REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

WATERFRONT CEBU CITY HOTEL & CASINO, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 8005

Members:

CASTAÑEDA, JR., *Chairperson,*
CASANOVA, and
MINDARO-GRULLA, *JJ.*

Promulgated:

DEC 1 2 2012
4:10 p.m.

x - x

DECISION

CASANOVA, *J.*:

The Petition for Review[1], filed by petitioner-Waterfront Cebu City Hotel & Casino, Inc., prays for the cancellation of respondent's assessment for deficiency income tax in the amount of P2,579,289.48 for taxable year 2006.

Petitioner is a domestic corporation duly organized and existing under the laws of the Philippines with principal office at Salinas Drive, Lahug, Cebu City.[2]

Respondent is the duly appointed Commissioner of Internal Revenue, vested with authority to act as such, including, among others, the power to

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[1] Docket, pp. 5-11
[2] Par. 1, Stipulation of Facts, Joint Stipulation of Facts and Issues (JSFI), Docket, p. 88

authorize the examination of taxpayer's books of accounts, to issue and decide deficiency assessments of internal revenue taxes.[3]

The facts of the case, as jointly stipulated by the parties, are as follows:[4]

"3. On August 31, 2007, the Bureau of Internal Revenue issued Letter of Authority No. 2007 00006956 for the investigation of Petitioner's business operations and books of accounts for Calendar Year 2006.

4. The Formal Letter of Demand issued by BIR Large Taxpayers District Office-Cebu LTDO No. 123 was received by Petitioner on April 30, 2009. Petitioner submitted is *(sic)* formal protest letter and written reply to the BIR in its letters of May 25, 2009 and July 23, 2009, respectively.

5. Respondent issued its Final Decision on Disputed Assessment on October 31, 2009 directing Petitioner to either pay the assessments or to appeal the decision to the Court of Tax Appeals within 30 days of receipt of the decision. The Petitioner received the decision on November 9, 2009 seeking collection of deficiency assessments as follows:

Income Tax	2,579,289.48
Value Added Tax	1,389,389.61
Expanded Withholding Tax	1,732.20

6. Petitioner has paid the deficiency Value Added Tax assessment in the amount of P1,389,389.61 on December 1, 2009 through the BIR's Electronic Filing and Payment System (EFPS). Printed copies of EFPS Filing Reference, Confirmation Report and BIR Payment Form No. 0605 are attached as Annexes H, H-1, H-2 and H-3 of the Petition for Review.

7. Petitioner has paid the deficiency Expanded Withholding Tax Assessment of P1,732.20 on December 1, 2009 through the BIR's Electronic Filing and Payment System. x x x x x x."

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[3] Par. 2, Stipulation of Facts, JSFI, Ibid
[4] Par. 3-7, Stipulation of Facts, JSFI, Ibid, pp. 89-90

On December 8, 2009, petitioner filed the instant Petition for Review with this Court to appeal respondent's denial of its protest on deficiency income tax assessment.

On February 10, 2010, respondent filed her Answer[5] and interposed the following Special and Affirmative Defenses, to wit:

> "4. Petitioner's protest on the assessment has no factual basis. The Final Assessment on Disputed Assessment states that the adjustment of 2008 Income Tax Return amounting to P1,506,576.00 cannot be honored due to the ongoing investigation for the taxable year 2007.
>
> 5. The Final Decision on Disputed Assessment also disallowed a total of P212,950.27 on Creditable Withholding Tax at Source (Forms 2307). Petitioner failed to submit complete documents to substantiate its claims and some were disallowed on its face value pursuant to Section 2.58.3(A) of RR. No. 2-98.
>
> 6. Finally, it is a well-settled rule in taxation that assessments are *prima facie* presumed correct and made in good faith. The taxpayer has the duty of proving otherwise, and in the absence of proof of any irregularities in the performance of official duties, an assessment will not be disturbed."

