REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

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PHILIPPINE NATIONAL BANK, Petitioner,	**C.T.A. CASE NO. 7203**
	Members:
- versus -	**ACOSTA,** *Chairperson* **BAUTISTA,** and **CASANOVA,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	**Promulgated:** FEB 18 2009 9:10 AM

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DECISION

CASANOVA, *J.*:

Before the Court is a Petition for Review praying that petitioner's claim for refund in the amount of P49,763,700.35 allegedly representing unutilized excess creditable withholding taxes for the taxable year 2002 be granted.

THE FACTS

Petitioner is a domestic corporation organized and existing under and by virtue of the laws of the Republic of the Philippines, with principal business address at the PNB Financial Center, President Diosdado Macapagal Boulevard, Pasay City.[1]

Respondent is the duly appointed Commissioner of Internal Revenue who is vested with authority to administer and enforce national internal revenue taxes,

[1] Paragraph 1.01 of the Summary of Admitted Facts, Joint Stipulation of Facts and Issues; Docket, p. 912.

including, *inter alia*, the power to grant claims for refund or any internal revenue taxes erroneously or excessively paid, assessed or collected.[2]

On April 15, 2003, petitioner manually filed an Annual Income Tax Return (BIR Form No. 1702) for calendar year 2002.[3] However, in the Return, petitioner failed to mark in Line 31 its choice, whether to be refunded, to be issued a Tax Credit Certificate, or to be carried over as tax credit next year/quarter.[4]

On April 29, 2003, petitioner electronically filed another Annual Income Tax Return (BIR Form No. 1702) for calendar year 2002 and reflected therein its choice to be issued a Tax Credit Certificate as there was overpayment.[5]

Thereafter, petitioner electronically filed its Quarterly Income Tax Returns (BIR Form No. 1702Q) for the first, Exhibit "E" to "E-3", second, "G" to "G-3", and third Exhibit "H" to "H-4" quarter for calendar year 2003 on May 30, 2003, August 29, 2003, and December 1, 2003, respectively; and reflected thereon prior year's excess credits in the amount of P5,106,339.00.

On August 20, 2004, petitioner electronically filed its Amended Annual Income Tax Return (BIR Form No. 1702) and reflected therein its choice to be issued a Tax Credit Certificate as there was overpayment of tax in the amount of P54,870,039.00.[6]

On August 27, 2004, petitioner filed with the Bureau of Internal Revenue ("BIR") its claim for refund or issuance of tax credit certificate in the amount Php49,763,700.35 representing the creditable taxes withheld.[7]

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[2] Paragraph 1.02 of the Summary of Admitted Facts, Joint Stipulation of Facts and Issues; supra at 912-913.
[3] Exhibits "A" to "A-4".
[4] Exhibit "A-2".
[5] Exhibits "C" to "C-3".
[6] Exhibits "D" to "D-4".
[7] Paragraph 1.03 of the Summary of Admitted Facts, Joint Stipulation of Facts and Issues; supra at 913. See also Exhibit "J".

As respondent has not yet rendered any final ruling or decision regarding the claim for refund, petitioner filed before this Court the present Petition for Review on April 14, 2005.[8]

On June 9, 2005, respondent filed his Answer[9] and alleged the following Special and Affirmative Defenses:

> "3. Petitioner's claim for refund has no factual and legal basis because in its Annual Income Tax Return, Annex 'A' of the Petition, it failed to exercise its option under Section 76 of the NIRC of 1997. Thus, the alleged excess payment shall be automatically credited against its estimated income tax liabilities for the quarters of the next succeeding taxable year;
>
> 4. Petitioner does not anymore have the right to request for the issuance of a tax credit certificate in its Amended Annual Income Tax Return, Annex 'C' of the Petition, because the automatic carry-over of the alleged unutilized creditable taxes is irrevocable under Section 76 of the NIRC of 1997;
>
> 5. Petitioner has the burden to prove that the claim for refund was filed within the reglementary period;
>
> 6. Petitioner has the burden to prove that it is entitled to the amount claimed for refund;
>
> 7. It is well-settled that claims for refund of taxes partake the nature of exemption from taxes and are strictly construed against the claimant."

