229 of the Tax Code on the prescriptive period for claiming tax refund/credit;
>
> 7. Claims for refund are strictly construed against the claimant for the same partake the nature of exemption from taxation and as such they are looked upon with disfavor."

During trial, petitioner presented documentary and testimonial evidence in support of its claim. Respondent's counsel, on the other hand, failed to appear during the scheduled hearing for the presentation of respondent's

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[7] P45,456,404.42 - P4,930,618.38 = P40,525,786.04.
[8] Prior Year's Excess Credits of P5,106,339.00, reduced by the MCIT due of P175,720.62.
[9] Docket, pp. 78 – 81.

evidence held on June 2, 2008[10] and respondent was deemed to have waived the right to do so. The Court then directed the parties to file their respective Memorandum in the Resolution dated June 13, 2009.[11] Petitioner filed its Memorandum on August 26, 2008[12] while respondent failed to do so within the given period.

In the Resolution dated September 2, 2008, in a Resolution[13], this case was deemed submitted for decision sans the Memorandum of respondent.

Hence, this decision.

THE ISSUES

The issues jointly stipulated by the parties are as follows:

"1. Whether or not petitioner is entitled to a refund/tax credit in the amount of P40,525,786.04 as alleged unutilized creditable withholding taxes for calendar year ('CY') 2003.

2. Whether or not petitioner's withholding tax credits for CY 2003 in the amount of P40,525,786.04 are duly substantiated by documentary evidence.

3. Whether or not the income from which the subject creditable income taxes were withheld were reported as part of petitioner's revenues in its Annual Income Tax Return for CY 2003.

4. Whether or not petitioner carried over and applied its excess creditable withholding taxes for CY 2003 against its income tax liability in the succeeding taxable year/s.

5. Whether or not petitioner filed its administrative claim for refund/tax credit within the two-year period prescribed under Section 204 (C) of the Tax Code.

[10] Minutes of June 2, 2008 hearing, Docket, p. 365.
[11] Docket, p. 367.
[12] Docket, pp. 379 – 402.
[13] Docket, p. 404.

6. Whether or not petitioner filed its judicial claim for refund/tax credit within the two-year period as provided under Section 229 of the Tax Code."[14]

THE COURT'S RULING

Section 76 of the NIRC of 1997 provides as follows:

> "**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."

Based on the foregoing provision of law, a corporate taxpayer who is entitled to a tax credit or refund of the excess estimated quarterly income taxes paid has two options: (1) to carry-over the excess credit or; (2) to apply for the issuance of a tax credit certificate or to claim a cash refund. However, the provision specifically provides that once the option to carry-over the excess credit is made, the same shall be irrevocable for that taxable period.

[14] Issues, Joint Stipulation of Facts and Issues, Docket, pp. 116-117.

In the instant case, it appears that petitioner filed its Annual Income Tax Return for taxable year 2003 on April 15, 2004[15] and subsequently amended the same on October 25, 2004[16], November 8, 2004[17], and March 29, 2005[18], reflecting the following amounts:

	Exhibit A 04/15/04 Original	**Exhibit B 10/25/04 1st Amended**	**Exhibit C 11/08/04 2nd Amended**
Income Tax Due (32%)	-	-	-
Minimum Corporate Income Tax (MCIT)	175,720.62	175,720.62	175,720.62
Less:Tax Credits/Payments			
Prior Year's Excess Credits	5,106,339.00	5,106,339.00	5,106,339.00
Tax Payments for the First Three Quarters	-	-	-
Creditable Tax Withheld for the First Three Quarters	**28,168,024.00**	**35,183,710.00**	**15,258,457.00**
Creditable Tax Withheld for the Fourth Quarter	-	-	**19,976,253.00**
Total Tax Credits/Payments	33,274,363.00	40,290,049.00	40,341,049.00
Tax Payable/(Overpayment)	(33,098,642.38)	(40,114,328.38)	(40,165,328.38)