On May 19, 2010, the parties filed their Joint Stipulation of Facts and Issues[6] which this Court subsequently approved per its Resolution[7] promulgated on May 24, 2010.

After presentation of its evidence, petitioner filed its Formal Offer of Evidence[8] on December 12, 2011 with respondent's Comment (Re: Petitioner's Formal Offer of Evidence)[9] filed on December 15, 2011. ea

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[5] Docket, pp. 62-66
[6] Ibid, pp. 88-90
[7] Ibid, p. 92
[8] Ibid, pp. 219-228
[9] Ibid, p. 386-388

In a Resolution[10] dated January 9, 2012, this Court resolved to admit Exhibits "A" to "F"; "I"; and "K" to "T", inclusive of submarkings.

On March 6, 2012, respondent, after completion of the testimony of her witness, Alicia Socorro T. Abutazil, filed her Formal Offer of Evidence.[11] Petitioner filed its Comment (Re: Respondent's Formal Offer of Evidence)[12] on April 3, 2012.

In a Resolution promulgated on April 16, 2012, this Court admitted all of the respondent's exhibits consisting of Exhibits "1" to "10" and its submarkings. The parties were likewise required to file their respective memorandum within thirty (30) days from receipt of the resolution.

On May 10, 2012, respondent filed a Manifestation[13] stating that she is adopting the arguments in her Answer on February 10, 2010 as her Memorandum.

Petitioner, having failed to file its memorandum within the period given by the Court, as per Report dated August 1, 2012 of the Records Division, a Resolution[14] was issued by this Court considering the case submitted for decision as of August 2, 2012.

The parties jointly stipulated on this lone issue for resolution of this Court, to wit:

> "Whether or not petitioner is liable for deficiency Income Tax Assessment in the amount of P2,579,289.48 for taxable year 2006 plus surcharges and interests."

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[10] Ibid, pp. 390-391
[11] Ibid, pp. 406-410
[12] Ibid, pp. 411-413
[13] Ibid, 417-419
[14] Ibid, p. 431

Petitioner was assessed by respondent for deficiency income tax for taxable year 2006 for having a discrepancy on prior year's excess tax credits claimed and disallowed creditable tax withheld at source, as detailed hereinbelow:[15]

Discrepancy on prior year's excess tax credits claimed	P 1,506,576.00	
Disallowed creditable tax withheld at source	212,950.27	P1,719,526.27
Interest		859,763.16
Total Income Tax Assessment		**P2,579,289.43**

The resolution of the instant case will, therefore, depend on the factual findings on whether or not the above-enumerated items of assessment, which are items of deduction against petitioner's income tax liability, will actually give rise to an income tax payable by the petitioner for taxable year 2006.

Petitioner submitted its Annual Income Tax Returns for taxable years 2005 to 2008 which reflected the following details:

	CY 2005 **Exhibit "B"**	**CY 2006** **Exhibit "C"**	**CY 2007** **Exhibit "D"**	**CY 2008** **Exhibit "E"**
Sales/Revenues/Receipts/Fees	₱ 780,851,508.00	₱768,747,351.00	₱ 731,918,319.00	₱740,285,854.00
Less: Cost of Sales/Services	427,738,854.00	433,324,345.00	135,012,036.00	391,355,175.00
Gross Income from Operation	₱ 353,112,654.00	₱335,423,006.00	₱596,906,283.00	₱348,930,679.00
Add: Non-Operating & Other Income	2,071,176.00	564,909.00	-	418,120.00
Total Gross Income	₱ 355,183,830.00	₱335,987,915.00	₱ 596,906,283.00	₱349,348,799.00
Less: Deductions	257,030,396.00	289,407,183.00	543,320,551.00	316,211,124.00
Taxable Income	₱ 98,153,434.00	₱ 46,580,732.00	₱53,585,732.00	₱33,137,675.00
Rate	32.50%	35.00%	35.00%	35.00%
Income Tax	₱ 31,899,866.05	₱16,303,256.20	₱18,755,006.20	₱11,598,186.00
MCIT	₱ 7,103,676.60	₱ 6,719,758.30	11,938,125.66	6,986,975.98
Tax Due	₱ 31,899,866.05	₱16,303,256.20	₱18,755,006.20	₱11,598,186.00

