REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

C.T.A. EB No. 478
(C.T.A. Case No. 7218)

Present:

Acosta, *P.J.,*
Castañeda, Jr.,
Bautista,
Uy,
Casanova, and
Palanca-Enriquez, ***JJ.:***

-versus-

CEBU HOLDINGS, INC.,
Respondent.

Promulgated: JUL 2 9 2009

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DECISION

CASTAÑEDA, JR., J.:

THE CASE

Assailed in this Petition for Review are the Decision dated November 10, 2008 granting the issuance of a tax credit certificate in the amount of

Two Million Eighty Three Thousand Eight Hundred Seventy Eight Pesos and 07/100 (P2,083,878.07) representing excess creditable taxes for taxable year 2002 and the Resolution dated March 12, 2009 denying both parties' Motions for Partial Reconsideration due to lack of merit.

THE FACTS

Real estate developer Cebu Holdings, Inc. ("respondent") is a corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines with Taxpayer Identification Number ("TIN") 000-551-890-000; while the Commissioner of Internal Revenue ("petitioner") is an official vested by law to grant refund of any internal revenue taxes erroneously paid.[1]

On April 15, 2003, respondent filed with the Bureau of Internal Revenue ("BIR") its annual income tax return ("ITR") for taxable year 2002, reflecting as follows:

Gross Income	191,149,784
Less: Deductions	147,535,224
Taxable Income	43,614,560
Tax Rate	32.00%
Income Tax	13,956,659
MCIT	4,377,937
Tax Due	**13,956,659**

[1] Joint Stipulation of Facts and Issues, Docket, C.T.A. Case No. 7218, p. 79.

Less:	
Prior Year's Excess Credits	33,468,076
Creditable Tax Withheld for 1st 3 Quarters	12,130,450
Creditable Tax Withheld for 4th Quarter	6,861,605
Total Tax Credits/Payments	52,460,131
Tax Payable/(Overpayment)- prior year's tax credit	(19,511,417)
Tax Payable/(Overpayment)-current year's tax credit	**(18,992,055)**[2]

As shown in the 2002 annual ITR, respondent indicated its aggregate excess income tax payments of P38,503,472.00 and signified its option to be issued a tax credit certificate in the amount of P18,992,055.[3]

Respondent subsequently filed an amended ITR for taxable year 2002, detailed as follows:

Sales/Revenues/Receipts/Fees	P 395,529,877.00
Less: Cost of Sales/Services	213,551,009.00
Gross Income from Operation	P 181,978,868.00
Add: Non-operation and Other Income	9,170,916.00
Total Gross Income	P 191,149,784.00
Less: Deductions	147,535,224.00
Taxable Income	P 43,614,560.00
Tax Due (32%)	P 13,956,659.00
Less: Tax Credits	
Prior Year's Excess Credits	P 30,150,767.00
Creditable Tax Withheld	
1st to 3rd Quarters – 2002	P 12,130,450.00
4th Quarter – 2002	6,861,605.00
Total Creditable Tax Withheld-2002	P 18,992,055.00
Total Tax Credits	P 49,142,822.00
Tax Overpayment-prior year's tax credits	P 16,194,108.00
Tax Overpayment-current year's (2002) tax credits	**P 18,992,055.00**
Tax Overpayment – Total	P 35,186,163.00[4]

[2] Joint Stipulation of Facts and Issues, Docket, C.T.A. Case No. 7218, p. 80.
[3] *Ibid.*
[4] Docket, C.T.A. Case No. 7218, p. 344. See Exhibits "C-2" and "C-3" p. 224.

Convinced that it is entitled to the excess income tax credit for taxable year 2002, on March 4, 2005, respondent commenced a written claim for refund in the amount of P18,992,055.00 with the BIR.[5]

Petitioner's inaction on the claim for refund prompted respondent to file a Petition for Review docketed as C.T.A. Case No. 7218 before the Court's First Division ("Division") on April 15, 2005.