	Exhibit E 03/29/05 03:26pm 3rd Amended (first version)	**Exhibit F 03/29/05 04:50pm 3rd Amended (second version)**	**Exhibit D 03/29/05 05:25pm 3rd Amended (final version)**
Income Tax Due (32%)	-	-	-
Minimum Corporate Income Tax (MCIT)	175,720.62	175,720.62	175,720.62
Less:Tax Credits/Payments			
Prior Year's Excess Credits	5,106,339.00	5,106,339.00	5,106,339.00
Tax Payments for the First Three Quarters	-	-	-
Creditable Tax Withheld for the First Three Quarters	**20,522,533.60**	**20,522,533.60**	**20,522,533.60**
Creditable Tax Withheld for the Fourth Quarter	**20,003,252.44**	**20,003,252.44**	**20,003,252.44**
Total Tax Credits/Payments	45,632,125.04	**175,720.62**	45,632,125.04
Tax Payable/(Overpayment)	(45,456,404.42)	-	(45,456,404.42)

An examination of the records show that petitioner opted to mark the box *"To be issued a Tax Credit Certificate"* on its *original*[19],

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[15] Exhibit "A".
[16] Exhibit "B".
[17] Exhibit "C".
[18] Exhibits "D", "E", and "F".
[19] Exhibits "A" and "A-1".

first amended[20], second amended[21], third amended (first version)[22], and third amended (final version)[23] Annual Income Tax Returns for taxable year 2003. On its third amended (second version)[24] Annual Income Tax Return, however, no choice was made by petitioner allegedly due to a systems generated error in the EFPS which reflected a zero amount of Tax Payable / (Overpayment) under Lines 28 and 30 of the Return.[25] Nonetheless, despite the failure of petitioner to make an appropriate marking on its third amended (second version) Annual Income Tax Return filed on March 29, 2005, its consistent markings of the choice "*To be issued a Tax Credit Certificate*" on all its previous Returns, as well as its subsequent third amended (final version) Annual Income Tax Return, demonstrates petitioner's firm demonstration of its choice to request a tax refund.

With respect to petitioner's third amended (final version) Annual Income Tax Return for taxable year 2003,[26] it appears that petitioner has a total tax credit of P45,632,125.04, consisting of the prior years excess credits in the amount of P5,106,339.00 and creditable taxes withheld during taxable year 2003 in the amount of P40,525,786.04. Moreover, petitioner's Returns also show that the 2003 Minimum Corporate Income Tax (MCIT) due in the amount of P175,720.62 was paid by using a portion of its prior year's excess credits of P5,106,339.00; thus, leaving the prior year's excess credits in the

[20] Exhibits "B" and "B-3".
[21] Exhibits "C" and "C-3".
[22] Exhibits "E" and "E-1".
[23] Exhibits "D" and "D-5".
[24] Exhibit "F".
[25] Exhibit "N", page 2.
[26] Exhibit "D".

reduced amount of P4,930,618.38 (P5,106,339.00 less P175,720.62), as shown below:

Minimum Corporate Income Tax Due	P	175,720.62
Less: Prior Year's Excess Credits		5,106,339.00
Balance of Prior Year's Excess Credits	P	4,930,618.38
Add: Creditable Taxes Withheld – 2003		**40,525,786.04**
Excess Creditable Taxes Withheld as of Dec. 31, 2003	P	45,456,404.42

Clearly from the documentary evidence submitted by petitioner, only the prior year's excess credits of P4,930,618.38[27] was carried over to the subsequent taxable year 2004[28]. And pursuant to Section 76 of the NIRC of 1997, the excess creditable taxes withheld in taxable year 2003 in the amount of P40,525,786.04 appears to be refundable.

However, in order to be entitled to the refund sought in this case, petitioner must satisfactorily comply with the following requisites:

1. That the claim for refund was filed within the two-year prescriptive period as 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 were included in the return of the recipient.[29]

In the first requirement, the law provides that the reckoning of the two-year prescriptive period for the filing of a claim for refund/tax credit of excess income tax paid/withheld commences from the date of filing of petitioner's final

[27] P4,930,618.00 in the Annual Income Tax Return.
[28] Exhibits "G-1", "H-1", and "I-1".
[29] Section 2.58, Revenue Regulations No. 2-98, as amended; Citibank N.A. vs. Court of Appeals and CIR, 280 SCRA 459.

adjustment return[30]. In the instant case, the claimed excess creditable withholding taxes pertain to taxable year 2003 for which petitioner originally filed its Income Tax Return on April 15, 2004[31]. Counting from this date, petitioner had until April 17, 2006[32] within which to file both its administrative and judicial claims for refund or tax credit certificate. Petitioner's original administrative claim for refund was filed on February 17, 2005[33] and subsequently amended on March 29, 2005[34]. Its Petition for Review was filed on April 12, 2006. Clearly, both were filed well within the two-year prescriptive period.