[15] Item A, Exhibits "F" and "9", BIR Records, p. 2954

Less: Unexpired Excess of Prior Year's MCIT	12,830,239.00	-	-	-
Aggregate Income Tax Due	₱ 19,069,627.05	₱ 16,303,256.20	₱18,755,006.20	₱11,598,186.00
Less: Prior Year's Excess Credits	18,187,237.00	12,785,038.00	9,489,870.00	2,545,181.00
Creditable Tax Withheld for 1st 3 Quarters	8,396,160.00	8,816,550.00	12,141,562.00	4,348,318.00
Creditable Tax Withheld for 4th Quarter	3,764,692.00	4,191,538.00	1,175,331.00	4,992,467.00
Total Amount Payable/(Overpayment)	₱(11,278,461.95)	₱(9,489,869.80)	₱(4,051,756.80)	₱ (287,780.00)

The alleged discrepancy on prior year's excess credits claimed amounting to P1,506,576.00, was the result of erroneous carry-over of excess income tax credits in the amount of P11,278,461.95[16] for taxable year 2005 to the succeeding taxable year 2006. Instead of the income tax credits of P11,278,461.95, petitioner erroneously carried over the amount of P12,785,038.00[17] to taxable year 2006 thereby overstating the prior year's excess tax credits reflected in its 2006 Annual Income Tax Return by P1,506,576.05.

In its letter-protest[18] dated May 25, 2009 to the Formal Letter of Demand, petitioner asserts that the respondent's assessment for taxable year 2006 has no effect because the assessed amount was already adjusted/deducted in its 2008 Annual Income Tax Return:

> "Discrepancy on Prior Tax Credit, ITR 2006 & 2005
>
> The discrepancy in the amount of P1,506,576.00 in the 'Prior Years Excess' credit were adjusted in 2008 per filing of ITR. This has no effect in the amount to be paid in 2006 since the excess credit for the year to be carried over in 2007 was P4,051,757.00 but we only carried the amount for filing our ITR 2008 in the amount of P2,545,181.00 instead."

[16] Line 29, Exhibit "B"
[17] Line 28A, Exhibit "C"
[18] Exhibit "K", BIR Records, p.2723

Respondent, however, in Item A.1 of the Final Decision on Disputed Assessment ("FDDA")[19] did not honor petitioner's adjustment in its 2008 ITR to correct the assessed amount because said adjustment affected the succeeding taxable year 2007 which is still under investigation. Item A.1 of the FDDA reads as follows:

> "A. x x x x x x
>
> 1. Discrepancy on prior years excess tax credits claimed – P1,506,576.00
>
> Please be informed that your adjustment of 2008 ITR to take up the discrepancy cannot be honored since the said adjustment affected the taxable year 2007 which is under investigation. Sec. 6 of the Tax Code states that any return, statement or declaration filed in any office authorized to receive the same shall not be withdrawn and may be modified, changed or amended provided that no notice of audit has been actually served upon the taxpayer. Moreover, the carryover of excess tax credits for taxable year 2007 is not yet validated since the investigation is still on-going."

Upon a scrutiny of petitioner's Annual Income Tax Returns for the taxable years 2005 and 2006, this Court finds that the assessed amount of P1,506,576.00 on prior year's excess credits would not give rise to a deficiency income tax liability on the part of the petitioner for the following reasons, to wit:

1. The assessed amount does not in any way pertain to an expense or income account which could affect petitioner's income tax due (before deduction for tax credits/payments is made) for the taxable year 2006.

