REPUBLIC OF THE PHILIPPINES
Court Of Tax Appeals
QUEZON CITY

SECOND DIVISION

PHILIPPINE BANK OF COMMUNICATIONS, *Petitioner,*	**C.T.A. CASE NO. 7435**
	Members:
- versus -	CASTAÑEDA, JR., Chairperson UY, and PALANCA-ENRIQUEZ, JJ.
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	**Promulgated:** AUG 10 2009 10:45 a.m.

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DECISION

PALANCA-ENRIQUEZ, *J.*:

Pursuant to *Section 76 of the National Internal Revenue Code (hereafter "NIRC") of 1997, as amended,* a taxable corporation with excess quarterly income tax payments, as shown on its final adjustment return, may apply for either a tax refund, which may be issued in the form of cash or a tax credit certificate; or a tax credit which shall be carried over the next year or quarter. 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

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be considered irrevocable for that taxable period and no application for cash refund or issuance of a tax credit certificate shall be allowed therefor.

THE CASE

This is a Petition for Review filed by Philippine Bank of Communications (herewith "petitioner") praying for the refund or issuance of a tax credit certificate in the amount of P17,578,318.00, representing petitioner's unutilized excess creditable withholding taxes for taxable year 2003.

THE PARTIES

Petitioner Philippine Bank of Communications is a commercial bank duly organized under Philippine laws, with principal office at PBCOM Tower, 6795 Ayala Avenue, corner Herrera Street, Makati City.

On the other hand, respondent is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR), vested with authority to exercise the functions of said office, including, *inter alia*, the power to refund unutilized excess creditable withholding taxes. He holds office at the BIR National Office Building, Diliman, Quezon City.

THE FACTS

In their "Joint Stipulation of Facts and Issues", the parties agreed on the following facts:

> "1. PBCOM is a commercial bank duly organized under Philippine laws with principal office at PBCOM Tower, 6795 Ayala Avenue corner Herrera Street, Makati City;
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> 2. Respondent Commissioner of Internal Revenue is the head of the Bureau of Internal Revenue holding office at the BIR National Office;
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> 3. On 7 April 2006, PBCOM filed a claim for refund with the Bureau of Internal Revenue;
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> 4. On 15 April 2004, PBCOM filed its Corporate Annual Income Tax Return for calendar year ended 31 December 2003;
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> 5. PBCOM filed the Petition for Review on 11 April 2006; and
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> 6. Based on its Corporate Annual Income Tax Return for calendar year ended 31 December 2003, PBCOM incurred a net loss of Php1,388,875,427 for the calendar year ended 31 December 2003."

On April 7, 2006, petitioner filed its administrative claim for refund or issuance of a tax credit certificate with the BIR *(Exhibit "B")*. However, for failure of respondent to act on such claim, petitioner filed the instant Petition for Review on April 11, 2006.

On August 16, 2006, respondent filed his Answer alleging the following:

"1. He admits the allegations in the first and second paragraphs under the heading 'THE PARTIES', and in paragraph 2 under the 'MATERIAL DATES' of the petition.

2. He denies all the allegations made under the headings 'NATURE OF THE PETITION', and 'STATEMENT OF ALLEGATIONS'; those made in paragraph 1 under the heading 'MATERIAL DATES' under the heading 'DISCUSSION' of the Petition because he has no knowledge or information sufficient to form a belief as to the truth thereof.

3. He denies the allegation in the first sentence of paragraph 3 under the heading 'MATERIAL DATES' because he has no knowledge or information sufficient to for a belief as to the truth thereof. He denies the allegation in the second sentence of the same paragraph and in paragraph 4 under the same heading for being erroneous conclusions of fact and law, the truth being that of the amount of P17,578,318.00 claimed for refund or issuance of a tax credit certificate, only the amount of P2,926,538.95 were supported with certificates of creditable taxes withheld at source as stated in the Memorandum of the OIC-Large Taxpayers Service dated May 9, 2006."

