REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

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SYSTRA PHILIPPINES, INC., Petitioner,	**C.T.A. CASE NO. 7580**
	Members:
- versus -	**ACOSTA,** *Chairperson* **BAUTISTA,** and **CASANOVA,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	**Promulgated:** MAY 28 2009; 3:34pm

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DECISION

BAUTISTA, *J.*:

This Petition for Review involves a claim for refund of or issuance of tax credit certificate (TCC) for petitioner's alleged excess and unutilized creditable withholding taxes for calendar years 2004 and 2005 in the total amount of P1,249,528.00.

Systra Philippines, Inc. (Petitioner) is a domestic corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with principal office address at Unit 2204-D, 22nd Floor, West Tower, Philippine Stock Exchange Centre, Exchange Road, Ortigas Center, Pasig City.[1] It is registered with the Bureau of Internal Revenue (BIR) under Tax Identification Number (TIN) 004-665-254-000.[2]

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[1] Par. 1, Admitted Facts, Joint Stipulation of Facts and Issues (JSFI), *Rollo,* p. 64.
[2] Annex "B", Petition for Review.

It was incorporated with the primary purpose of engaging in consultancy and management services for firms and entities engaged in the field of railways, train and mass transit systems and other areas in transportation and communications; and to provide planning and development services, systems/project studies, construction supervision and project management, modernization and rehabilitation of networks, training of technical staff and other related services.[3]

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 *inter alia*, the power to decide, approve, and grant refunds and/or tax credits of overpaid and erroneously paid or collected internal revenue taxes. He presently holds office at the 5th Floor, BIR National Office Building, BIR Road, Diliman, Quezon City.

On March 28, 2005, petitioner filed with the BIR its Annual Income Tax Return for calendar year 2004.[4] On the face of such Return, petitioner indicated its option to claim a TCC for its alleged excess and unutilized creditable withholding taxes for calendar year 2004 in the amount of P1,074,792.00.[5]

On July 19, 2005, petitioner filed with the BIR Revenue District Office (RDO) No. 43-Pasig City, an administrative claim for the issuance of TCC for its excess and unutilized creditable withholding taxes for calendar year 2004 in the amount of P1,074,792.00.[6]

On April 7, 2006, petitioner filed with the BIR its Annual Income Tax Return for calendar year 2005. On the face of said Return, petitioner signified its choice to claim a TCC for its purported excess and unutilized creditable withholding taxes for calendar year 2005 in the amount of P174,736.00.[7]

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[3] Annex "A", Petition for Review.
[4] Exhibit "A".
[5] Exhibit "A-5".
[6] Exhibit "D".
[7] Exhibits "B" and "B-6".

On February 2, 2007, petitioner filed with the BIR RDO No. 43-Pasig City, an administrative claim for the issuance of TCC for its excess and unutilized creditable withholding taxes for calendar year 2005 in the amount of P174,736.00.[8]

Pursuant to the Letter of Authority No. 2001-0004927 dated April 30, 2007 issued by the BIR, Revenue Officers Gelina Cacal and Clarissa Floreza were authorized to verify petitioner's claim for refund of excess creditable withholding taxes for calendar year 2005 based on petitioner's actual operations and documentary evidence.[9]

On March 26, 2007, the instant Petition for Review was filed. Up to such date, respondent has neither approved nor denied petitioner's administrative claims for the issuance of TCC for excess and unutilized creditable withholding taxes of petitioner for calendar years 2004 and 2005 in the amounts of P1,074,792.00 and P174,736.00, respectively.

In his Answer[10] filed on May 25, 2007, respondent alleged the following Special and Affirmative Defenses:

> "5. Claims for refund/tax credit certificate are strictly construed against the taxpayer as the same partakes the nature of a tax exemption;
>
> 6. The taxpayer has the burden to show that the taxes were erroneously or illegally paid. Failure on the part of the Petitioner to prove the same is fatal to its cause of action.
>
> 7. In the instant case, the Petitioner failed to present proof that the creditable withholding tax which it was claiming as tax credit remained unutilized;
>
> 8. The Petitioner should prove its legal basis for claiming the amount being refunded."

After the approval of the parties' Joint Stipulation of Facts and Issues via this Court's Resolution dated August 14, 2007, trial on the merits ensued.

At the hearing held on July 15, 2008, counsel for petitioner moved to consider respondent to have waived his right to present evidence, for failure to appear during three

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[8] Par. 9, JSFI, *Rollo*, p. 67; Exhibit "E-1".
[9] Par. 10, JSFI, *Rollo*, p. 67.
[10] *Rollo*, pp. 41 to 42.

scheduled hearings of the case. The said motion was granted in a Resolution dated July 17, 2008. The parties were likewise given a period of thirty (30) days from receipt of said Resolution within which to file their respective Memorandum.

Upon motion, petitioner was granted an extension to file its Memorandum until September 13, 2008.

