Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

SECOND DIVISION

AXIA POWER HOLDINGS PHILIPPINES CORPORATION,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 8464

Members:
CASTAÑEDA, JR., *Chairperson*
CASANOVA, *and*
COTANGCO-MANALASTAS, *JJ.*

Promulgated:
NOV 12 2013
2:45 p.m.

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DECISION

CASANOVA, *J.*:

This Petition for Review[1] filed by petitioner Axia Power Holdings Philippines Corporation seeks for a tax refund or issuance of tax credit certificate in the amount of Eleven Million One Hundred Six Thousand Eighty Pesos (Php11,106,080.00), representing its unutilized creditable withholding taxes for taxable year 2009.

Petitioner is a corporation duly organized and existing under the laws of the Philippines, with principal office located at Unit 700-C, 20th Drive Corporate Center, 20th Drive McKinley Business Park, Fort Bonifacio, Taguig City. It may be served with summons, pleadings, notices and other processes of the Court through its counsel at the Villanueva Caña & Associates Law Offices with address at Unit 2308, 23rd Floor Cityland 10, Tower II, 154 H.V. Dela Costa and Valero Streets, Makati City.[2] It is a duly registered taxpayer under the Certificate of Registration No.9RC0000291524 dated April 4, 2005.[3]

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[1] Docket, pp. 6-10
[2] Par. 1 and 2, Admitted Facts, Joint Stipulation of Facts and Issued (JSFI), Ibid, p. 208
[3] Exhibit "H", Docket, p. 337.

Respondent is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR) vested by law with the power and authority to act and decide upon applications for refund or tax credit of excess internal revenue tax payments, and in general to enforce the provisions of the 1997 Tax Code, as amended and other laws. Respondent is being represented in the present case by the legal officers of the Legal Division, Revenue Region 8 of the BIR with address at 2nd Floor Legal Division, BIR Building No. 313 Sen. Gil Puyat Avenue, Makati City.[4]

On December 22, 2009, petitioner, as the surviving corporation, and Marubeni Pacific Energy Holdings Corporation, Marubeni Pacific II Energy Holdings Corporation, and Marubeni Energy Services Corporation (MESC), as the absorbed corporations, entered into an Articles of Merger and Plan of Merger[5] which was approved by the Securities and Exchange Commission (SEC) on March 29, 2010.[6]

Marubeni Energy Services Corporation (MESC) is a duly registered taxpayer under the Certificate of Registration No. 9RC0000048978 dated May 8, 2000.[7] It filed its Quarterly Income Tax Return for taxable 2009, as follows:

	Date Filed
1st Quarterly Income Tax Return[8]	May 13, 2009[9]
Amended 1st Quarterly Income Tax Return[10]	November 20, 2009[11]
2nd Quarterly Income Tax Return[12]	August 13, 2009[13]
Amended 2nd Quarterly Income Tax Return[14]	November 20, 2009[15]
3rd Quarterly Income Tax Return [16]	November 19, 2009[17]
Annual Income Tax Return[18]	April 13, 2010

MESC sent a Letter[19] dated April 13, 2010 to respondent requesting for the cancellation of its TIN and the issuance of a Tax Clearance Certificate (TCC/TCL) in its favor. Attached to the said letter is MESC's Application for Tax Credits/Refunds[20].

[4] Par. 3, Admitted Facts, JSFI, Id., p. 208-209.
[5] Exhibits "B" & "C", docket, pp. 276-280 & 281-288.
[6] Exhibit "A", Id., p. 274.
[7] Exhibit "G", Id., p. 335.
[8] Exhibit "J", Id., p. 347.
[9] Exhibit "J-1". Id.
[10] Exhibit "J-3", Id., p. 350.
[11] Exhibit "J-4", Id.
[12] Exhibit "M", Id., p. 355.
[13] Exhibit "M-1", Id.
[14] Exhibit "M-3", Id., p. 359.
[15] Exhibit "M-4", Id.
[16] Exhibit "P", Id., p. 364.
[17] Exhibit "P-1", Id.
[18] Exhibit "T", Id., p. 405.
[19] Exhibit "U", Id., pp. 408-419.
[20] Exhibit "V", Id., p. 420.

