REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus -

IRONCON BUILDERS AND DEVELOPMENT CORPORATION,
Respondent.

C.T.A. E.B. NO. 235
(C.T.A. CASE NO. 6502)

Present:

ACOSTA, *P.J.*
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA, *and*
PALANCA-ENRIQUEZ, *JJ.*

Promulgated:

AUG 0 9 2007

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DECISION

UY, J.:

This is a Petition for Review before the Court of Tax Appeals *En Banc* filed on January 3, 2007 under Republic Act No. 9282, seeking a review of the Amended Decision and Resolution dated July 31, 2006 and November 27, 2006, respectively, by the Second Division of this Court (Court in Division) in CTA Case No. 6502, entitled "Ironcon Builders and Development Corporation vs. Commissioner of Internal Revenue", to wit:

1) Amended Decision promulgated on July 31, 2006 partially granting herein respondent's claim for refund in the amount of NINE MILLION THREE HUNDRED THIRTY TWO THOUSAND FIVE HUNDRED NINETY EIGHT PESOS (P9,332,598.00)

representing the unutilized excess creditable VAT withheld as of December 31, 2000; and

2) Resolution promulgated on November 27, 2006 denying herein petitioner's Motion for Reconsideration of the aforesaid Amended Decision for lack of merit.

THE FACTS

As culled from the records, the factual antecedents of the case are as follows:

Petitioner is the duly appointed Commissioner of Internal Revenue who is empowered to perform the duties of his office, including among others, the duty to act upon and approve claims for refund or tax credit as provided by law, with office address at the BIR National Office Building, Agham Road, Diliman, Quezon City. Respondent is a domestic corporation organized and existing under and by virtue of the laws of the Philippines with principal office address at 471 General Luna Street, Walled City, Intramuros, Manila. It is a general building contractor engaged in the construction business. It is registered with the Bureau of Internal Revenue as a Value-Added Tax (VAT) taxpayer with Taxpayer Identification Number (TIN) 200-278-264-000.[1]

On April 10, 2001, respondent filed its 2000 Annual Income Tax Return[2] declaring a taxable income of P3,020,409.86 with the income tax due thereon of P966,531.16 which was offset against the accumulated tax credits of P5,765,898.20 leaving an income tax overpayment of P4,799,367.04, computed as follows:

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[1] As admitted by herein petitioner in his Answer in CTA Case No. 6502.
[2] Exhibit "H", CTA Case No. 6502.

Gross Income	P 15,997,195.02
Less: Deductions	12,976,785.16
Taxable Income	P 3,020,409.86
Income Tax Due (32%)	P 966,531.16
Less: Tax Credits/ Payments	
Prior Year's Excess Credits	3,654,342.91
Creditable Taxes Withheld for the First Three Quarters	2,111,555.29
Total Tax Credits/ Payments	P 5,765,898.20
Tax Overpayment	P 4,799,367.04

In the said 2000 return, respondent opted to carry-over the excess tax credits of P4,799,367.04 to the succeeding taxable year 2001 by putting an "x" mark on the corresponding box in the return. However, in its amended 2000 income tax return filed on October 10, 2001, respondent revised its chosen option from "To be carried as tax credit next year/quarter" to "To be issued a tax credit certificate".[3]

For the same taxable year 2000, respondent seasonably filed its quarterly VAT returns reflecting VAT overpayment as of December 31, 2000 in the amount of P18,053,715.64, representing the sum of its accumulated excess input VAT in the amount of P13,073,061.16 and creditable VAT withheld in the amount of P4,980,654.48, detailed as follows:

Year 2000	Annexed to the Petition as	Input VAT					
		Output VAT (a)	Carried-over fr. Previous Qtr (b)	This Quarter (c)	Accumulated Excess Input VAT (d) (b) + (c) - (a)	Creditable VAT Withheld (e)	Total VAT Overpayment (f) (d) + (e)
1st qtr	D-5	2,219,576.81	10,314,202.97	3,609,240.65	11,763,866.81	1,195,382.45	12,959,249.26
2nd qtr	D-4	4,524,967.21	12,959,249.28	3,356,135.83	11,790,417.90	2,005,889.48	13,796,307.38
3rd qtr	D-2	5,397,598.92	13,796,307.38	4,544,083.42	12,942,791.88	2,845,832.07	15,788,623.95
4th qtr	D	7,931,279.68	15,788,623.95	5,215,715.89	13,073,060.16	4,980,654.48	18,053,714.64

[3] Exhibit "I", ibid.

