REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

HAVI FOOD SERVICES PHILS., INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 7735

Members:

BAUTISTA, Chairperson
PALANCA-ENRIQUEZ, and
COTANGCO-MANALASTAS, *JJ.*

Promulgated:
FEB 28 2011
ABFernando 11:50 a.m.

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DECISION

COTANGCO-MANALASTAS, *J.:*

Before this Court is a Petition for Review filed on March 10, 2008 by Havi Food Services Phils., Inc. to seek the refund or issuance of tax credit certificate in the amount of P5,238,461.00, allegedly representing its unutilized excess creditable income taxes withheld for taxable years 2005 and 2006.

STATEMENT OF FACTS

Havi Food Services Phils. Inc. (petitioner) is a domestic corporation duly organized and existing under the laws of the Philippines, with principal office located at Sumulong Highway, Marikina, Metro Manila.[1]

[1] Par. 1, Stipulation of Facts, Joint Stipulation of Facts and Issues, docket, p. 56

Respondent is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR) with authority to act as such, including, among others, the power to decide, approve, and grant refunds or tax credit of overpaid internal revenue taxes as provided by law. He holds office at the BIR National Office Building, BIR Road, Diliman, Quezon City.

On March 28, 2006[2] and March 29, 2007[3], petitioner filed its Annual Income Tax Returns for taxable years 2005 and 2006, respectively.

Thereafter, petitioner filed two (2) formal written applications for refund with the BIR Revenue District Office No. 045-Marikina City on February 20, 2008 and August 31, 2007 in the amount of P5,238,461.00, representing its unutilized excess creditable income taxes withheld for 2005 and 2006.[4]

Respondent failed to render his decision on the subject application for income tax refund. Hence, petitioner filed the instant Petition for Review on March 10, 2008.

Respondent filed his Answer[5] on May 13, 2008 and raised the following Special and Affirmative Defenses:

> "5. The claim for refund is still under examination by the respondent's Bureau;
>
> 6. The burden of proof is upon the petitioner to prove that it is entitled to the claim for refund;
>
> 7. The grant of a claim for refund (*sic*) tantamount to an exemption from taxation which is construed strictly against the claimant and in favor of the taxing authority;
>
> 8. The taxes sought to be refunded were paid in accordance with law; the burden of proof to the contrary is upon the petitioner-claimant

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[2] Exhibit "A"
[3] Exhibit "C"
[4] Par. 5, Stipulation of Facts, Joint Stipulation of Facts and Issues, docket, p. 57
[5] Docket, pp. 40-42

to show with clear and unambiguous provision of law supporting the same."

On May 14, 2008, a Notice of Pre-Trial Conference was issued by this Court setting the case for pre-trial conference on May 23, 2008 and requiring both parties to be present at the pre-trial and to file with the Court and serve on the adverse party their pre-trial briefs.[6] Petitioner and respondent simultaneously filed their respective pre-trial brief on May 21, 2008.[7]

On June 11, 2008, the parties filed their Joint Stipulation of Facts and Issues[8] before this Court, which was approved in a Resolution dated June 17, 2008. In the same resolution, the pre-trial was considered terminated.[9]

During trial, petitioner presented and formally offered its documentary and testimonial evidence; while respondent manifested that he is submitting the case for decision since there was no terminated examination.[10]

Consequently, respondent was granted a period of thirty (30) days from September 29, 2009 within which to file his Memorandum; while petitioner was given a period of fifteen (15) days from receipt of the Resolution dated October 1, 2009 within which to file its Memorandum.[11]

The case was considered submitted for decision on March 22, 2010, in view of the report dated March 18, 2010 of the Records Division that no memoranda have been filed by both parties.[12]

[6] Docket, p. 43
[7] Docket, pp. 44-54
[8] Docket, pp. 56-58
[9] Docket, p. 63
[10] Minutes of the Hearing held on September 29, 2009, docket, p. 284
[11] Docket, p. 286
[12] Resolution dated March 22, 2010, docket, p. 304

STATEMENT OF ISSUES

The parties submitted the following issues[13] for this Court's resolution:

> "Whether Petitioner is entitled to be refunded its excess creditable withholding taxes as of calendar year ended December 31, 2006 in the amount of P5,238,461.00 by showing –
>
> a) Whether or not the creditable withholding taxes amounting to P6,452,706 for CY 2005 and P5,003,896 for CY 2006 are duly supported with Certificates of Creditable Taxes Withheld at Source;
>
> b) Whether or not the income from which these creditable taxes were withheld were duly declared as part of Petitioner's income in its Annual Income Tax Return and audited financial statements for CY December 31, 2005 and December 31, 2006;
>
> c) Whether or not Petitioner did not carry over its unutilized creditable withholding taxes as of calendar year ended December 31, 2005 and December 31, 2006 to the succeeding taxable year 2007.
>
> d) Whether or not Petitioner duly filed both administrative and judicial applications for refund within the two-year prescriptive period provided under Sections 204 and 229 of the Tax Code, as amended."

DISCUSSION/RULING

Petitioner anchors its claim on the provisions of Section 76 of the National Internal Revenue Code (NIRC) of 1997, in relation to Sections 204 and 229 of the same Code. Section 76 of the NIRC of 1997 is hereunder quoted for easy reference:

> "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

[13] Docket, pp. 57-58

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.**" *(Emphasis supplied)*

Based on the afore-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. However, once the option to carry-over has been made, the same becomes irrevocable for that taxable period.

This Court also takes note of its ruling in the case of *Shell Services International Sendirian Berhad vs. Commissioner of Internal Revenue*[14] as regards the determination of the option chosen by the taxpayer in accordance with Section 76 of the NIRC of 1997. The pertinent part of the said Decision reads:

"**(W)hile petitioner marked with an 'x' the box corresponding to the phrase 'to be refunded' in its 2000 ITR, petitioner had *actually exercised* the option to carry-over its 2000 excess creditable withholding tax to the year 2001**, and in fact, *it had already carried over* to the succeeding year its unutilized creditable taxes withheld for the taxable year 2000. **By express mandate of *Section 76*, once the option to carry-over has been made, such option is irrevocable for that taxable period and no application for cash refund or issuance of tax credit certificate shall be allowed therefore.**" *(Emphasis supplied)*

Applying the foregoing to the facts of this case, records show that petitioner's claim of P5,238,461.00 consists of the following:

Excess credits in 2005	P 234,565.00
Add: Creditable taxes withheld in 2006	5,003,896.00
Excess Tax Credits Claimed for Refund	**P 5,238,461.00**

[14] CTA EB No. 196, June 13, 2007 (CTA Case No. 6658, March 14, 2006)

A perusal of petitioner's Annual Income Tax Return for taxable year 2006[15] shows that petitioner carried over the 2005 excess credits in the amount of P234,565.00, which was included in the carry-over amount of P7,252,340.00.[16] The same was reflected in petitioner's 2007 Annual Income Tax Return, which shows prior year's excess credits amounting to P5,920,361.00,[17] consisting of the following:

Petitioner's CWT claim for refund – 2000 and 2001	P 9,357,681.00
Less: CWT granted by the Court	(2,339,906.53)
2000 Excess Credits to be carried over	P 7,017,774.47
2000 Excess Credits reflected in 2006 ITR	P 7,017,775.00
Add: 2005 Excess Credits	234,565.00
Total Prior Year's Excess Credits reflected in 2006 ITR	P 7,252,340.00
Less: Tax due for 2006	(1,331,979.00)
Net Prior Year's Excess Credits reflected in 2007 ITR	**P 5,920,361.00**

Accordingly, while petitioner marked with an "x" the box corresponding to the phrase "To be issued a Tax Credit Certificate" as may be perused in its 2005 Annual Income Tax Return[18], petitioner had actually exercised the option to carry-over its 2005 excess creditable withholding tax to succeeding taxable years.

On the other hand, upon further scrutiny of the returns offered in evidence, it was found that petitioner opted to be refunded of its tax credits for taxable year 2006, as shown by the "x" mark in the box corresponding to the said choice in the return.[19]

Inasmuch as the amount of P5,920,361.00 excess credit still includes the 2005 excess credits of P234,565.00, only the excess tax credits for taxable year 2006 in the amount of P5,003,896.00 can be a proper subject of a claim for refund pursuant to Section 76 of the NIRC of 1997.