By such reason, the Bureau of Internal Revenue, Revenue District Office No. 47 – East Makati issued a Letter of Authority[21] dated May 24, 2010 Authorizing RO Ferdinand Apalisoc and RO Myrabel dela Cruz/GS Jane C. Denosta to examine petitioner's books of accounts and other accounting records in connection with the latter's closure of business and claim for refund.

Pursuant to the First Request for Presentation of Records issued by the BIR dated June 18, 2010, MESC transmitted its pertinent documents to BIR, RDO No. 47[22] on August 26, 2010.

Due to inaction of respondent, petitioner, being the surviving entity after the merger, filed this instant Petition for Review on April 12, 2012

Respondent filed an Answer[23] on May 31, 2012, interposing the following special and affirmative defenses, viz:

> "8. Respondent reiterates and repleads the preceding paragraphs of the Answer as part of her Special and Affirmative Defenses;
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> 9. Petitioner's claim for refund is still subject to investigation by the Bureau of Internal Revenue. Furthermore, Petitioner's claim of its entitlement for refund or the issuance of a Refund or a Tax Credit Certificate has no basis either in fact or in law, for its failure to show or demonstrate any evidence to the effect that the tax, which is the subject of this case, was erroneously or illegally collected;
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> 10. Petitioner's claim for refund or issuance of a tax credit certificate in the amount of P11,106,080.00, as alleged unutilized creditable withholding taxes for the calendar year ending December 31, 2009 was not fully substantiated by proper documents, such as sales invoices, official receipts and others;
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> 11. It is incumbent upon the Petitioner to show that it has complied with the provision of Section 204(C) in relation to

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[21] Exhibit "W", Id., p. 421.
[22] Exhibit "X", Id., pp. 424-425.
[23] Id., p. 159-165.

Section 229 of the 1997 National Internal Revenue Code, as amended, for in an action for refund, **the burden is upon the taxpayer to prove that he is entitled thereto, and failure to discharge the burden is fatal to the claim (Emmanuel & Zenaida Aguilar v. Commissioner, CA-GR No. Sp. 16432, March 30, 1990, as cited in Aban, Law of Basic Taxation in the Philippines, 1st Edition, p. 206)**;

12. It must be stressed that taxes paid and collected are presumed to have been made in accordance with the laws and regulations, hence, not creditable or refundable, and that claims for refund are construed strictly against the claimant, the same partake the nature of exemption from taxation **(Commissioner of Internal Revenue vs. Ledesma, 31 SCRA 95) and as such, they are looked upon with disfavor (Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 121)**;

13. The Honorable Supreme Court had the occasion to reiterate the aforementioned rule when it decided the case of Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue **(G.R. NO. 159471, January 26, 2011)** that:

> 'Taxation is a destructive power which interferes with the personal and property rights of the people and takes from them a portion of their property for the support of the government. And, since taxes are what we pay for civilized society, or are the lifeblood of the nation, **the law frowns against exemptions from taxation and statutes granting tax exemptions are thus construed *stictissimi juris* against the taxpayer** and **liberally in favor of the taxing authority. A claim of refund or exemption from tax payments must be clearly shown and be based on language in the law too plain to be mistaken. Elsewise stated, taxation is the rule, exemption therefrom is exception**.'

14. Thus, applying the pertinent provisions of the law, rules, and jurisprudence on the matter at hand, **it is crystal clear that the instant petition for review lacks basis and merit, and should be dismissed outright and with prejudice by this Honorable Court.**"

On June 28, 2012 and July 2, 2012, the Court received Pre-Trial Brief (For the Respondent)[24] and petitioner's Pre-Trial Brief[25], respectively.

Thereafter, the parties submitted their Joint Stipulation of Facts and Issues on July 30, 2012 which was approved in a Resolution[26] dated August 1, 2012.

During trial, petitioner presented[27] its sole witness Ivy P. Acosta and submitted its Formal Offer of Documentary Evidence on January 17, 2013.

In the May 15, 2013 hearing, respondent's counsel manifested that they are submitting the instant case for decision considering that there is no Report submitted to their office. Parties were given thirty (30) days therefrom within which to file their respective memorandum.