On September 12, 2008, petitioner again filed another motion praying for additional time to file its Memorandum. Such motion was likewise granted, and the Court gave petitioner a final and non-extendible period of fifteen (15) days from September 13, 2008 or until September 28, 2008, by virtue of an Order dated September 16, 2008.

On October 7, 2008, the case was considered submitted for decision after petitioner submitted its Memorandum on September 29, 2008, without respondent's Memorandum having been filed.

The stipulated issues[11] to be resolved by this Court are as follows:

"1. Whether or not petitioner's withholding tax credits of P2,013,760.00 and P1,504,577.00 for CYs 2004 and 2005, respectively, are duly substantiated by documentary evidence;

2. Whether or not the income from which the subject creditable taxes were withheld were reported as part of petitioner's revenues in its Annual Income Tax Returns for CYs 2004 and 2005;

3. Whether or not petitioner's excess creditable withholding taxes for CYs 2004 and 2005 were carried over and applied against petitioner's income tax liability for the succeeding taxable period/s;

4. Whether or not petitioner had excess and unutilized creditable withholding taxes for CY 2004; and

5. Whether or not petitioner is entitled to the refund or issuance of a TCC in the total amount of P1,249,528.00, representing petitioner's excess and unutilized creditable income taxes withheld for CYs 2004 and 2005."

[11] Issues, JSFI, *Rollo,* pp. 67 to 68.

The foregoing issues can be summarized into a single issue, *viz.,* "whether or not petitioner is entitled to the issuance of tax credit certificate for its alleged excess and unutilized creditable withholding taxes for calendar years 2004 and 2005."

The Petition lacks merit.

In the case of **Banco Filipino Savings and Mortgage Bank vs. Court of Appeals, *et al.***[12], the Supreme Court ruled that there are three conditions for the grant of a claim for refund of creditable withholding tax, to wit: (1) the claim is filed with the Commissioner of Internal Revenue within the two-year period from the date of payment of the tax;[13] (2) it is shown on the return of the recipient that the income payment received was declared as part of the gross income;[14] and, (3) the fact of withholding is established by a copy of a statement duly issued by the payor to the payee showing the amount paid and the amount of the tax withheld therefrom.

The first condition is pursuant to Sections 204(C) and 229 of the National Internal Revenue Code of 1997, which state:

> "**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." *(Emphasis supplied)*
>
> "**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

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[12] G.R. No. 155682, March 27, 2007.
[13] Jose C. Vitug and Ernesto D. Acosta, Tax Law and Jurisprudence, 329 (2006), citing *Gibb v. Collector,* 107 Phil. 230 (1960).
[14] *Calamba Steel Center, Inc. v. Commissioner on Internal Revenue,* G.R. No. 151857, April 28, 2005, 457 SCRA 482.

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)*

While the second and third conditions are anchored on Section 2.58.3(B) of Revenue Regulations No. 2-98[15], which provides:

"SECTION 2.58.3. Claim for Tax Credit or Refund

xxx xxx xxx

(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)*

Petitioner satisfied the first and third requirements.

Records show that petitioner filed two applications for the issuance of tax credit certificate of excess creditable withholding taxes for taxable years 2004 and 2005 on July 19, 2005 and February 2, 2007, respectively, with BIR Revenue District Office No. 43-Pasig City.[16] Petitioner filed its Annual Income Tax Return for calendar year 2004 on March 28, 2005 and for calendar year 2005 on April 7, 2006. Clearly, petitioner complied with the requisite that the claim must be filed with the Commissioner of Internal Revenue within the two-year period from the date of payment of the tax.

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[15] SUBJECT: Implementing Republic Act No. 8424, *"An Act Amending The National Internal Revenue Code, as Amended"* Relative to the Withholding on Income Subject to the Expanded Withholding Tax and Final Withholding Tax, Withholding on Income Tax on Compensation, Withholding of Creditable Value-Added Tax ad Other Percentage Taxes.

[16] Exhibits "D", "D-1", "E", and "E-1".

Furthermore, the fact of withholding was established by the submission of copies of withholding tax statements[17] (BIR Form No. 2307) issued by the payor to petitioner showing the amount paid and the amount of the tax withheld therefrom. A summary of such statements is as follows:

Exhibit	Quarter and Year	Amount of income	Tax Withheld
"F"	1st Quarter 2004	P 3,299,999.99	P 495,000.00
"G"	1st Quarter 2004	61,387.73	9,208.16
"H"	2nd Quarter 2004	3,299,999.99	495,000.00
"I"	2nd Quarter 2004	81,716.07	12,257.41
"J"	3rd Quarter 2004	3,299,999.99	495,000.00
"K"	3rd Quarter 2004	81,965.00	12,294.75
"L"	4th Quarter 2004	3,299,999.99	495,000.00
"M"	1st Quarter 2005	194,145.13	29,121.77
"N"	1st Quarter 2005	3,018,181.81	452,727.26
"O"	2nd Quarter 2005	2,472,727.27	370,909.10
"P"	3rd Quarter 2005	2,690,909.08	403,636.36
"Q"	4th Quarter 2005	1,654,545.44	248,181.82

Anent the second condition that there must be a showing on the return of the recipient that the income payment received was declared as part of the gross income, petitioner failed to convince this Court that it has complied thereto.

