REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

MINDANAO I GEOTHERMAL PARTNERSHIP,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 8250

Members:

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

Promulgated:

NOV 09 2012
4:30 p.m.

x - x

DECISION

CASANOVA, *J.*:

This is a Petition for Review[1] filed by petitioner on March 31, 2011 seeking the refund or the issuance of tax credit certificate in the amount of Three Million Six Hundred Twenty Five Thousand Five Hundred Sixty Pesos and Seventy Six Centavos (P3,625,560.76) representing its excess income tax payments for the Calendar Year (CY) 2008 and 2009.

Petitioner was a general partnership duly registered with the Securities and Exchange Commission (SEC)[2] with principal office address at 36th Floor, Tower 1, The Enterprise Center, 6766 Ayala Avenue, Makati City.[3] It was primarily engaged in the development, financing construction, ownership, operation, maintenance and transfer of geothermal electrical generation with

[1] Docket, pp. 4-14
[2] Exhibit "B-1 and B-2"
[3] Exhibit "C"

plant located at the Mindanao Geothermal Reservation, North Cotabato. The general partners in petitioner were the following corporations, to wit: (1) Marubeni Pacific Energy Holdings Corporation (MPEHC); and (2) Marubeni Pacific II Energy Holdings Corporation(MP2EHC).[4]

Respondent is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR) empowered to perform duties of her office, including among others, the duty to act and decide upon and approve claims for refund or tax credit as provided by law,[5] with office address at 4th Floor, BIR National Office Building, Agham Road, Diliman, Quezon City.

On December 22, 2009, the Board of Directors and Stockholders of Marubeni Energy Services Corporation (MESC), MPEHC and MP2EHC approved their merger with Axia Power Holdings Philippines Corporation (APHPC), with the latter as the surviving entity. The merger was approved by the SEC on March 29, 2010.[6]

On account of the merger, MPEHC withdrew as general partner in petitioner, and the same was approved by the SEC on March 29, 2010 which effectively dissolved petitioner as a corporate entity. [7]

On April 15, 2009, petitioner filed its Annual Income Tax Return for CY 2008.[8] The said return showed a gross income of P133,044,449.00,[9] a taxable income in the amount of P60,213,712.00,[10] an aggregate income tax

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[4] Exhibit "A"
[5] Par. 2, Admitted Facts, Joint Stipulation of Facts and Issues (JSFI), Docket, p. 343
[6] Par. 1.a, Petition for Review, Docket, p. 4
[7] Par. 1.b, Petition for Review, Ibid, p. 5
[8] Exhibit "F"
[9] Exhibit "F-1"
[10] Exhibit "F-2"

due in the amount of P21,074,799.00[11] and a tax overpayment in the amount of P16,443,743.00.[12] In the said return, petitioner indicated its intention to carry over, as tax credit, the tax overpayment to the succeeding calendar year.

On April 12, 2010, petitioner filed through the Electronic Filing Payment System (EFPS) its original Annual Income Tax Return (ITR) for CY 2009.[13]

On April 14, 2010, petitioner manually filed its Annual ITR for CY 2009.[14] The said return shows a total gross income in the amount of P26,767,881.00,[15] a net loss in the amount of P38,612,515.00[16] and an aggregate income tax due in the amount of P535,358.00.[17] After deducting the Total Tax Credit Payments of P20,504,077.00 from the aggregate income tax due, the said return reveals a tax overpayment in the amount P19,968,719.00.[18] In the said return, petitioner indicated its intention to be issued a tax credit certificate.[19]

On April 15, 2010, petitioner filed with the BIR National Office, Large Taxpayers Division and LT Regular Audit Division 1, a written application for issuance of tax clearance with a claim for refund or issuance of a tax credit certificate for its excess creditable withholding tax for the CYs 2007 to 2009.[20]

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[11] Exhibits "F-3 and F-4"
[12] Exhibits "F-5 and F-6"
[13] Exhibit "G and G-1"
[14] Exhibit "G-2"
[15] Exhibit "G-3"
[16] Exhibit "G-4"
[17] Exhibit "G-6"
[18] Exhibit "G-7"
[19] Exhibit "G-8"
[20] Par. 7, Admitted Facts, JSFI, Docket, p. 344; Exhibits "E", "E-1" to "E-3"

On March 31, 2011, petitioner filed its judicial claim for refund before this Court.[21]

In her Answer[22], respondent states by way of Special and Affirmative Defenses the following, to wit:

"**Special and Affirmative Defenses**

'4. Respondent hereby repleads the foregoing denials and admission as part of her special and affirmative defenses.

5. Respondent is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR) empowered to perform the duties of her office, including among others, the duty to act and decide upon and approve claims for refund or tax credit as provided by law.