In compliance therewith, petitioner filed its Memorandum[28] on July 9, 2013, while Memorandum (For the Public Respondent)[29] was submitted on July 22, 2013. Thereafter, the case was submitted for decision on July 30, 2013.[30]

The parties set forth the following issues[31] to be resolved by this Court:

> "a. Whether or not there is an actual unutilized creditable withholding taxes for the Calendar Year (CY) ending December 31, 2009 in the amount of P11,106,080.00 as claimed by petitioner;
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> b. Whether or not the petitioner's claim for refund or issuance of a tax credit certificate for the Calendar Year (CY) ending December 31, 2009 in the amount of P11,106,080.00 was fully substantiated by proper documentary evidence; and

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[24] Id., pp. 168-172.
[25] Id., pp. 191-200.
[26] Id., p. 212.
[27] Minute Resolution dated October 15, 2012, Id., p. 252.
[28] Id., pp. 497-521.
[29] Id., pp. 523-533
[30] Resolution Id., p. 535.
[31] Issues, JSFI, Id., p. 209

c. And in sum, whether or not petitioner is entitled to the claim for refund or issuance of tax credit certificate for MESC in the amount of P11,106,080.00 representing MESC's unutilized creditable withholding taxes for CY ending December 31, 2009.

The aforesaid issues may be summarized into one main issue, to wit:

1. Whether or not petitioner is entitled to its claim for refund or issuance of tax credit certificate in the amount of P11,106,080.00 representing MESC's unutilized creditable withholding taxes for calendar year ending December 31, 2009.

In the case at bench, petitioner contends that the evidence it presented, specifically, Exhibits "T", "T-1", "T-2", "T-3", "T-4", "T-5", "T-6", "T-7" and "T-8", proved that the MESC has unutilized creditable withholding taxes for taxable year 2009 in the amount of P11,106,080.00. It further argues that its claim for refund or issuance of ICC was filed within the two-year prescriptive period and that the return showed that the income payments derived from management fees which were subject to creditable withholding tax were included as part of MESC's gross income. Lastly, petitioner claims that the fact of withholding was duly established by the Certificates of Creditable Tax Withheld At Source (BIR Form No. 2307) issued by MESC's clients to it, which petitioner presented as part of its evidence.

On the other hand, respondent counter-argues that petitioner failed to establish its entitlement for refund; and petitioner was not able to comply with the substantiation requirements provided by law.

Petitioner anchors its claim on the provision of Section 76 of the National Internal Revenue Code (NIRC) of 1997, as amended, which states:

> "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."

Pursuant to the above-quoted provision, the corporate taxpayer's excess tax credits or overpaid income tax in a given taxable year may either be refunded (either in the form of cash or tax credit certificate) or carried over/applied to the succeeding taxable years. The carry-over option, however, once taken is irrevocable for that taxable period and no application for a tax refund or issuance of a tax credit certificate shall then be allowed.[32]

A scrutiny of MESC's Annual Income Tax Return (AITR)[33] for the CY 2009 filed with the BIR on April 13, 2010 shows that MESC had an income tax liability of ₱6,825,329.00 which was applied against its CWT for the first three quarters in the amount of ₱17,931,410.00 leaving the amount of ₱11,106,080.00 CWT unutilized as of December 31, 2009, computed as follows:

Sales/Revenues/Receipts/Fees	₱ 119,542,730.00
Less: Cost of Sales/Services	82,662,714.00
Gross Income from Operation	36,880,016.00
Add: Non-Operating & Other Taxable Income	863,991.00
Total Gross Income	37,744,007.00
Less: Deductions	14,992,910.00
Taxable Income	₱ 22,751,097.00
Tax Rate	30%
Income Tax	**₱ 6,825,329.00**

[32] Philam Asset Management, Inc. vs. Commissioner of Internal Revenue, G.R. Nos. 156637 and 162004, December 14, 2005.
[33] Exhibit "T", Docket, pp. 405-407.

Less: Tax Credits/Payments	
Creditable Tax Withheld for the First Three Quarters	₱ 17,931,410.00
Tax Payable/(Overpayment)	**(₱11,106,080.00)**

Since MESC marked the box corresponding to the option "To be issued a Tax Credit Certificate"[34] in its AITR, the excess CWT for the CY 2009 in the amount of ₱11,106,080.00 may be a proper subject of a claim for tax credit certificate (TCC) pursuant to Section 76 of the NIRC of 1997, as amended.