2. Had petitioner been able to declare in its 2006 Annual ITR the prior year's excess tax credit of P11,278,461.95 instead of P12,785,038.00, it would still have an overpayment of P7,983,293.75 as of December 31, 2006, as shown below:

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[19] Exhibits "F" and "9" BIR Records, p. 2954

Prior Year's excess credits		₱11,278,461.95
Add: Creditable Tax Withheld for the First Three Quarters	₱8,816,550.00	
Creditable Tax Withheld per BIR Form No. 2307 for the Fourth Quarter	4,191,538.00	13,008,088.00
Total Tax Credits		₱24,286,549.95
Less: Income Tax Due		16,303,256.20
Total Overpayment		**₱7,983,293.75**

Also, respondent's contention that the adjustment made in taxable year 2008 ITR cannot be honored since the adjustment affected taxable year 2007 which is under investigation is misplaced.

It must be stressed that, based on the above adjusted computation of total overpayment as of December 31, 2006, the tax benefit derived therefrom redounded to the succeeding year 2007 which is beyond the scope of the present assessment. Since the tax benefit will be in the succeeding year, at most, it may only be assessed in the said succeeding year 2007. Thus, assessing petitioner for the alleged deficiency income tax for the year 2006 is not proper.

As to petitioner's creditable tax withheld at source in the amount of P212,950.27, respondent disallowed the same because petitioner failed to submit the Certificate of Creditable Tax Withheld at Source supporting the same. To refute the findings of respondent, petitioner submitted various Certificates of Creditable Tax Withheld at Source before this Court marked as Exhibits "Q-1" to "Q-101" but only for the creditable withholding taxes amounting to P151,060.53, as presented herein below:

	Exhibit No.	Amount	Remarks
DBP	Q-1	₱ 254.44	Faithful Reproduction of the Original
BDO	Q-2	3,972.37	Certified True Copies
Abbott Laboratories	Q-3	81.70	
Abbott Laboratories	Q-4	157.39	
Abbott Laboratories	Q-5	24.51	
Abbott Laboratories	Q-6	24.51	
Abbott Laboratories	Q-7	162.49	
Abbott Laboratories	Q-8	204.91	
Abbott Laboratories	Q-9	49.02	
Aboitiz Equity Ventures	Q-9-a	9,943.21	
Aboitiz Equity Ventures	Q-10	234.17	
Rustans Coffee	Q-11	7,269.82	
Smart Communications	Q-12	343.64	
Smart Communications	Q-13	716.36	
Smart Communications	Q-14	167.27	
Zuellig Pharma	Q-15	133.75	
Abbott Laboratories	Q-16	127.28	
Abbott Laboratories	Q-17	24.55	
Bayer Phils	Q-18	299.31	
Bayer Phils	Q-19	65.29	Photocopies
Bayer Phils	Q-20	621.02	
NFA Regional Office	Q-21	458.81	Faithful Reproduction of the Original
NFA Regional Office	Q-21(a)	377.80	
NFA Regional Office	Q-21(b)	54.46	
Petron Corp	Q-22	251.15	Photocopies
Petron Corp	Q-23	257.89	
PLDT	Q-24	2,912.05	
PLDT	Q-25	299.55	
San Miguel Corp	Q-26	103.48	
San Miguel Corp	Q-27	54.46	
San Miguel Corp	Q-28	1,187.27	
San Miguel Corp	Q-29	207.27	
San Miguel Corp	Q-30	250.73	
San Miguel Corp	Q-31	605.98	
San Miguel Corp	Q-32	328.36	
San Miguel Corp	Q-33	1,103.81	
San Miguel Corp	Q-34	59.58	
San Miguel Corp	Q-35	1,512.31	
San Miguel Corp	Q-36	152.71	
San Miguel Corp	Q-37	830.61	
San Miguel Corp	Q-38	420.46	
San Miguel Corp	Q-39	78.21	
San Miguel Corp	Q-40	163.39	
San Miguel Corp	Q-41	556.66	
San Miguel Corp	Q-42	153.90	