After issues were joined, the trial proceeded. Petitioner presented evidence, both testimonial and documentary, and rested its case. Respondent was considered to have waived his right to present evidence after he failed to appear and present evidence during the April 10, 2008, May 13, 2008, and May 29, 2008 hearing

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[8] Paragraph 1.04 of the Summary of Admitted Facts, Joint Stipulation of Facts and Issues; supra.
[9] Supra at 884-886.

dates.[10] The case was deemed submitted for decision on July 31, 2008 after petitioner filed its Memorandum on July 28, 2008.[11]

ISSUES

For this Court's resolution are the following issues:[12]

1. Whether Petitioner filed the administrative claim for refund and this Petition for Review within the two (2)-year period prescribed by the National Internal Revenue Code of 1997, as amended ("NIRC of 1997").

2. Whether Petitioner's Final Amended Income Tax Return for 2002 shows that the income received by it from the sale of acquired real properties, rental income and commissions, among others, from which the creditable withholding taxes arose, was declared as part of its gross income.

3. Whether the creditable withholding taxes subject of the claim for refund were unutilized.

4. Whether the unutilized creditable withholding taxes were not carried over in the succeeding taxable quarters/years.

5. Whether the fact of withholding is established by a copy of statements duly issued by the payor to the payee showing the amount paid and the amount of tax withheld therefrom.

6. Whether Petitioner failed to exercise its option under Section 76 of the NIRC of 1997 to claim for refund of its unutilized creditable withholding taxes in its Annual Income Tax Return for 2002.

THIS COURT'S RULING

Section 76 of the Tax Reform Act of 1997 ("Tax Code of 1997") provides as follows:

"SEC. 76. *Final Adjustment Return.* – Every corporation liable to tax under Section 27 shall file a final adjustment return covering

[10] Supra at 1083.
[11] Supra at 1128.
[12] Issues, Joint Stipulation of Facts and Issues; supra at 913-914.

> 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 the 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 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."

Based on the afore-quoted provisions, a corporation entitled to a tax credit or refund of the excess estimated quarterly income taxes paid has two options: (1) to carry over the excess credit or (2) to apply for the issuance of a tax credit certificate or to claim a cash refund. If the option to carry-over the excess credit is exercised, the same shall be irrevocable for that taxable period.[13]

As to the issue of whether or not petitioner failed to exercise its option under Section 76 of the Tax Code of 1997 to claim for refund of its unutilized creditable withholding taxes in its Annual Income Tax Return for 2002, the answer is in the negative.

Records show that petitioner manually filed with the BIR its 2002 income tax return on April 15, 2003 reflecting therein an income tax overpayment of P53,045,784.00.[14] When it filed the same return through the BIR's Electronic Filing

[13] *Paseo Realty and Development Corporation v. Court of Appeals*, G.R. No. 119286, October 13, 2004, 440 SCRA 235.
[14] Exhibits "A" & "A-1".

and Payment System [EFPS] on April 29, 2003[15] petitioner marked the option "To be issued a Tax Credit Certificate", which it previously failed to do. Petitioner subsequently filed an amended 2002 income tax return through EFPS on August 20, 2004,[16] showing a higher income tax overpayment of P54,870,039.00 for which petitioner also marked the option "To be issued a Tax Credit Certificate".

Thus, despite the failure of petitioner to make the appropriate marking in its 2002 income tax return originally filed on April 15, 2003, the subsequent marking of the choice "To be issued a Tax Credit Certificate" in its 2002 income tax return filed through the BIR's EFPS on April 29, 2003 and in its amended 2002 income tax return filed through the BIR's EFPS on August 20, 2004 served as an expression of its choice to request a tax refund in the form of a tax credit certificate with respect to the income tax overpayment shown in the said returns.