Nevertheless, settled jurisprudence as well as Section 2.58 of Revenue Regulations (RR) No. 2-98, as amended, require the taxpayer's compliance with three

[15] Exhibit "C"
[16] Exhibit "C-3"; Exhibit "V", page 6
[17] Exhibits "E" and "E-2"
[18] Exhibit "A-4"
[19] Exhibit "C-5"

basic requirements in order for it to be entitled to the refund of excess creditable withholding taxes, to wit:

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;

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

3. That the income upon which the taxes were withheld were included in the return of the recipient.[20]

Consequently, this Court shall determine whether petitioner was able to satisfy the foregoing requirements.

As to the first requisite, the relevant provisions of the NIRC of 1997 are Sections 204(C) and 229, which provide as follows:

> "SEC. 204. *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.* - The Commissioner may -
>
> 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 as a written claim for credit or refund**. xxx" (*Emphasis supplied)*
>
> "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

[20] Section 2.58.3(B), Revenue Regulations No. 2-98; *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

> 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." (*Emphasis supplied)*

Significantly, in the case of *ACCRA Investments Corporation vs. The Honorable Court of Appeals*, *et al.*[21], the Supreme Court said that the reckoning of the two-year prescriptive period for the filing of a claim for refund or tax credit of excess income tax paid/withheld provided in the above-quoted provision should commence from the date of filing of the final adjustment return.

As previously mentioned, the amount that can be a proper subject of a claim for refund on the basis of Section 76 of the NIRC of 1997 is the claimed excess creditable withholding taxes for taxable year 2006, for which petitioner filed its corresponding Annual Income Tax Return on March 29, 2007.[22] Counting from this date, petitioner had until March 29, 2009 within which to file its claim for refund or issuance of tax credit certificate for taxable year 2006, both in the administrative and judicial levels. Petitioner's administrative claims for refund were filed on February 20, 2008 and August 31, 2007[23]; while its judicial claim via the instant Petition for Review was filed on March 10, 2008. Clearly, both the administrative and judicial claims for refund were filed well within the two-year prescriptive period. Hence, the first requisite was met by petitioner.

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[21] G.R. No. 96322, December 20, 1991
[22] Exhibit "C"
[23] Par. 5, Stipulation of Facts, Joint Stipulation of Facts and Issues, docket, p. 57

In establishing its compliance with the second requisite, petitioner submitted Schedules of Creditable Withholding Taxes Claimed[24], Details of Creditable Taxes Withheld[25], and Certificates of Creditable Tax Withheld at Source (BIR Form No. 2307)[26]; which were examined by the Court-commissioned Independent Certified Public Accountant (CPA), Ms. Myra Celeste O. Dabalos.

In her final report, Ms. Dabalos noted a P0.11 rounding off difference between the creditable withholding taxes reflected in the Certificates of Creditable Tax Withheld at Source and the amounts shown in the Schedule of Creditable Withholding Taxes, computed as follows:[27]

Creditable Tax Withheld Per BIR Form 2307	P 5,003,897.08
Less: Creditable Tax Withheld per Schedule	5,003,896.97
Difference	**P 0.11**

However, after a thorough scrutiny of petitioner's documents, this Court found that the following certificates with creditable withholding taxes in the amount of P8,525.69 were not duly signed by the respective payors/withholding agents:

EXHIBIT	PAYOR	CWT
R-235	QSCV Corp. - Sumulong	P 4,663.77
R-288	Tan, Robert Sy - Aurora	1,460.81
R-292	Tan, Robert Sy - Anonas	2,401.11
	TOTAL	**P 8,525.69**

Therefore, petitioner was able to prove the fact of withholding only as to the amount of P4,995,370.31, computed as follows:

Claimed Creditable Withholding Taxes		P5,003,896.00
Less:	Creditable Withholding Taxes supported by certificates without signatures from the withholding agents	8,525.69
Properly Substantiated Creditable Withholding Taxes		**P4,995,370.31**

This Court shall now ascertain petitioner's compliance with the third requisite.