However, in order to be entitled to a refund of excess CWT, petitioner must satisfy 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, as amended;

2. That the fact of withholding is established by a copy of a statement fuly issued by the payor (withholding agent) to the payee, showing the amount paid and the amount of tax withheld therefrom; and

3. That it is shown on the return of the recipient that the income payment received was declared as part of the gross income.[35]

As regards the first requisite, Sections 204(C) and 229 of the NIRC of 1997, as amended, respectively, provide as follows:

> **"SEC. 204. *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.*** - The Commissioner may-
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> 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

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[34] Exhibit "T-7", Ibid.

[35] Section 2.58 of Revenue Regulations No. 2-98, as amended; Citibank N.A. vs. Court of Appeals, et al., G.R. No. 107434, October 10,1997; ACCRA Investments Corporation vs. The Honorable Court of Appeals, et al., G.R. No. 96322, December 20, 1991.

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 therefore, 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."

In the cases of *Commissioner of Internal Revenue vs. TMX Sales, Inc. and Court of Tax Appeals*[36] and *ACCRA Investments Corporation vs. The Honorable Court of Appeals, et al.,*[37] the Supreme Court ruled that the reckoning of the two-year prescriptive period for the filing of a claim for refund or tax credit certificate of excess income tax paid/withheld should commence from the date of filing of the final adjustment return because it is only during that date that the exact tax liability or refundability of the tax can be determined.

Records show that the claimed excess CWT pertain to taxable year ended December 31, 2009 for which MESC filed its AITR on April 13, 2010[38]. Counting from this date, petitioner had until April 13, 2012 within which to file a claim for refund/TCC of MESC's excess CWT for taxable year 2009, both in the administrative and judicial levels. Thus,

[36] G.R. No. 83736. January 15, 1992.
[37] G.R. No. 96322, December 20, 1991.
[38] Exhibit "T".

petitioner seasonably filed with the BIR its administrative claim for refund/TCC on April 15, 2010[39] and its judicial claim for refund through the instant Petition for Review on April 12, 2012[40].

In compliance with the second requisite, petitioner presented Certificates of Creditable Tax Withheld at Source (BIR Forms No. 2307) duly issued by Mindanao I Geothermal Partnership and Mindanao II Geothermal Partnership to MESC showing CWT in the total amount of ₱17,931,409.61 broken down as follows:

Exh.	Period Covered	Payor	Income Payment	Tax Withheld
"K"	01/01/09 to 03/31/09	Mindanao I Geothermal Partnership	₱ 17,732,316.13	₱ 2,659,847.42
"L"	01/01/09 to 03/31/09	Mindanao II Geothermal Partnership	11,994,018.05	1,799,102.71
"N"	04/01/09 to 06/30/09	Mindanao I Geothermal Partnership	17,419,233.81	2,612,885.07
"O"	04/01/09 to 06/30/09	Mindanao II Geothermal Partnership	10,723,561.25	1,608,534.19
"Q"	07/01/09 to 09/30/09	Mindanao I Geothermal Partnership	35,782,314.67	5,367,347.20
"R"	07/01/09 to 09/30/09	Mindanao II Geothermal Partnership	25,891,286.83	3,883,693.02
		Total	**₱ 119,542,730.74**	**₱ 17,931,409.61**

This brings us to the third requirement, *i.e.*, whether or not the income upon which the subject taxes were withheld were included and reported by petitioner in its 2009 Annual ITR.

The certificates show that the claimed CWT in the amount of ₱17,931,409.61 were withheld on management and technical consultancy fees received by MESC during the year 2009 in the amount of ₱119,542,730.74 which is the very same figure reflected in MESC's AITR for taxable year 2009 as "Sales/Revenues/Receipts/Fess"[41]. Thus, MESC had properly declared the income related to the reported CWT of ₱17,931,409.61.

In sum, the Court finds the evidence adduced by petitioner to be sufficient to support its claim for refund or issuance of a tax credit certificate in the amount of P11,106,080.00, representing MESC's unutilized/excess CWT for taxable year 2009.

WHEREFORE, premises considered, the instant Petition for Review is hereby **GRANTED**. Accordingly, respondent is hereby **ORDERED** to **REFUND** or to **ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner the amount of P11,106,080.00, representing petitioner's excess creditable withholding taxes for taxable year 2009.

[39] Exhibit "V".
[40] Docket, pp. 6-10.
[41] Exhibit "T", Line 17.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
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.

ROMAN G. DEL ROSARIO
Presiding Justice