On May 10, 2001, respondent filed with the Bureau of Internal Revenue (BIR) an administrative claim for the refund of its alleged excess creditable expanded withholding tax in the amount of P6,979,759.72 and excess creditable VAT in the amount of P18,655,707.99 totaling to P25,635,467.71.[4]

However, on October 26, 2001, respondent filed another letter with the BIR reducing its original claims for refund of excess creditable expanded withholding and value-added taxes to the amounts of P4,799,367.04 and P18,053,715.64, respectively, or in the sum of P22,853,082.68.[5]

On July 1, 2002, respondent filed a Petition for Review with the Court in Division due to petitioner's inaction on its claims.

On January 5, 2006, the Court in Division rendered a Decision denying respondent's claim for refund based on the following reasons:

1) Pursuant to Section 76 of the National Internal Revenue Code (NIRC) of 1997, respondent can no longer claim for a refund of the amount of P4,799,367.04 because it had earlier availed of the option to carry-over and apply the same as tax credit to the succeeding taxable year 2001. Such option is *irrevocable* and thus respondent is precluded from claiming the subject amount for refund; and

2) Based on the commissioned auditing firm's Report,[6] and as can be seen in respondent's Quarterly VAT Returns for 2000, out of the total claimed excess creditable VAT of P18,053,715.64, only the amount of P9,332,598.00 represents its excess 6% creditable VAT withheld for the year 2000 in accordance with Sections 108 and 114(C) of the NIRC of 1997, and Section 8 of Revenue Regulations No. 10-93, which accordingly, may be a proper subject of a claim for refund under Sections 204(C) and 229 of the NIRC of 1997. Nonetheless, respondent failed to submit its VAT returns for the succeeding quarters of 2001 in order to resolve the issue of whether or not the claimed amount

[4] Exhibit "J", id.
[5] Annex "E", Petition for Review, CTA Case No. 6502.
[6] Annexed as Exhibit IV of Exhibit "A", CTA Case No. 6502.

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of P9,332,598.00 was utilized or carried over to the said succeeding quarters.

On January 25, 2006, respondent filed its "Motion for Reconsideration" seeking reconsideration of the aforesaid Decision asserting that:

1) Its subsequent acts clearly manifested its intention to avail of a tax credit certificate and not a carry-over of its excess creditable expanded withholding tax to the succeeding year;

2) It presented all the evidence required by Section 76 of the NIRC of 1997 for the claiming of a tax refund or credit; and

3) Section 76 of the NIRC of 1997 does not require the presentation of the VAT Returns for the succeeding taxable year for the claiming of a tax credit or refund of the excess creditable VAT.

In addition, respondent attached to said motion the VAT returns for the four quarters of 2001 (original and amended)[7] which, were presented for marking in open court on February 16, 2006 and were noted to be faithful reproduction of the originals, for the Court's consideration.

Subsequently, insofar as the claimed amount of P9,332,598.00, the Court in Division found cogent reason to modify its Decision dated January 5, 2006 and partially granted respondent's motion thereof in the Amended Decision dated July 31, 2006, thereby ordering petitioner to refund respondent the amount of P9,332,598.00 representing the unutilized excess creditable VAT withheld as of December 31, 2000. Such modification was based on the Supreme Court's ruling[8] that once a taxpayer claiming a refund has clearly established its claim, technicalities in the presentation of evidence should be

[7] Exhibits "A" to "D-1", inclusive, CTA Case No. 6502.
[8] BPI-Family Savings Bank, Inc. vs. Court of Appeals, 330 SCRA 507 (2000).

set aside; hence, the Court in Division considered the VAT returns submitted by respondent as part of its evidence.