[24] Exhibits "O" and "P"
[25] Exhibits "Q" and "R"
[26] Exhibits "Q-1" to "Q-284" and "R-1" to "R-353"
[27] Exhibit "V", pages 3-4, Item No. 6

Based on the documentary evidence presented, petitioner's reported gross income in its Annual Income Tax Return for taxable year 2006 amounted to P201,584,012.00[28], broken down as follows:

REVENUES	AMOUNT
Sale of Services	P 196,914,951.00
Miscellaneous Income	4,669,061.00
TOTAL	**P201,584,012.00**

On the other hand, the total income payments for the same year per BIR Forms No. 2307 amounted to P229,131,716.50, detailed as follows:[29]

NATURE OF INCOME PAYMENT	AMOUNT
Management and consultancy	P 3,001,262.82
Services/Freight	6,349,194.26
Prime/Sub-contractors	140,090,194.79
Payment by top 10,000 corporations-services	4,515,414.67
Payment by top 10,000 corporations-goods and services	64,634,560.82
Payment by top 10,000 corporations	4,426,064.10
Local suppliers	921,718.74
Rentals	4,547,416.00
Refund-MERALCO	645,890.30
TOTAL	**P 229,131,716.50**

From the foregoing, it is apparent that there is a discrepancy of P27,547,704.50 between the total gross income reflected per petitioner's income tax return *vis-à-vis* the total amount shown per BIR Forms No. 2307. Here, petitioner failed to reconcile such discrepancy.

While the Independent CPA reported that out of the total income of P228,510,328.59 reflected per BIR Forms No. 2307, it was able to verify that the amount of P208,939,481.04[30] was recorded by petitioner in its books of accounts and declared in its income tax return, this Court cannot confirm said findings due to petitioner's failure to present the source documents, such as invoices and official receipts, upon which the income amount of P208,939,481.04 was based.

[28] Exhibit "C", line nos. 37, 54, and 61
[29] See Annex "A" for details
[30] Exhibit "T", page 3; Exhibit "V", pages 4-7

Decision
C.T.A. CASE NO. 7735 HAVI FOOD SERVICES PHILS., INC. vs. COMMISSIONER OF INTERNAL REVENUE
2006 INCOME PAYMENTS PER BIR FORMS NO. 2307

Exh.	Management & consultancy	Rentals	Refund-MERALCO	Services/Freight	Local Suppliers	Prime/Sub Contractors	Payments Made by top 10,000	Payments Made by top 10,000-Services	Payments Made by top 10,000-Goods/Goods&Services	Total
R-1	1,558,484.11	504,000.00				1,933,045.48		205,843.86		4,201,373.
R-2	1,442,778.71	504,000.00				1,933,045.48		205,843.86		4,085,668.
R-3		125,461.40								125,461.
R-4		125,461.40								125,461.
R-5		151,857.00								151,857.
R-6		151,857.00								151,857.
R-7		133,108.00								133,108.
R-8		140,799.40								140,799.
R-9		310,684.60				43,616,543.65				43,927,228.
R-10		300,000.00				42,728,119.95				43,028,119.
R-11		300,000.00							28,231,346.00	28,531,346.
R-12		100,000.00							13,895.00	113,895.
R-13		300,000.00							1,313,267.00	1,613,267.
R-14		100,000.00							21,021,608.28	21,121,608.
R-15		617,400.00								617,400.
R-16						332,469.32				332,469.
R-17						204,505.28				204,505.
R-18						305,000.86				305,000.
R-19						316,154.48				316,154.
R-20				107,220.50						107,220.
R-21						149,932.50				149,932.
R-22						148,244.00				148,244.
R-23						80,785.50				80,785.
R-24						627,497.11				627,497.
R-25						619,548.88				619,548.
R-26						573,593.77				573,593.
R-27						512,960.16				512,960.
R-28						269,008.64				269,008.
R-29						300,882.32				300,882.
R-30						268,232.14				268,232.
R-31						168,000.00				168,000.
R-32						186,966.52				186,966.
R-33						175,387.50				175,387.
R-34						198,742.50				198,742.
R-35						34,106.50				34,106.
R-36						38,842.00				38,842.
R-37						38,887.50				38,887.
R-38						329,720.50				329,720.
R-39						428,841.50				428,841.
R-40						310,840.55				310,840.
R-41						231,106.00				231,106.
R-42						139,461.82				139,461.
R-43						132,606.96				132,606.
R-44						399,428.26				399,428.
R-45						389,486.57				389,486.
R-46						310,325.89				310,325.
R-47						93,160.00				93,160.
R-48						208,758.58				208,758.
R-49						266,158.56				266,158.
R-50						62,037.00				62,037.
R-51						71,431.00				71,431.
R-52						51,306.00				51,306.
R-53						71,196.00				71,196.
R-54						55,794.00				55,794.
R-55						86,853.01				86,853.
R-56								85,945.50		85,945.
R-57							172,231.00			172,231.
R-58								132,709.00		132,709.
R-59								186,341.00		186,341.
R-60							116,025.50			116,025.