5.1 Respondent holds office at the 5th Floor, Main Building, BIR National Office, BIR Road, Diliman, Quezon City.

5.2 Respondent is represented by revenue attorneys of the BIR in collaboration with the Office of the Solicitor General. She maybe served with summons and other legal processes through counsel at the Litigation Division, Room 703, Main Building, BIR National Office, BIR Road, Diliman, Quezon City.

6. Petitioner's claim for refund is subject to administrative investigation/examination by the respondent.

7. It is incumbent upon petitioner to prove that the alleged claim for refund was filed within the two-year period provided under Section 229 of the NIRC of 1997.

7.1 Section 229 of the NIRC of 1997 reads in part:

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

[21] Petition for Review, Docket, p. 4-14
[22] Docket, pp. 277-286

any penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, *(sic)* 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.

7.2 A valid claim for refund should consist of the following:

a. There must be a written claim for refund filed by the taxpayer with the Commissioner of Internal Revenue. This is a mandatory requirement. Without this requirement, the CIR is without any authority to refund.

b. The claim for refund must be a categorical demand for reimbursement.

c. The claim for refund must be filed within two years from date of payment of the tax or penalty regardless of any supervening cause. In claims for refund, the thirty-day period to appeal should be within the two-year prescriptive period.

7.3 In the case of *Servicewide Specialists vs. Commissioner of Internal Revenue* the Court of Appeals held that the effectivity of the National Internal Revenue Code authomatically abandons the previous rulings that the prescriptive period of claims for refund commences after the occurence of a supervening cause. In the *Servicewide Specialists* case, the Court of Appeals reasoned:

> This was however clarified in the subsequent case of CIR vs. Central Azucarera Don Pedro, 49 SCRA 474 (Feb. 28, 1973). In this case, the respondent paid compensating tax for its importation of equipment. But the respondent was later granted exemption to pay these taxes pursuant to Sec. 7 of RA No. 3127 which exemption is retroactive. Hence, respondent filed its claim for refund of the compensating tax paid on July 22, 1965, or more than two (2) years after it was paid and therefore had prescribed under Sec. 309. The Supreme Court clarified the doctrine laid down in Muller & Phipps (Manila), Ltd. vs. Coll. of Int. Revenue, 103 Phil. 145 [March 20, 1958] which was the basis of the CTA in declaring in this case that Sec. 306 of the Tax Code applies to taxes erroneously or illegally or in any manner wrongfully collected or penalties collected without authority. The Supreme Court said:
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>> The case of Muller & Phipps, supra, was relied upon by the Court of Tax Appeals in reversing the action of herein petitioner. In that case advance sales taxes were paid on imported raw materials upon their withdrawal from customs custody. Subsequently, since not all of said materials could be used, the importer shipped back a portion of them to its supplier in the United States and then filed a claim for the refund of the corresponding amount of advance sales taxes which it had paid. The Collector of Internal Revenue denied the claim and the importer went to the Court of Tax Appeals. The petition for review however, was filed beyond the two-year prescriptive period fixed in Section 306 of the Tax Code and the Court of Tax Appeals dismissed the same upon motion by the Collector. The case was thereafter brought

before this Court for review on appeal, and We held that the prescriptive period of two (2) years from payment, fixed by Section 306 of the Tax Code, cannot apply to the present case, on the ground that the advance sales tax in question was not erroneously or illegally collected but that although it was legitimately due when paid the taxpayer subsequently became entitled to a partial refund by reason of a supervening circumstance, namely, the re-exportation of the imported materials. The ruling was subsequently clarified by this Court in a later case, Commissioner of Internal Revenue vs. Insular Lumber Co., Dec. 11, 1967, 21 SCRA 1237. It was there held that Sections 306 and 309 of the Internal Revenue Code were intended to govern all kinds of refunds of internal revenue taxes – those taxes imposed and collected pursuant to the National Internal Revenue Code. In other words the prescriptive period of two (2) years therein provided is the one which should govern and not any other prescriptive period, such as that of ten (10) years provided for in Article 1144, paragraph (2), of the Civil Code. But at the same time this Court ruled: since in those cases the tax sought to be refunded was collected legally, the running of the two-year prescriptive period provided for in Section 306 should commence, not from the date the tax was paid, but from the happening of the supervening cause which entitled the taxpayer to a tax refund. And the claim for refund should be filed with the Commissioner of Internal Revenue, and the subsequent appeal to the Court of Tax Appeals must be instituted with the said two-year period. Clarifying the point

> further, this Court added: In fine, when the tax sought to be refunded is illegally or erroneously collected, the period of prescription starts from the date the tax was paid; but when the tax is legally collected, the prescriptive period commences to run from the date of occurrence of the supervening cause which gave rise to the right of refund. The ruling in Muller & Phipps is accordingly modified.