Petitioner presented Percival Ordejon, Annabel Yeo and Jerome Antonio B. Constantino, the duly Commissioned Independent CPA, as witnesses, and documentary evidence, marked as *Exhibits "A" to "Z"*, inclusive of their submarkings, which were admitted by the Court in its Resolutions dated April 29, 2008 and August 26, 2008.

On the other hand, respondent presented Rogelio Gonzales, as witness, and documentary evidence marked as *Exhibits "1" to "5"*, which were admitted by the Court in its Resolution dated September 29, 2008.

Thereafter, both parties were ordered to file their simultaneous memoranda, within thirty (30) days from notice.

Petitioner having filed its "Memorandum" on October 30, 2008, and respondent on November 13, 2008, the case was deemed submitted for decision on November 20, 2008.

ISSUE

As stipulated upon by the parties, the following is the sole issue for this Court's consideration.

> WHETHER PBCOM IS ENTITLED TO A REFUND OR ISSUANCE OF A TAX CREDIT CERTIFICATE IN THE AMOUNT OF P17,578,318.00, REPRESENTING THE EXCESS AND/OR UNUTILIZED CREDITABLE WITHHOLDING TAXES FOR THE TAXABLE YEAR ENDING 31 DECEMBER 2003.

THE COURT'S RULING

The Petition is without merit.

The Court will first determine whether petitioner has opted to carry-over its claimed excess withholding tax for the year 2003

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amounting to P17,578,318.00 and automatically applied the same amount against the estimated tax liabilities for the succeeding taxable quarters of 2004.

In this regard, *Section 76 of the NIRC of 1997, as amended*, 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:
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> (A) Pay the balance of the 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.
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> 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 maybe 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 above-quoted provision, a corporation entitled to a tax credit or refund of the excess quarterly income taxes paid/withheld has two options, namely; (1) to carry-over the excess credit to the next quarters/years, or (2) to apply for a refund in the form of either a cash refund or a tax credit certificate. However, once the option to carry-over has been made, the same becomes irrevocable for that taxable period.

In its Income Tax Return for taxable year 2003, petitioner reflected a net loss of P1,388,875,427.00, and income tax overpayment of P57,789,994.00, which petitioner marked as "To be Issued a Tax Credit Certificate" *(Exhibit "A")*.

A perusal of said Return shows that the income tax overpayment of P57,789,994.00 consists of the following:

Prior year's excess credits	P	40,211,676.00
Creditable tax withheld during the year		17,578,318.00
Total	**P**	**57,789,994.00**

Petitioner was unable to utilize the total tax credits of P57,789,994.00 because it had no income tax liability either at the regular rate of thirty-two percent (32%) or the Minimum Corporate Income Tax rate of two percent (2%).

Even though it was only the amount of P40,211,676.00, representing the excess credits as of December 31, 2002, that was reflected as "Prior Year's Excess Credits" in petitioner's Annual ITR for taxable year 2004, this Court cannot ascertain whether petitioner has already exercised the irrevocable option to carry-over its 2003 excess tax credits of P17,578,318.00 to its 2004 Quarterly Income Tax Returns.

It is clear under *Section 76 of the NIRC of 1997, as amended*, that the excess tax credits may be carried over and applied against the quarterly income tax liabilities of the succeeding years. Considering so, petitioner may have carried over/applied the claimed 2003 excess tax credits of P17,578,318.00 to the succeeding first three quarters of 2004, and later amended said Returns, such that no amount of the 2003 excess credits is reflected therein and in the 2004 Annual Income Tax Return. In case petitioner had actually exercised the option of carry-over in its 2004 Quarterly Income Tax Returns, such option is irrevocable and petitioner can no longer claim for a cash refund/tax credit certificate corresponding to its 2003 excess tax credits. Thus, without the presentation of its Quarterly Income Tax Returns for the first, second, and third quarters of taxable year 2004, petitioner's claim must fail.