San Miguel Corp	Q-43	127.08
San Miguel Corp	Q-44	492.61
San Miguel Corp	Q-45	123.85
San Miguel Corp	Q-46	54.46
San Miguel Corp	Q-47	54.46
San Miguel Corp	Q-48	54.90
SANOFI	Q-49	6,796.28
SANOFI	Q-50	333.14
SANOFI	Q-51	6,796.28
SANOFI	Q-52	125.00
SANOFI	Q-53	717.27
SANOFI	Q-54	300.00
SANOFI	Q-55	54.46
SANOFI	Q-56	344.94
SANOFI	Q-57	18,008.33
SANOFI	Q-58	69.11
SANOFI	Q-59	147.27
SM Prime Holdings	Q-60	63.54
SM Prime Holdings	Q-61	219.67
SM Prime Holdings	Q-62	49.02
Smart Communications	Q-63	109.09
Tsuneishi Heavy	Q-64	1,238.60
Unilever Foods	Q-65	175.00
Unilever Foods	Q-66	200.14
Unilever Foods	Q-67	180.36
Unilever Foods	Q-68	3,818.38
Unilever Foods	Q-69	107.11
Unilever Foods	Q-70	118.87
Unilever Foods	Q-71	43.64
Unilever Foods	Q-72	226.82
HSBC	Q-73	112.61
HSBC	Q-74	54.46
Petron Corp	Q-75	152.44
Petron Corp	Q-77	108.93
PLDT	Q-76	219.64
PLDT	Q-78	409.71
Pilipinas Makro	Q-79	49.02
SANOFI	Q-80	19,518.24
SANOFI	Q-81	96.22
SANOFI	Q-82	54.46
SANOFI	Q-83	63.54
SANOFI	Q-84	21,881.21
SANOFI	Q-85	796.26
SANOFI	Q-86	6,125.89
SANOFI	Q-87	10,519.54
SANOFI	Q-88	492.01
SANOFI	Q-89	6,575.79
SANOFI	Q-90	651.92

SANOFI	Q-91	127.08
Server Phils	Q-92	1,982.73
Server Phils	Q-93	149.04
SM Prime Holdings	Q-94	90.77
Solvay Pharma	Q-95	108.93
Solvay Pharma	Q-96	143.84
Solvay Pharma	Q-97	173.40
Unilever Foods	Q-98	1,287.50
Unilever Foods	Q-99	148.46
Unilever Foods	Q-100	96.76
Unilever Foods	Q-101	462.54
TOTAL		**₱151,060.53**

This Court, however, is constrained to consider only the creditable withholding taxes supported by original certificates amounting to P254.44[20]. The other creditable withholding taxes of P891.07[21], while supported by original certificate, shall be disallowed because they were not among those that were disallowed by respondent as per Schedule of Disallowed 2307 Certificate[22]. In fine, petitioner's disallowed tax credits amounted to P212,695.83 (P212,950.27 less P254.44).

After considering the foregoing adjustments, this Court finds that petitioner is not liable for any deficiency income tax. In fact, petitioner will still have a tax overpayment of P7,770,596.92, as computed below, which may be carried over to the succeeding taxable year:

Tax Credits Reflected in 2006 ITR	₱ 25,793,125.00
Less: Overstatement of Tax Carried Over from Previous Quarter	1,506,576.05
Disallowed Tax Credit for the Year	212,695.83
Adjusted Tax Credits	₱ 24,073,853.12
Less: Tax Due	16,303,256.20
Tax Overpayment to be carried over to succeeding taxable year	**₱ 7,770,596.92**

[20] Exhibit "Q-1"
[21] Exhibits "Q-21", "Q-21(a)" and "Q-21(b)"
[22] Exhibit "Q"

In sum, respondent's deficiency income tax assessment against petitioner should be cancelled and/or withdrawn.

WHEREFORE, premises considered, petitioner's Petition for Review is hereby **GRANTED**. Accordingly, the assessment for deficiency income tax in the amount of P2,579,289.48 for taxable year 2006 is hereby **CANCELLED**.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

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

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

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.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Acting Presiding Justice