Decision
C.T.A. CASE NO. 7735 HAVI FOOD SERVICES PHILS., INC. vs. COMMISSIONER OF INTERNAL REVENUE
2006 INCOME PAYMENTS PER BIR FORMS NO. 2307

Exh.	Management & consultancy	Rentals	Refund-MERALCO	Services/Freight	Local Suppliers	Prime/Sub Contractors	Payments Made by top 10,000	Payments Made by top 10,000-Services	Payments Made by top 10,000-Goods/Goods&Services	Total
R-61							179,358.00			179,358.0
R-62						316,146.50				316,146.5
R-63								103,996.50		103,996.5
R-64								76,499.00		76,499.0
R-65								20,226.00		20,226.0
R-66								188,663.00		188,663.0
R-67						309,579.01				309,579.0
R-68						341,439.74				341,439.7
R-69						227,488.39				227,488.3
R-70						238,561.61				238,561.6
R-71						420,722.50				420,722.5
R-72						242,862.30				242,862.3
R-73						264,522.18				264,522.1
R-74						240,453.32				240,453.3
R-75						197,815.87				197,815.8
R-76						70,414.59				70,414.5
R-77						195,132.91				195,132.9
R-78						102,580.50				102,580.5
R-79						140,285.06				140,285.0
R-80						20,720.00				20,720.0
R-81						250,246.16				250,246.1
R-82						344,839.93				344,839.9
R-83						299,833.48				299,833.4
R-84						289,834.82				289,834.8
R-85						37,709.09				37,709.0
R-86						391,762.38				391,762.3
R-87						101,902.68				101,902.6
R-88						154,229.47				154,229.4
R-89						102,623.50				102,623.5
R-90						378,070.00				378,070.0
R-91						232,232.00				232,232.0
R-92						196,430.87				196,430.8
R-93						253,382.63				253,382.6
R-94						193,837.81				193,837.8
R-95						141,792.81				141,792.8
R-96				155,822.73						155,822.7
R-97				72,760.00						72,760.0
R-98				73,876.61						73,876.6
R-99				88,775.57						88,775.5
R-100				87,477.32						87,477.3
R-101				123,581.04						123,581.0
R-102				248,544.72						248,544.7
R-103				222,705.36						222,705.3
R-104		341,393.60						46,705.00		388,098.6
R-105		341,393.60						46,705.00		388,098.6
R-106						334,448.99				334,448.9
R-107						358,317.00				358,317.0
R-108						262,338.39				262,338.3
R-109						265,427.68				265,427.6
R-110						183,915.57				183,915.5
R-111						235,168.71				235,168.7
R-112						170,151.78				170,151.7
R-113						144,666.97				144,666.9
R-114						260,635.12				260,635.1
R-115						310,343.57				310,343.5
R-116						212,549.10				212,549.1
R-117						201,404.47				201,404.4
R-118						150,409.18				150,409.1
R-119						164,568.64				164,568.6
R-120						124,341.96				124,341.9

Decision
C.T.A. CASE NO. 7735 HAVI FOOD SERVICES PHILS., INC. vs. COMMISSIONER OF INTERNAL REVENUE
2006 INCOME PAYMENTS PER BIR FORMS NO. 2307