As to the second and third requisites, the Court-commissioned Independent Certified Public Accountant (CPA), Manabat Delgado Amper & Co. (formerly C.L. Manabat & Co.), through its Partner, Atty. Fredieric B. Landicho, presented the original Report dated April 20, 2007[35] and a Supplemental Report dated July 4, 2007[36]. In its Supplemental Report, the Independent CPA summarized its findings as follows:[37]

a. Creditable Withholding Taxes Supported with Original CWTs, Deeds of Absolute Sale, Original / Certified True Copy of Transaction Tickets and / or Input Sheets With income reported in 2003 *(Exhibit "SS")*	P17,124,004.91
b. Creditable Withholding Taxes Supported with Original CWTs, Deeds of Absolute Sale, Photocopy Transaction Tickets and / or Input Sheets With income reported in 2003 *(Exhibit "TT")*	5,537,463.01

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[30] ACCRA Investments Corporation vs. Court of Appeals, 204 SCRA 957.
[31] Exhibit "A".
[32] April 15, 2006 fell on a Saturday.
[33] Exhibit "K".
[34] Exhibit "L".
[35] Exhibit "O".
[36] Exhibit "MM".
[37] Exhibit "MM" , pages 4 and 5.

c. Creditable Withholding Taxes Supported with Original CWTs, Deeds of Absolute Sale, Original / Certified True Copy of Transaction Tickets and / or Input Sheets With No Income Earned or Loss Recognized *(Exhibit "UU")*	12,445,360.78
d. Creditable Withholding Taxes Supported with Original CWTs, Deeds of Absolute Sale, Original / Certified True Copy of Transaction Tickets and / or Input Sheets With Income Reported outside of the year 2003 *(Exhibit "VV")*	4,549,302.34
e. Creditable Withholding Taxes Supported with Original CWT dated other than year 2003, Deed of Absolute Sale executed other than year 2003 With Income Reported in 2003 *(Exhibit "WW")*	21,060.00
f. Creditable Withholding Taxes Supported with Original CWTs and Deeds of Absolute Sale, Transaction Tickets or Input Sheets not yet provided *(Exhibit "XX")*	262,695.00
g. Creditable Withholding Taxes Original CWT, Deed of Absolute Sale and Transaction Ticket or Input Sheet not yet provided *(Exhibit "YY")*	585,900.00
Total Creditable Withholding Taxes	**P40,525,786.04**

Upon careful scrutiny of the Reports and petitioner's supporting documents, the Court finds that the creditable withholding taxes in the amount of P22,661,467.92 (under items "a" and "b" of the Report), which was found by the Independent CPA to be supported with original and appropriate documents showing income reported in 2003, should be reduced by **P12,079.33**, representing creditable withholding taxes; considering that the same were not properly supported by Certificates of Creditable Tax Withheld at Source (CWTs). The amount of P12,079.33 is detailed as follows:

	Exhibit	Withholding Agent	Claimed CWT
1.)	EE-1.4	*Supported with Original CWT dated other than year 2003* STAR J MANAGEMENT CORP	P 150.00
2.)	EE-1.68	*Unreadable CWT and transaction ticket cannot be traced* PNB INVESTMENTS LIMITED	11,929.33
	Total		**P 12,079.33**

The creditable withholding taxes in the amount of P12,445,360.78 described as "supported with original CWTs and Deeds of Absolute Sale, original/certified true copy of transaction tickets and/or input sheets, with no income earned or loss recognized" (under item "c" of the Report) represents petitioner's valid claim.

Pursuant to Section 32(3) of the NIRC of 1997, as far as dealings in property is concerned, the gross income for income tax purposes only refers to the amount of gain(s) derived from the dealings in property (*i.e.*, gross selling price minus cost basis). Since the selling prices were equal to the book values of the properties sold, no gain or loss is to be recognized from the transactions. However, out of the P12,445,360.78 creditable withholding taxes classified by the Independent CPA under item "c" of the Report, the amount of P900,000.00 allegedly withheld by Isetann Department Store, Inc.[38] shall be disallowed for not being supported by CWTs.