In the Decision dated November 10, 2008, the Division ordered the issuance of a tax credit certificate in the reduced amount of P2,083,878.07 representing excess creditable taxes for taxable year 2002 in favor of respondent, (previously the petitioner in that case), the dispositive portion of which reads:

> In sum, out of the reported prior year's excess credits of P30,150,757.00, only the amount of P288,076.04 shall be applied against the income tax liability for taxable year 2002 in the amount of P13,956,659.00. The remaining income tax liability of P13,668,582.96 shall be offset against the substantiated creditable taxes withheld in taxable year 2002 in the amount of P15,752,461.03, leaving a refundable excess tax credits of only P2,083,878.07, computed as follows:

Sales/Revenues/Receipts/Fees	P395,529,877.00
Less: Cost of Sales/Services	213,551,009.00
Gross Income from Operation	P 181,978,868.00
Add: Non-Operation & Other Income	9,170,916.00
Total Gross Income	P 191,149,784.00
Less: Deductions	147,535,224.00
Taxable Income	P 43,614,560.00

[5]Joint Stipulation of Facts and Issues, Docket, C.T.A. Case No. 7218, p. 80.

Tax Due (32%)	P 13,956,659.00	
Less: Prior year's excess credits	288,076.04	
Tax Still Due	P 13,668,582.96	
Less: Substantiated Creditable Taxes Withheld		15,752,461.03
Refundable Excess Tax Credits		**P 2,083,878.07**

WHEREFORE, the instant Petition for Review is hereby **GRANTED.** Accordingly, respondent is hereby **ORDERED TO ISSUE TAX CREDIT CERTIFICATE** in favor of petitioner in the reduced amount P2,083,868.07, representing excess creditable taxes for taxable year 2002.

SO ORDERED.[6]

Acting on petitioner and respondent's Motions for Partial Reconsideration, the Court issued a Resolution dated March 12, 2009 denying the same for lack of merit.[7]

Respondent filed an Urgent Motion to Withdraw the Petition dated March 25, 2009 on the ground that it shall no longer pursue its claim for tax credit certificate and instead, carry forward the excess creditable income taxes to the succeeding taxable quarters of the succeeding taxable years until the same have been fully utilized. However, in the Resolution dated May 5, 2009, the Division denied this Motion.[8]

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[6] Docket, C.T.A. Case No. 7218, pp. 340-353. Penned by Associate Justice Lovell R. Bautista with Presiding Justice Ernesto D. Acosta and Associate Justice Caesar A. Casanova concurring.
[7] Docket, C.T.A. Case No. 7218, pp. 373-374.
[8] Docket, C.T.A. Case No. 7218, pp. 376-379; 388-389.

THE ISSUE

Dissatisfied, petitioner elevated to the Court *en banc* the case on appeal interposing the following assignment of errors:

> 1. Respondent is liable for deficiency income tax for the year 2003 if the amount of P16,194,108.00 representing a part of prior years excess creditable tax withheld carried over to the succeeding taxable year 2003 had been subtracted from petitioner's Amended Annual Income Tax Return for the taxable year 2003.
>
> 2. Respondent is not entitled to the issuance of a tax credit certificate in the reduced amount of P15,752,461.07 representing excess creditable taxes withheld for year 2002.[9]

Petitioner alleges that respondent has to pay income tax deficiency in the amount of P8,540,182.00 for the taxable year 2003 if the Court takes into consideration the amount of P16,194,108.00 that was carried over as prior year's excess credits to the succeeding taxable year 2003.[10] The amount carried over is a portion of income tax overpayment of P30,150,157.00 (should be P30,150,767.00) specifically declared by this Honorable Court in its Decision as unsubstantiated by respondent. Thus, the government would be put in a disadvantageous position if respondent would be refunded of its alleged 2002 excess tax credits of P2,083,878.07. *ge*

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[9] Rollo, pp. 11 &14.
[10] See Exhibit "F-2".

Petitioner emphasizes that the amount of P16,194,108.00 carried over as prior year's excess credits to the succeeding year 2003 had been subtracted from respondent's 2003 Amended Annual ITR resulting to an income tax payable in the amount of P8,540,182.00, and not an overpayment of taxes withheld in the amount of P7,653,923.00.