Exh.	Management & consultancy	Rentals	Refund-MERALCO	Services/Freight	Local Suppliers	Prime/Sub Contractors	Payments Made by top 10,000	Payments Made by top 10,000-Services	Payments Made by top 10,000-Goods/Goods&Services	Total
R-121						121,944.64				121,944.6
R-122						178,042.79				178,042.7
R-123						204,876.21				204,876.2
R-124						141,924.10				141,924.1
R-125						142,936.60				142,936.6
R-126				133,037.59						133,037.5
R-127				156,531.85						156,531.8
R-128				131,487.50						131,487.5
R-129				132,873.22						132,873.2
R-130				183,359.07						183,359.0
R-131				163,023.10						163,023.1
R-132				136,879.46						136,879.4
R-133				121,808.04						121,808.0
R-134				308,512.75						308,512.7
R-135				336,060.94						336,060.9
R-136				234,473.02						234,473.0
R-137				90,029.44						90,029.4
R-138				189,474.16						189,474.1
R-139				471,071.49						471,071.4
R-140				441,790.47						441,790.4
R-141				330,711.60						330,711.6
R-142				334,778.57						334,778.5
R-143				168,213.18						168,213.1
R-144				161,972.14						161,972.1
R-145				143,374.11						143,374.1
R-146				106,690.18						106,690.1
R-147									13,777,287.50	13,777,287.5
R-148						69,863.50				69,863.5
R-149						80,945.00				80,945.0
R-150						67,100.00				67,100.0
R-151						158,739.23				158,739.2
R-152						89,602.50				89,602.5
R-153						143,459.84				143,459.8
R-154						84,107.14				84,107.1
R-155						120,328.71				120,328.7
R-156						108,640.00				108,640.0
R-157						152,681.23				152,681.2
R-158						104,774.25			60.00	104,834.2
R-159						94,541.20				94,541.2
R-160						100,345.02				100,345.0
R-161						92,759.32				92,759.3
R-162						91,294.64				91,294.6
R-163						200.00				200.0
R-164						95,669.64				95,669.6
R-165						55,571.43				55,571.4
R-166						73,178.58				73,178.5
R-167						60,178.57				60,178.5
R-168						65,071.43				65,071.4
R-169						234,299.68				234,299.6
R-170						244,998.32				244,998.3
R-171						208,460.71				208,460.7
R-172						193,116.96				193,116.9
R-173						109,174.85				109,174.8
R-174						107,322.00				107,322.0
R-175						112,490.17				112,490.1
R-176						92,756.25				92,756.2
R-177						211,796.59				211,796.5
R-178						227,006.25				227,006.2
R-179						151,176.78				151,176.7
R-180						151,697.34				151,697.3

Decision
C.T.A. CASE NO. 7735 HAVI FOOD SERVICES PHILS., INC. vs. COMMISSIONER OF INTERNAL REVENUE
2006 INCOME PAYMENTS PER BIR FORMS NO. 2307