Likewise, petitioner's claimed creditable withholding taxes in the amount of P4,549,302.34 (under item "d" of the Report) which was duly supported by Certificates of Creditable Tax Withheld at Source and the related income of which was verified to have been reported outside of taxable year 2003 should be reduced by P180,000.00, representing creditable taxes

[38] Exhibit "UU", Item No. 31.

withheld in 2002 by Cagayan De Oro Bible Church[39] and included in petitioner's taxable year 2002 claim for refund.[40]

Moreover, the claimed creditable withholding taxes in the amount of P21,060.00 (under item "e" of the Report) supported by Certificate of Creditable Tax Withheld at Source and Deed of Absolute Sale which were dated and executed in taxable year 2004 should be disallowed. The claimed creditable withholding taxes in the amount of P848,595.00[41] (under items "f" and "g" of the Report), the actual withholding thereof and / or the related income of which was not verified to have been reported as part of petitioner's taxable income due to the non-submission of original CWT, Deed of Absolute Sale, transaction tickets or input sheets, shall also be disallowed.

In sum, out of the total claimed creditable withholding taxes of P40,525,786.04, only the amount of P38,564,051.71 was duly supported by CWTs upon which the related income formed part of petitioner's taxable income in taxable year 2003 or prior years. The amount of P38,564,051.71 is computed as follows:

Amount of Claimed Creditable Withholding Taxes		P40,525,786.04
Less: Disallowances		
a. Not properly supported with CWTs	P 12,079.33	
b. Without CWTs	900,000.00	
c. Withheld in 2002 and included in petitioner's 2002 claim for refund	180,000.00	
c. Supported with Original CWT dated other than year 2003, Deed of Absolute Sale executed other than year 2003	21,060.00	
e. Supported with Original CWTs and Deeds of Absolute Sale but without Transaction Tickets or Input Sheets	848,595.00	1,961,734.33
Substantiated Creditable Withholding Taxes		**P38,564,051.71**

[39] Exhibit "HH-1.5
[40] Exhibit "O", p. 7.
[41] 262,695.00 + 585,900.00 = 848,595.00.

In order to prove that no amount of the subject claim was utilized to pay for its 2003 MCIT liability of P175,720.62, petitioner presented various Certificates of Creditable Tax Withheld at Source for taxable year 1999 which were summarized in Exhibit "ZZ". Although the certificates showed creditable withholding taxes totaling P1,275,661.75, the Court cannot ascertain whether or not the said documents actually represent petitioner's unutilized 1999 excess creditable withholding taxes as of December 31, 2002.

Records show that the Prior Year's Excess Credits of P5,106,339.00 reflected in petitioner's 2003 Income Tax Return originated from the total tax credits/payments of P282,083,824.00 reported in its 1999 Income Tax Return[42]. Thus, petitioner should have presented the certificates/quarterly tax payments supporting the entire amount of P282,083,824.00 in order for the Court to identify with certainty that petitioner indeed had excess tax credits of P13,266,584.00 as of December 31, 1999. Moreover, petitioner should have shown which of the certificates supporting the amount of P13,266,584.00 were credited/applied in taxable years 2000 and 2001 in order for the Court to verify that the certificates used by petitioner to pay off its 2003 MCIT liability of P175,720.62 were never utilized in the said years.

Considering petitioner's failure to prove that it had sufficient prior year's excess credits against which the 2003 MCIT liability of P175,720.62 may be offset or credited, the same shall be deducted from its substantiated claim of

[42] Exhibit "AAA".

P38,564,051.71. Hence, petitioner shall be entitled to the refund or issuance of tax credit certificate only in the reduced amount of P38,388,331.09, computed as follows:

Minimum Corporate Income Tax Due	P	175,720.62
Less: Substantiated Creditable Taxes Withheld		38,564,051.71
Refundable Excess Creditable Taxes Withheld	**P**	**38,388,331.09**

WHEREFORE, this instant Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, respondent is hereby **ORDERED** to **REFUND** or to **ISSUE A TAX CREDIT CERTIFICATE** in the reduced amount of **THIRTY EIGHT MILLION THREE HUNDRED EIGHTY EIGHT THOUSAND THREE HUNDRED THIRTY ONE AND 09/100 PESOS (P38,388,331.09)**, representing petitioner's excess creditable withholding taxes for taxable year 2003.

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.
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