From the foregoing there is therefore no doubt that Sec. 306 (now Sec. 230) of the Tax Code providing for a two (2) year prescriptive period governs all kinds of refunds of internal revenue taxes. The purpose of which is evidently to settle at the earliest possible time claims for refunds of taxpayers because:

> Taxes are the lifeblood of the nation. Their primary purpose is to generate funds for the state to finance the needs of the citizenry and to advance the common wealth. (see Napocor vs. Province of Albay, 180 SCRA 198).

Moreover, Sec. 306, and its amendment, Sec. 230 quoted hereunder, cover not only taxes erroneously or illegally assessed or collected but also "of any sum alleged to have been excessive." The taxes paid and sought to be refunded by Servicewide in this case, as will be explained later in the resolution of the second issue, falls under the latter phrase.

The next point of inquiry is when does this two-year prescriptive period starts running.

Sec. 230 of the NIRC, which amended Sec. 306 of the Tax Code reads:

> 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 of Internal Revenue: 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 begun after the expiration of two 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.
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> xxx xxx xxx

The immediately aforequoted provision of law is clear that the two year prescriptive period commences to run from the date of payment of tax regardless of any supervening cause that may arise after payment. Therefore the ruling of the Supreme Court in the aforequoted cases, only insofar as to its declaration that the prescriptive period commences to run from the date of occurrence of the supervening cause which gave rise to the right of refund, is not anymore applicable.

8. Petitioner must prove that it is indeed entitled to a claim for refund under existing laws, rules and jurisprudence. In the case of *Far East bank & Trust Company vs. Commissioner of Internal Revenue* the Supreme Court held:

> A tax refund is in the nature of a tax exemption which must be construed *strcitissimi juris* against the taxpayer. To stress, the taxpayer must present convincing evidence to substantiate a claim for refund.

After petitioner presented and formally offered its testimonial and documentary evidence, this Court admitted all of petitioner's formally offered exhibits per Resolution promulgated March 7, 2012.[23] In the April 11, 2012 hearing, respondent's counsel manifested that they will not be presenting evidence and will be submitting the case for decision. The Court ordered both parties to file their respective memorandum.[24] Considering that both parties failed to file their respective memorandum, the case was submitted for decision on May 29, 2012.[25] On June 20, 2012, petitioner filed its Motion for Reconsideration with Motion to Admit Attached Memorandum which was denied by this Court in a Resolution promulgated on August 13, 2012.

The sole issue for the resolution of this Court is whether petitioner is entitled to the refund or issuance of Tax Credit Certificate in the total amount of P3,625,560.76, representing its unutilized excess income tax payments for the CY 2008 and 2009.[26]

As held in the case of Citibank N.A. vs. Court of Appeals and Commissioner of Internal Revenue,[27] a taxpayer must comply with the following requirements or conditions in order to be entitled to a claim for refund representing unutilized creditable tax withheld, to wit:

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[23] Docket, pp. 857 and 858
[24] Docket, p. 860
[25] Docket, p. 862
[26] Docket, p. 344
[27] G.R. No. 107434, October 10, 1997

1. That the claim for refund was filed within the two-year prescriptive period prescribed under Section 204(C), in relation to Section 229 of the NIRC, as amended;
2. That the fact of withholding is established by a copy of a 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; 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.

Section 204 (C) in relation to Section 229 of the National Internal Revenue provides for a period of two years within which a taxpayer may file a claim for credit or refund of its excess income payments before this Court. The said Sections, respectively, read 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 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 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.
>
> 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.

However, in case of dissolution of a corporation, the two (2) year period within which to file a claim for refund begins thirty (30) days after the approval by the SEC of its plan for dissolution.[28]

In compliance with the first requisite, there is no dispute that the SEC Certificate dated March 29, 2010 stated that petitioner was technically dissolved because of the affidavit of withdrawal of MPEHC.[29] Counting thirty days from that date, the start of the two year prescriptive period under Section 229 is on April 29, 2010. From April 29, 2010, petitioner had until April 29, 2012 within which to claim for refund or issuance of tax credit certificate, both in the administrative and judicial levels. Therefore, petitioner's administrative claim for refund filed on April 15, 2010 and the Petition for Review filed on March 31, 2011 are well within the prescriptive period provided by law.