Respondent should not unjustly enrich itself at the expense of the government for not paying the correct taxes for the taxable year 2003 when it erroneously applied its 2002 prior year's tax credits of P16,194,108.00. Under the principle against unjust enrichment, if something is received when there is no right to demand, and it was unduly delivered through mistake, the obligation to return arises.

In the Comment, respondent contends that its alleged 2003 income tax liability is immaterial because it bears no relation to the refund claim for excess creditable income taxes covering the year 2002; and this matter is belatedly raised as an issue. Respondent earlier filed an Urgent Motion to Withdraw the Petition for Review of C.T.A. Case No. 7218. Should the Court grant this Motion, respondent will only be reinstated to its position prior to the filing of the Petition for Review in all respects, with no better right or rights to any portion of the amount claimed.

THE COURT'S RULING

The Petition is unmeritorious.

The amount of P16,194,108.00 comprises the unsubstantiated portion of P30,150,767.00 prior year's (2001) tax credit which was carried over or applied against respondent's liability for taxable year 2003. It is no longer the concern of the Court if the amount of P16,194,108.00 is not supported by Certificates of Withholding Tax ("CWT") resulting to a tax deficiency of P8,540,182.00 for taxable year 2003, instead of a tax overpayment of P7,653,923.00 as argued by petitioner. The refund claim pertains to the taxable year 2002, and not the taxable year 2003. Should there be any tax deficiency due for taxable year 2003, it is the duty of the petitioner to issue an assessment for this period. And even if there was a valid assessment of tax liability against respondent, the same cannot be set-off against any of its excess creditable taxes covered by the refund claim. Internal revenue taxes cannot be subject of set-off or compensation.[11] Under the law, a claim for taxes is not such a debt, demand, contract or judgment allowed to be set off.[12] In other words, the government and taxpayer are not mutually creditors and debtors to each

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[11] See *Republic vs. Mambulao*, G.R. No. L-17725, February 28, 1962, 4 SCRA 622.
[12] See *Cordero vs. Gonda*, G.R. No. L- 22369, October 15, 1966, 18 SCRA 331.

other.[13] Moreover, different procedures are involved in a claim for refund and assessment.[14]

The Division correctly denied respondent's Urgent Motion to Withdraw the Petition.

The Rules of Court are supplementary to the Revised Rules of the Court of Tax Appeals.

In view of the Motion dated March 25, 2009[15] which was filed subsequent to issuance of the Resolution dated March 12, 2009 denying the parties' Motions for Partial for Reconsideration, the Division is given the discretion to withdraw the Petition at this stage pursuant to Section 3, Rule 50 of the 1997 Rules of Court which provides:

RULE 50

DISMISSAL OF APPEAL

> SEC. 3. *Withdrawal of appeal.* – An appeal may be withdrawn as of right at anytime before the filing of the appellee's brief. Thereafter, the withdrawal may be allowed in the discretion of the court.

Taking into consideration the nature of the case, the time when the Motion to Withdraw the Petition was filed and petitioner's Opposition thereto, the denial by the Division of such Motion is proper.

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[13] *United Airlines, Inc. vs. Commissioner of Internal Revenue*, C.T.A. EB Case No. 297, January 15, 2008.

[14] *ATR Kim Eng Financial Corporation(formerly Philtread Tire and Rubber Corporation and Philtread Holdings Corporation) vs. Commissioner of Internal Revenue,* C.T.A. Case No. 5598, April 21, 2005.

[15] Docket, C.T.A. Case No. 7218, pp. 376-378.

Petitioner further maintains that respondent failed to prove the third requisite, namely that the income upon which the taxes were withheld was included in its 2002 annual ITR. Upon verification, there were discrepancies between the amounts of gross income declared in respondent's 2002 income tax return and as reflected in the Certificates of Creditable Tax Withheld at Source (BIR Form 2307) supporting its claim for excess creditable withholding tax.