In addition thereto, petitioner failed to show full compliance with the following requisites in order to be entitled to a claim for refund or issuance of a tax credit certificate of excess creditable withholding tax at source, as prescribed under *Section 2.58.3 of Revenue Regulations No.2-98*, otherwise known as the *Withholding Tax Regulations,* to wit:

1) That the claim for refund was filed within the two-year reglementary period prescribed under *Section 204(C)*, in relation to *Section 229* of the NIRC of 1997, as amended;

2) That the fact of withholding is established by a copy of the statement duly issued by the payor (withholding agent) to the payee (BIR Form No. 1743-A), showing the amount paid and the amount of tax withheld therefrom;

3) That it is shown on the return of the recipient that the income payment received was declared as part of the gross income declared in the income tax return of the recipient *(Citibank N.A. vs. Court of Appeals and Commissioner of Internal Revenue, 280 SCRA 459).*

As regards the first requisite, We find that petitioner has complied with the same. In this regard, *Sections 204 (C) and 229 of the NIRC of 1997, as amended*, provide:

> "SEC. 204. Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes. — The Commissioner may —
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> (A) xxx
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> (B) xxx
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> (C) Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund

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> 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."
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> "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.
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> 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."

The two-year prescriptive period for the filing of a claim for refund under *Section 204 (C),* in relation to *Section 229* of the *NIRC of 1997, as amended,* commences from the date of filing of the final adjustment return *(ACCRA Investments Corp. vs. Court of Appeals, 204 SCRA 957)*. It must be stressed that the rationale in computing the two-year prescriptive period with respect to petitioner corporation's claim for refund from the time it filed its final adjustment return is the fact that it was only then that petitioner could ascertain whether it made profits or incurred losses in its business operations.

Records reveal that petitioner filed its Annual ITR for taxable year 2003 on April 15, 2004 *(Exhibit "A")*. Counting from this date, petitioner had until April 15, 2006, within which to file its claim for refund/tax credit, both administratively and judicially. Evidently, both petitioner's administrative claim filed on April 7, 2006 *(Exhibit "B")*, and the present Petition for Review filed on April 11, 2006, were filed within the two-year prescriptive period under *Section 204 (C), in relation to Section 229 of the NIRC of 1997, as amended.* Clearly, the first requirement has been complied with.

As regards the second and third requisites, this Court finds that petitioner failed to comply with the same.

As found by the Court-Commissioned Independent CPA (ICPA) Jerome Antonio B. Constantino, in his reports dated December 3, 2007 and December 18, 2007 *(Exhibits "YYYY" and "YYYY-15")*, petitioner presented various documents, such as Withholding Tax Remittance Returns, Capital Gains Tax Remittance, Certificates of Creditable Tax Withheld at Source, CAR-BIR Returns, and other remittance receipts evidencing remittance of taxes withheld. However, petitioner failed to prove that the income allegedly withheld was declared as part of its gross income, there being no evidence presented to prove the same. Therefore, this Court cannot determine whether the claimed amount was declared as part of petitioner's Annual ITR and in the Audited Financial Statements for the year 2003.

Furthermore, aside from the fact that petitioner failed to present supporting documents to prove its entitlement to its claim, this Court also finds that some of the documents presented pertain to capital gains tax and not to creditable withholding taxes.

Well settled is the rule that actions for tax refund, as in the instant case, are in the nature of a claim for exemption and the law is not only construed in *strictissimi juris* against the taxpayer, but also the pieces of evidence presented entitling a taxpayer to an exemption are *strictissimi* scrutinized and must be duly proven. The law does not look with favor on tax exemptions, and he who thus seeks to be privileged must justify it by words too plain to be mistaken and too categorical to be misinterpreted *(Sealand Services, Inc. vs. Court of Appeals, 359 SCRA 441)*.

For all the foregoing, the Court is left with no recourse, but to dismiss the petition.

WHEREFORE, premises considered, the instant Petition for Review is hereby **DENIED DUE COURSE**, and, accordingly **DISMISSED** for lack of merit.

SO ORDERED.

OLGA PALANCA-ENRIQUEZ
Associate Justice

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
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, Second Division

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