Exh.	Management & consultancy	Rentals	Refund-MERALCO	Services/Freight	Local Suppliers	Prime/Sub Contractors	Payments Made by top 10,000	Payments Made by top 10,000-Services	Payments Made by top 10,000-Goods/Goods&Services	Total
R-181						377,240.31				377,240.3
R-182						386,087.26				386,087.2
R-183						320,786.60				320,786.6
R-184						291,428.57				291,428.5
R-185						182,679.62				182,679.6
R-186						220,269.75				220,269.7
R-187						187,877.67				187,877.6
R-188						177,088.40				177,088.4
R-189						1,171,958.44				1,171,958.4
R-190						1,310,654.29				1,310,654.2
R-191						1,019,562.11				1,019,562.1
R-192						914,092.85				914,092.8
R-193						20,081.25				20,081.2
R-194						201,080.00				201,080.0
R-195						171,953.50				171,953.5
R-196						174,547.50				174,547.5
R-197						108,675.00				108,675.0
R-198						253,772.40				253,772.4
R-199						216,375.00				216,375.0
R-200						212,819.65				212,819.6
R-201						169,848.22				169,848.2
R-202						220,004.22				220,004.2
R-203						174,954.64				174,954.6
R-204						144,012.21				144,012.2
R-205						132,691.07				132,691.0
R-206						221,018.14				221,018.1
R-207						227,008.29				227,008.2
R-208						211,920.53				211,920.5
R-209						189,792.86				189,792.8
R-210								746,462.94		746,462.9
R-211								638,165.59		638,165.5
R-212								676,786.09		676,786.0
R-213								449,857.15		449,857.1
R-214								349,850.89		349,850.8
R-215									277,097.04	277,097.0
R-216							367,245.60			367,245.6
R-217								354,814.29		354,814.2
R-218						132,538.19				132,538.1
R-219						137,119.93				137,119.9
R-220						140,581.93				140,581.9
R-221						158,819.25				158,819.2
R-222						165,310.50				165,310.5
R-223						132,606.96				132,606.9
R-224						119,821.43				119,821.4
R-225						132,457.15				132,457.1
R-226						97,446.43				97,446.4
R-227						96,854.47				96,854.4
R-228						98,766.97				98,766.9
R-229						119,485.71				119,485.7
R-230						198,690.43				198,690.4
R-231						194,119.28				194,119.2
R-232						164,090.18				164,090.1
R-233						116,708.03				116,708.0
R-234						367,372.07				367,372.0
R-235						233,188.60				233,188.6
R-236						335,483.88				335,483.8
R-237						279,620.72				279,620.7
R-238						166,711.66				166,711.6
R-239						285,738.64				285,738.6
R-240						156,167.28				156,167.2

Decision
C.T.A. CASE NO. 7735 HAVI FOOD SERVICES PHILS., INC. vs. COMMISSIONER OF INTERNAL REVENUE
2006 INCOME PAYMENTS PER BIR FORMS NO. 2307

Exh.	Management & consultancy	Rentals	Refund-MERALCO	Services/Freight	Local Suppliers	Prime/Sub Contractors	Payments Made by top 10,000	Payments Made by top 10,000-Services	Payments Made by top 10,000-Goods/Goods&Services	Total
R-241						132,339.12				132,339.1
R-242						109,173.45				109,173.4
R-243						156,282.75				156,282.7
R-244						158,837.15				158,837.1
R-245						115,635.18				115,635.1
R-246						42,101.82				42,101.8
R-247						37,012.08				37,012.0
R-248						46,430.58				46,430.5
R-249						128,549.56				128,549.5
R-250						98,913.22				98,913.2
R-251						96,750.01				96,750.0
R-252						83,887.50				83,887.5
R-253						78,513.00				78,513.0
R-254						72,084.00				72,084.0
R-255						63,676.00				63,676.0
R-256						85,190.00				85,190.0
R-257						4,560.00				4,560.0
R-258						64,741.50				64,741.5
R-259						60,174.00				60,174.0
R-260						80,386.00				80,386.0
R-261						51,956.50				51,956.5
R-262						4,800.00				4,800.0
R-263						44,147.50				44,147.5
R-264						1,200.00				1,200.0
R-265						50,271.50				50,271.5
R-266						55,918.00				55,918.0
R-267						80.00				80.0
R-268						274,791.50				274,791.5
R-269						271,396.50				271,396.5
R-270						217,697.00				217,697.0
R-271						199,492.00				199,492.0
R-272						193,312.50				193,312.5
R-273						181,942.50				181,942.5
R-274						190,787.00				190,787.0
R-275						171,937.00				171,937.0
R-276						231,673.50				231,673.5
R-277						251,181.00				251,181.0
R-278						221,496.00				221,496.0
R-279						217,031.00				217,031.0
R-280						138,727.27				138,727.2
R-281						105,824.13				105,824.1
R-282						104,843.66				104,843.6
R-283						82,920.62				82,920.6
R-284						240.00				240.0
R-285						94,486.67				94,486.6
R-286						86,745.57				86,745.5
R-287						91,162.53				91,162.5
R-288						146,081.48				146,081.4
R-289					144,785.78					144,785.7
R-290					126,009.82					126,009.8
R-291					96,581.25					96,581.2
R-292						240,110.59				240,110.5
R-293					216,869.57					216,869.5
R-294					190,437.50					190,437.5
R-295					147,034.82					147,034.8
R-296				241,130.00						241,130.0
R-297				247,968.14						247,968.1
R-298						221,871.35				221,871.3
R-299						182,510.00				182,510.0
R-300						306,073.41				306,073.4