Most of the Certificates of Creditable Tax Withheld at Source do not indicate the amounts of income payment and the amount of tax withheld. Thus, the summaries of Creditable Tax Withheld at Source for taxable year 2002 submitted by respondent are insufficient to corroborate the testimony of independent certified public accountant Atty. Owen Algoso and his findings that the income from which the taxes were withheld was duly included in the annual ITR for taxable year 2002.

Respondent should have proffered additional supporting documents such as general ledger, invoices or official receipts, sales summary or any other documents which would establish that the income related to creditable tax withheld of P18,992,055.00 form part of the income in its amended 2002 income tax return.

The Court disagrees.

As previously stated in the assailed Decision of the Division, 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 within the two year period from the date of payment of the tax;
2. The income upon which the taxes were withheld was included in the return of the recipient; 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.[16]

Contrary to petitioner's assertion, respondent established that the income upon which the taxes were withheld was included in the return of the recipient, the Division aptly observed that:

xxx xxx xxx

> xxx xxx xxx petitioner's revenues from lease of real properties in the amount of P274,565,140.00 as shown in its 2002 Income Tax Return is higher than the lease revenues of P194,104,483.80 reflected in the certificates. Evidently, petitioner declared in its 2002 ITR, all of the income on its lease of real properties upon which the claimed creditable income taxes of P9,705,224.19 were withheld.
>
> However, petitioner's revenues from sales of real properties in the amount of P120,964,737.00, as shown in the ITR is lower by P19,999.70 when compared to the gross sales of P120,984,736.70 indicated in the withholding tax remittance returns. For petitioner's failure to account for the discrepancy of P19,999.70, the related creditable withholding taxes in

[16] *Commissioner of Internal Revenue vs. PERF Realty Corporation,* G.R No. 163345, July 4, 2008, 557 SCRA 165 *citing Citibank, N.A. vs. Court of Appeals*, G.R. No. 107434, October 10, 1997, 280 SCRA 459. See also *Filinvest Development Corporation vs. Commissioner of Internal Revenue*, G.R No. 146941, August 9, 2007, 529 SCRA 605.

the amount of P999.99, as computed below, shall be disallowed from petitioner's claim.

Sales of Goods/Properties per income tax return		P120,964,737.00
Less: Sales of Real Properties per w/holding tax remittance returns		120,984,736.70
Discrepancy in sales of real properties	P	19,999.70
Multiply by: 5% withholding tax rate		0.05
Disallowed Creditable Withholding Taxes	**P**	**999.99**

Also, petitioner failed to show that it declared the management fees of P2,490,000.00 related to the claimed creditable withholding taxes of P124,500.00. These management fees fall under "Sale of Services" but no amount of sale of services was indicated in the Return. Although petitioner reported a "Miscellaneous" income of P4,205,134.00, it cannot be verified whether the same included the management fees of P2,490,000.00. Petitioner should have submitted documents wherein the management fees of P2,490,000,000.00 can be traced as forming part of its reported Miscellaneous income of P4,205,134.00.

Hence, petitioner complied with the third requisite but only to the extent of P15,752,461.03, out of the total claimed creditable withholding taxes of P15,877,961.02 with valid proofs of withholding, to wit:

Claimed creditable withholding taxes w/valid proofs of withholding	P15,877,961.02
Less: a. Creditable taxes withheld pertaining to the discrepancy In sales of real properties per income tax return and per withholding tax remittance returns	999.99
b. Creditable taxes withheld pertaining to the management fees of P2,490,000.00	124,500.00
Claimed creditable taxes withheld pertaining to petitioner's declared income in its 2002 income tax return	**P15,752,461.03**[17]

In view of the foregoing, the Division correctly ordered petitioner to issue a tax credit certificate in the amount of P2,083,878.07 representing excess creditable taxes for taxable year 2002, in favor of respondent.

[17] Docket, C.T.A. Case No. 7218, pp. 351-352.

WHEREFORE, premises considered, the Petition for Review is hereby **DISMISSED**. The Decision dated November 10, 2008 and the Resolution dated March 12, 2009 are **AFFIRMED**.

SO ORDERED.

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

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

OLGA PALANCA-ENRIQUEZ
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.

ERNESTO D. ACOSTA
Presiding Justice