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[28] Bank of the Philippine Islands vs. Commissioner of Internal Revenue, G.R. No. 144653, August 28, 2001

[29] Exhibit "A"

Anent the second requisite, petitioner presented various Certificates of Creditable Tax Withheld at Source duly issued by its client, Philippine National Oil Company- Energy Development Corporation (PNOC-EDC) reflecting the income payments and the amount of taxes withheld therefrom, to wit:

Exhibit	Payor	Period Covered	Income Payments	Tax Withheld
CY 2008				
F-10	PNOC-EDC	Jan 1, 2008 to March 31, 2008	₱ 56,747,085.00	₱ 1,134,941.70
F-12	PNOC-EDC	Apr 1, 2008 to June 30, 2008	92,807,898.00	1,856,157.96
F-14	PNOC-EDC	July 1, 2008 to Sep 30, 2008	64,854,571.50	1,297,091.43
F-16	EDC	Oct 1, 2008 to Dec 31, 2008	68,447,144.50	1,368,942.89
			₱ 282,856,699.00	**₱ 5,657,133.98**
CY 2009				
G-15	EDC	Jan 1, 2009 to March 31, 2009	₱ 98,350,924.00	₱1,967,018.48
G-17	EDC	Apr 1, 2009 to June 30, 2009	81,527,530.00	1,630,550.60
G-19	EDC	August 2009	23,138,264.00	462,765.28
			₱203,016,718.00	**₱4,060,334.36**
		Total	**₱485,873,417.00**	**₱ 9,717,468.34**

Clearly, the creditable taxes withheld reflected in petitioner's Annual ITRs[30] in the amounts of P5,657,133.00 and P4,060,334.00 for CYs 2008 and 2009, respectively, or in the aggregate amount of P9,717,468.00 were duly supported by various Certificates of Creditable Tax Withheld at Source.

Lastly, a perusal of the withholding tax certificates reveals that the creditable withholding taxes of P5,657,133.98 and P4,060,334.36 for CYs 2008 and 2009 were withheld on gross income payments of P282,856,699.00

[30] Rounded to the nearest Peso.

and P203,016,718.00, respectively, generated from its sale of power/electricity to the PNOC-EDC.

The Court, however, observed that petitioner's gross income in its 2008 and 2009 Annual Income Tax Returns amounted to P302,719,876.00 and P166,200,028.00. Based on the foregoing, there is discrepancy between the income payments per Income Tax Return and Certificate of Creditable Tax Withheld for both years. Nonetheless, petitioner was able to reconcile the aforesaid differences by providing reconciliation schedules[31] for both years and through the Supplemental Affidavits,[32] executed by petitioner's witness, Ms. Maria Cecilia P. Olarte. Hence, petitioner was able to prove that the income payments it received, from which the taxes were withheld, were reported/declared in its Annual ITR.

We now determine how much of the creditable taxes withheld remained unutilized as of December 31, 2009.

It should be noted that the instant case involves a claim for refund of petitioner's alleged unutilized creditable tax withheld for CYs 2008 and 2009 in the amount of P3,625,560.76, computed as follows:

	CY 2008	CY 2009	Total
Creditable Tax Withheld for the First Three Quarters	₱4,288,191.00	₱4,060,334.00	₱8,348,525.00
Creditable Tax Withheld per BIR Form 2307 for the Fourth Quarter	1,368,943.00		1,368,943.00
Total Creditable Tax Withheld for the Year	₱ 5,657,134.00	₱ 4,060,334.00	₱9,717,468.00
Add: Tax Payments for the First Three Quarters	15,518,249.00		15,518,249.00
Total Tax Credits/Payments	₱21,175,383.00	₱ 4,060,334.00	₱25,235,717.00

[31] Exhibits "N", "N-1" to "N-21a", "O" and "O-1" to "O-12b"
[32] Exhibits "L-2" and "P"

Less: Income Tax due	21,074,799.00	535,358.00	21,610,157.00
Unutilized Excess Tax Credits/Payments	**₱ 100,584.00**	**₱ 3,524,976.00**	**₱ 3,625,560.00**

In arriving at the alleged unutilized excess income payments of P3,625,560.76, petitioner deducted its 2008 and 2009 tax liabilities in the amounts of P21,074,799.00 and P535,358.00, respectively, or in the aggregate amount of P21,610,157.00, from the amounts of creditable taxes withheld of P9,717,468.00 and tax payment of P15,518,249.00. As previously discussed, petitioner was able to prove that it has creditable taxes withheld amounting to P9,717,468.00 which may be used to pay for its tax liabilities. However, this Court cannot ascertain the existence of the alleged tax payment of P15,518,249.00 on the ground that petitioner failed to present any document to support that the same was actually paid or remitted to the BIR. Considering that the taxes withheld amounting to P9,717,468.00 is not sufficient to cover its tax liabilities of P21,610,157.00, then, there is no excess creditable withholding tax to speak of. Thus, petitioner's claim cannot stand.

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

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

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.
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