A perusal of petitioner's amended income tax return for taxable year 2002 reveals that the income tax overpayment of P54,870,039.00[17] consisted of the following:

Prior year's (2001) excess credits	P	5,106,339.00
Creditable tax withheld during the year (2002)		49,763,700.00
Total	**P**	**54,870,039.00**

Petitioner was unable to utilize the total tax credits of P54,870,039.00 because it had no income tax liability either at the regular rate of 32% or Minimum Corporate Income Tax (MCIT) rate of 2%. Since it was only the amount of P5,106,339.00 representing the 2001 excess credits that was reflected as "Prior Year's Excess Credits" in petitioner's income tax return for the subsequent year

[15] Exhibits "C" & "C-1".
[16] Exhibits "D" & "D-1".
[17] Exhibit "D-3".

2003,[18] the unutilized creditable taxes withheld in 2002 in the amount of P49,763,700.00 appears to be refundable pursuant to Section 76 of the Tax Code of 1997.

However, in order to be entitled to the refund being sought for, petitioner must satisfy the following requirements:

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 Tax Code 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.[19]

The Court finds petitioner to have complied with the first requirement. The two-year prescriptive period for the filing of a claim for refund of excess income tax paid/withheld commences from the date of filing of the final adjustment return.[20] The claimed excess creditable withholding taxes pertain to taxable year 2002 for which petitioner originally filed its income tax return on April 15, 2003.[21] Counting from this date, petitioner had until April 15, 2005 within which to file its claim both in administrative and judicial levels. Clearly, petitioner's administrative claim filed on August 27, 2004[22] and the Petition for Review filed before this Court on April 14, 2005, fall within the two-year prescriptive period.

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[18] Exhibits "E-3" and "I-4".

[19] *Banco Filipino Savings and Mortgage Bank vs. Court of Appeals, Court of Tax Appeals and Commissioner of Internal Revenue*, G.R. No. 155682, March 27, 2007, 519 SCRA 93. See also Section 2.58, Revenue Regulations No. 2-98, as amended, issued on April 17, 1998 (prescribes the regulations to implement Republic Act (RA) No. 8424 relative to the Withholding on Income subject to the Expanded Withholding Tax and Final Withholding Tax, Withholding of Income Tax on Compensation, Withholding of Creditable Value- Added Tax and Other Percentage Taxes).

[20] *ACCRA Investments Corporation vs. Court of Appeals*, G.R. No. 96322, December 20, 1991, 204 SCRA 957.

[21] Exhibit "A-1".

[22] Summary of Admitted Facts, par. 1.03.

Anent the second and third requisites, the Court-commissioned independent CPA, C.L. Manabat & Co., through its Partner, Atty. Fredieric B. Landicho, made a revised Summary of Findings based the latter's Report dated December 4, 2006 as follows:[23]

Findings	Exhibit	CWT
a) CWT supported with original and appropriate documents, with income reported in 2002	FF and GG	P 32,860,166.11
b) CWT supported with original and appropriate documents, no income earned or loss recognized from the transaction	HH	5,383,867.33
c) CWT supported with original and appropriate documents with income recorded outside of the year 2002	II	4,362,884.19
d) CWT supported with original CWTs dated other than year 2002, Deed of Absolute Sale executed other than year 2002 with income reported outside of the year 2002	JJ	4,848,444.49
e) CWT supported with original CWTs and Deed of Absolute Sale but with no transaction tickets or input sheets	KK	2,308,338.23
TOTAL		**P 49,763,700.35**

In his Report dated December 4, 2006, Atty. Fredieric B. Landicho commented:[24]

> "a) Our examination reveals that the claim for the issuance of a tax credit certificate or tax refund for creditable withholding taxes amounting to [P32,860,166.11][25] were duly corroborated with original BIR Form No. 2307, original Deeds of Absolute Sale for sale of properties, original input sheets and/or transaction tickets except for the amount of P1,211,103.06 see (Exhibit "N") which have no original copies of the transaction tickets or input sheets. In lieu, (sic) thereof, we examined the photocopies of the transaction tickets or input sheets for the said amount. We have also ascertained that the related income from which the taxes were withheld were properly reported to and formed part of the gross income of the Company for the taxable period 2002 as reported in its Annual Income Tax Return. Moreover, we have further verified that all sales of properties of the Company are absolute sales. None of the creditable taxes withheld which are the subject of the application of tax credit pertains to redemption sale.