Finding no compelling reason to either alter or modify the assailed Amended Decision, the Court in Division denied petitioner's Motion for Reconsideration thereof in the assailed Resolution dated November 27, 2006.

Hence, this recourse before the Court *En Banc* praying that the assailed Amended Decision and Resolution of the Court in Division promulgated on July 31, 2006 and November 27, 2006, respectively, be set aside and a new judgment be rendered maintaining the Decision dated January 5, 2006 of the Court in Division which dismissed respondent's Petition for Review filed on July 1, 2002 due to insufficiency of evidence.

THE ISSUES

Petitioner submits the following issues for the resolution of the Court *En Banc*:

> "I. THE COURT OF TAX APPEALS GRAVELY ERRED IN DECLARING THE ALLEGED EXCESS CREDITABLE WITHHELD VAT AS ERRONEOUSLY PAID TAXES UNDER SECTION(S) 204 AND 229 OF THE TAX CODE.
>
> II. THE COURT OF TAX APPEALS GRAVELY ERRED IN ADMITTING THE RESPONDENT'S DOCUMENTARY EVIDENCE AFTER THE RESPONDENT RESTED ITS CASE AND THE COURT RENDERED ITS DECISION."

In support of his Petition for Review, petitioner submits that respondent is not entitled to the refund of the amount of P9,332,598.00 representing the unutilized excess creditable VAT withheld as of December 31, 2000 based on these arguments:

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a. "The respondent's reliance of BPI-Family Savings Bank vs. Court of Appeals *(G.R. No. 122480, April 12, 2000)* case is misplaced considering that this case is not in all fours with the case at bar. Said BPI case involved refund of excess creditable withholding taxes on income where the Tax Code explicitly provides a refund or tax credit option to taxpayer, whereas, in the case at bar, excess creditable VAT withheld can be refunded only where there is clear proof that said creditable VAT was erroneously or illegally withheld or paid";

b. "The CTA cannot legally fill in the option of refund or tax credit of excess creditable withheld VAT for and in behalf of the respondent where the Tax Code does not explicitly provide said option unless there is clear proof that said creditable VAT was erroneously or illegally withheld or paid"; and

c. "Petitioner maintains that the Exhibits 'A-1', 'B-1', 'C-1' and 'D-1' are inadmissible as evidence they being considered as *forgotten evidence*, because they are in existence at the time the respondent presented its documentary evidence before this Honorable Court".

Meanwhile, in compliance with this Court's Resolution dated January 15, 2007, respondent filed its "Comment" to the instant petition on January 26, 2007 and prayed for the dismissal of the present petition considering that the Court in Division did not commit any error in admitting the documentary evidence (VAT returns for the four quarters of 2001) presented by it. Accordingly, the case was deemed submitted for decision on February 12, 2007.

THE COURT EN BANC'S RULING

We find no merit in the petition.

A careful and closer look at the arguments set forth by the petitioner in the instant petition would readily reveal that the grounds relied upon and the matters raised herein are mere restatements of his previous arguments raised before the Court in Division which had already been exhaustively discussed and passed upon in its assailed Amended Decision and Resolution promulgated on July 31, 2006 and November 27, 2006, respectively.

Be that as it may, with the end view of further clarifying the conclusions reached by the Court in Division, We adopt its main legal basis in granting respondent's claim for refund in the amount of P9,332,598.00 representing unutilized excess creditable VAT withheld as of December 31, 2000.

As correctly pointed out by the Court in Division, the Supreme Court has emphasized that once a taxpayer has already established his claim for refund, his failure to strictly comply with the rules of procedure, even if he is negligent, should not compel the Court to disregard such established fact. Therefore, in the case at bench, rules on technicalities in the presentation of evidence should be set aside and the VAT returns submitted by respondent be considered as part of its evidence. To reiterate:

> "Substantial justice, equity and fair play are on the side of the petitioner. **Technicalities and legalisms, however exalted, should not be misused by the government to keep money not belonging to it and thereby enrich itself at the expense of its law-abiding citizens**. If the State expects its taxpayers to observe fairness and honesty in paying their taxes, so must it apply the same standard against itself in refunding excess payments of such taxes. Indeed, the State must lead by its own example of honor, dignity and uprightness."[9] *(Underscoring Ours)*

The rationale of the rules of procedure is to secure a just determination of every action. Such are tools designed to facilitate the attainment of justice

[9] Amended Decision dated July 31, 2006, CTA Case No. 6502, citing the case of BPI-Family Savings Bank, Inc. vs. Court of Appeals, 330 SCRA 507 (2000); Docket, p.28.