In order to prove that petitioner reported the income from which the subject creditable taxes were withheld as part of its gross income, it presented and offered (1) the Schedule of Creditable Withholding Tax Certificates for calendar years 2004 and 2005 (per Payee)[18], (2) the Summary of Creditable Withholding Tax Per Certificate versus Per Books[19], (3) the Schedule of Income Per Withholding Tax Certificate versus Per Income Tax Return[20], and (4) the Sworn Statement[21] of Ms. Kirsten Colleen Carvajal, as Deputy Branch Manager of petitioner.

The Court is not persuaded that these documents proved that petitioner declared as part of its gross income for calendar years 2004 and 2005 the subject income payments.

[17] Exhibits "F" to "Q".
[18] Exhibit "R".
[19] Exhibit "S".
[20] Exhibit "T".
[21] Exhibit "U", on pages 5 to 6, 9 to 10.

The Court cannot also rely on the uncorroborated testimony of Ms. Carvajal that the said income payments were declared as part of petitioner's gross income for being self-serving and unfounded.

Moreover, as it appears from the said pieces of evidence and as admitted by petitioner, there are variances, *inter alia*, between the income per withholding tax certificate and income accrued per books. To explain these variances, a portion of the testimony of Ms. Carvajal is quoted as follows:

> "A: The schedules marked as **Exhibits 'S' and 'T'** show the amounts of income payment reported in the Company's books of accounts and income tax returns for CYs 2004 and 2005 *vis-à-vis* the amounts of income stated in the Certificates of Creditable Tax Withheld at Source issued by our income payors for CYs 2004 and 2005.
>
> The schedules also show the amounts of creditable withholding taxes reported in the Company's books of accounts for CYs 2004 and 2005 *vis-à-vis* the amounts of creditable withholding taxes stated in the income tax returns and Certificates of Creditable Tax Withheld at Source issued by our income payors for CYs 2004 and 2005.
>
> The amounts of income and creditable withholding taxes reported in the Company's books of accounts tallies with the amounts of income and creditable withholding taxes reported in the Certificates of Creditable Tax Withheld at Source for CYs 2004 and 2005, subject to minimal net variances due to rounding off.
>
> There are variances in the amounts of income and creditable withholding taxes reported in the Company's books of accounts and Certificates of Creditable Tax Withheld at Source for CYs 2004 and 2005, as shown in the schedules marked as **Exhibit 'S' and 'T'. These variances are primarily due to timing difference.**
>
> In sum, there was a net variance of P394.44 between the income reported in SPI's books of accounts/income tax returns and the creditable withholding tax certificates for CYs 2004 and 2005. There was also a net variance of P78.59 between the amount of creditable withholding taxes reported in SPI's books of accounts and the creditable withholding tax certificates for CYs 2004 and 2005. The net variances were due to rounding off.[22]" *(Emphasis supplied)*

Petitioner however failed to explain and to establish how and why the "timing difference" arose and to which does it refer, especially since the variances bore significant

[22] Exhibit "U", page 10.

amounts in 2004, particularly, for the months of February, March, May, July, August, and September; and in 2005, for the months of January and February.[23]

As cases filed before this Court are litigated *de novo*, party-litigants should prove every minute aspect of their cases.[24] Such being the case, this Court has grave doubts as to the veracity of petitioner's assertion that the income payment received by petitioner, which was subjected to withholding tax, was declared as part of its gross income for calendar years 2004 and 2005.

Tax refunds are in the nature of tax exemptions. As such they are regarded as in derogation of sovereign authority and to be construed *strictissimi juris* against the person or entity claiming the exemption.[25] Thus, tax exemptions claimed by persons cannot be granted if their entitlement thereto remains unproven and unsubstantiated.[26]

In summary, since petitioner failed to show compliance with the second condition that there must be a showing on the return of the recipient that the income payment received was declared as part of the gross income, petitioner's claim for issuance of tax credit certificate cannot be granted.

WHEREFORE, premises considered, the instant Petition for Review is hereby **DENIED** due to insufficiency of evidence.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

[23] Exhibit "T".
[24] *Dizon vs. Court of Tax Appeals, et al.,* G.R. No. 140944, April 30, 2008; *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue,* G.R. No. 145526, March 16, 2007; and *Commissioner of Internal Revenue vs. Manila Mining Corporation,* G.R. No. 153204, August 31, 2005.
[25] *Commissioner of Internal Revenue vs. S.C. Johnson and Son, Inc., et al.,* G.R. No. 127105, June 25, 1999.
[26] *Afisco Insurance Corporation, et al. vs. Court of Appeals, et al.,* G.R. No. 112675, January 25, 1999.

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

CAESAR A. CASANOVA
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, 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.

ERNESTO D. ACOSTA
Presiding Justice
Chairperson, First Division