Decision
C.T.A. CASE NO. 7735 HAVI FOOD SERVICES PHILS., INC. vs. COMMISSIONER OF INTERNAL REVENUE
2006 INCOME PAYMENTS PER BIR FORMS NO. 2307

Exh.	Management & consultancy	Rentals	Refund-MERALCO	Services/Freight	Local Suppliers	Prime/Sub Contractors	Payments Made by top 10,000	Payments Made by top 10,000-Services	Payments Made by top 10,000-Goods/Goods&Services	Total
R-301						322,522.39				322,522.
R-302						243,562.50				243,562.
R-303						219,072.32				219,072.
R-304						191,561.84				191,561.
R-305						184,351.50				184,351.
R-306						170,524.11				170,524.
R-307						146,462.86				146,462.
R-308				203,180.39						203,180.
R-309						360,289.63				360,289.
R-310						352,073.03				352,073.
R-311						316,571.42				316,571.
R-312						270,618.04				270,618.
R-313							234,374.00			234,374.
R-314							368,758.00			368,758.
R-315							359,936.00			359,936.
R-316							284,005.00			284,005.
R-317							119,930.00			119,930.
R-318							161,539.00			161,539.
R-319							161,042.00			161,042.
R-320							132,766.00			132,766.
R-321							146,143.00			146,143.
R-322							231,151.00			231,151.
R-323							215,562.00			215,562.
R-324							159,698.00			159,698.
R-325							194,918.00			194,918.
R-326							296,866.00			296,866.
R-327							297,337.00			297,337.
R-328							227,179.00			227,179.
R-329						277,617.62				277,617.
R-330						311,011.66				311,011.
R-331						27,572.00				27,572.
R-332						273,823.19				273,823.
R-333						145,304.47				145,304.
R-334						327,647.18				327,647.
R-335						273,028.07				273,028.
R-336						314,486.59				314,486.
R-337						143,391.98				143,391.
R-338						230,929.43				230,929.
R-339						129,048.22				129,048.
R-340						175,182.45				175,182.
R-341						180,427.82				180,427.
R-342						177,857.14				177,857.
R-343						119,107.14				119,107.
R-344			889.06							889.
R-345			889.06							889.
R-346			889.06							889.
R-347			889.06							889.
R-348			128,289.00							128,289.
R-349			128,289.00							128,289.
R-350			128,289.00							128,289.
R-351			128,289.00							128,289.
R-352			128,289.00							128,289.
R-353			889.06							889.
TOTAL	**3,001,262.82**	**4,547,416.00**	**645,890.30**	**6,349,194.26**	**921,718.74**	**140,090,194.79**	**4,426,064.10**	**4,515,414.67**	**64,634,560.82**	**229,131,716.5**

In view of petitioner's failure to prove that it declared the income upon which the substantiated creditable withholding tax of P4,995,370.31 for taxable year 2006 was withheld, the refund claim cannot be granted.

At this juncture, it must be emphasized that a claimant has the burden of proof to establish the factual basis of his or her claim for tax credit or refund.[31] Tax refunds are in the nature of tax exemptions. As such, they are regarded as derogation of sovereign authority and to be construed *strictissimi juris* against the person or entity claiming the refund.[32]

In recapitulation, since petitioner failed to comply with the third requisite of the refund claim as provided by law and jurisprudence, this Court is left with no recourse but to deny the instant claim for refund.

WHEREFORE, the instant Petition for Review is hereby **DENIED** for lack of merit.

SO ORDERED.

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

WE CONCUR:

LOVELL R. BAUTISTA
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

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[31] *Paseo Realty and Development Corporation vs. Court of Appeals, Court of Tax Appeals and Commissioner of Internal Revenue*, G.R. No. 119286, October 13, 2004

[32] *Commissioner of Internal Revenue vs. S.C. Johnson and Son, Inc., et al.*, G.R. No. 127105, June 25, 1999

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.

LOVELL R. BAUTISTA
Associate Justice
Chairperson

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's Division.

ERNESTO D. ACOSTA
Presiding Justice