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and equity. But there can be no just determination of the present action if this Court ignores, on grounds of strict technicality, the subject VAT returns submitted before the Court in Division. Thus:

> "The Rules of Court was conceived and promulgated to set forth guidelines in the dispensation of justice but not to bind and chain the hand that dispenses it, for otherwise, courts will be mere slaves to or robots of technical rules, shorn of judicial discretion. That is precisely why courts in rendering real justice have always been, as they in fact ought to be, conscientiously guided by the norm that when on the balance, technicalities take a backseat against substantive rights, and not the other way around. Truly then, technicalities, in the appropriate language of Justice Makalintal, 'should give way to the realities of the situation'. xxx"[10]

Moreover, consistent with the abovementioned principle, it bears stressing that the very law creating the Court of Tax Appeals specifically provides that proceedings before it "shall not be governed strictly by the technical rules of evidence".[11] Clearly, the assailed Amended Decision and Resolution were not rendered without any legal and factual basis.

As determined by the Court in Division, respondent was able to show that: (1) its claim was filed within the two-year prescriptive period upon perusal of its VAT returns for the year 2000, its administrative claims (original and amended), and its Petition for Review; and (2) its claim was not utilized or carried over to the succeeding quarters upon submission of its VAT returns[12] for the succeeding quarters of 2001 (original and amended).

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[10] De Guzman v. Sandiganbayan, 256 SCRA 171 (1996), citing the cases of Urbayan vs. Caltex (Philippines), Inc., 5 SCRA 1016 (1962); Economic Insurance Co., Inc. vs. Uy Realty Company, 34 SCRA 744 (1970).
[11] Section 8 of Republic Act No. 1125, as amended by Republic Act No. 9282.
[12] Exhibits "A" to "D-1", inclusive, supra.

With all the foregoing, the facts, jurisprudence, and applicable laws, and contrary to petitioner's argument, respondent has sufficiently discharged its burden of proving its entitlement to the refund sought for. Thus, respondent is entitled to its claim for refund.

This Court is not unaware of the principle that the burden of proof is upon him who claims the exemptions in his favor and he must be able to justify his claim by the clearest grant of the organic or statute law.[13] This is consistent with the well-established principle that tax refunds are in the nature of a tax exemption and should be construed *strictissimi juris* against the taxpayer.[14]

However, as earlier pointed out, We are convinced that respondent was able to establish its claim for refund based on the evidence presented and the factual and legal findings of the Court in Division.

In the light of the foregoing considerations, this Court finds no reversible error committed by the Court in Division when it rendered the assailed Amended Decision dated July 31, 2006, and assailed Resolution dated November 27, 2006. Accordingly, with the presentation and admission of the subject VAT returns, We rule that respondent has sufficiently established that the excess creditable VAT withheld in the amount of P9,332,598.00 was not carried over to the succeeding quarters of 2001, in accordance with Sections 204 (C) and 229 of the NIRC of 1997.

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[13] China Banking Corporation vs. Court of Appeals, 403 SCRA 634 (2003).

[14] Commissioner of Internal Revenue vs. S.C. Johnson and Son, Inc. and Court of Appeals, 309 SCRA 87(1999); Commissioner of Internal Revenue vs. Tokyo Shipping Co., Ltd., 244 SCRA 332 (1995); Commissioner of Internal Revenue vs. Procter and Gamble Philippine Manufacturing Corporation and the Court of Tax Appeals, 204 SCRA 377 (1991).

WHEREFORE, premises considered, the instant petition is hereby **DENIED DUE COURSE**, and, accordingly, **DISMISSED** for lack of merit.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

CAESAR A. CASANOVA
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII 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 *En Banc*.

ERNESTO D. ACOSTA
Presiding Justice

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