[23] Exhibit" Y", pages 5 to 6.
[24] Exhibit" K", pages 5 to 6 and Exhibit" Y", pages 5 to 6.
[25] Adjusted amount per CPA Report dated March 26, 2007 (Exhibit "Y").

b) The claim for the issuance of a tax credit certificate or tax refund for creditable withholding taxes amounting to [P5,383,867.33][26] were substantiated with original BIR Form No. 2307, original Deeds of Absolute Sale for sale of properties and original input sheets and/or transaction tickets. There were no income earned or loss recognized from the transaction since the selling price is equal to the book value of the properties sold. Further, the related Deeds of Absolute Sale and Certificates of Creditable Tax Withheld at Source were executed and dated in 2002.

c) The creditable withholding taxes amounting to [P4,362,884.19][27] were duly supported with original BIR Form No. 2307, original Deeds of Absolute Sale and original input sheets and/or transaction tickets. The related Deeds of Absolute Sale and Certificates of Creditable Tax Withheld at Source were executed and filed [on] 2002. However, the related income of these CWTs were reported either in 2003, 2001 or in prior years. According to the Company, the CWTs pertain to the sales on the installment plan wherein the initial payment do not exceed 25% of the selling price. We have examined the transaction tickets or input sheets proving that these transactions are on installment sales. However, we have examined only the input sheets or transaction tickets for the year 2003, 2001 and prior years.

d) Taxes withheld amounting to [P4,848,444.49][28] were substantiated with original Certificates of Creditable Tax Withheld and original Deeds of Absolute Sales. Both the CWTs and Deeds of Absolute Sale were dated and executed other than the year 2002. We have also verified the related income of these CWTs and noted that they were reported either in 2003 and 2001.

e) The [P2,308,338.23][29] creditable taxes withheld were properly supported with Certificates of Creditable Tax Withheld and original Deeds of Absolute Sale for sale of properties. However, we were not able to verify the related income from which the following amount of taxes were withheld because of the absence of the supporting documents (e.g. transaction tickets, input sheets) that would allow us to verify whether the said income was reported as part of the Company's income."

Upon careful examination of the said reports and petitioner's supporting documents, this Court finds that the creditable withholding taxes in the amount of P4,848,444.49 under item "d" of the revised Summary Findings, were supported by

[26] Ibid.
[27] Ibid.
[28] Ibid.
[29] Ibid.

Certificates of Creditable Tax Withheld at Source and Deeds of Absolute Sales which were dated and executed other than the year 2002, *i.e.*, outside the period of claim, and, thus, shall be disallowed.

As regards the claimed creditable withholding taxes in the amount of P2,308,338.23 under item "e" of the revised Summary of Findings, the related income of which was not verified to have been reported as part of petitioner's taxable income, shall also be disallowed.

The claimed creditable withholding taxes of P32,860,166.11, which were found by the commissioned CPA to be supported with original and appropriate documents and with income reported in 2002 under item "a" of the revised Summary of Findings, should be reduced by P150,248.32 representing creditable withholding taxes which were not properly supported by Certificates of Creditable Tax Withheld at Source, computed as follows:

Exhibit	Withholding Agent	Claimed CWT
1.) No amount of income payment or creditable withholding tax indicated in the certificate		
S-1.513	PNB Forex	P 14,873.32
2.) No certificate of withholding		
S-1.147	Joel O. Dizon	135,375.00
		P 150,248.32

Thus, of the P32,860,166.11 creditable withholding taxes classified by the commissioned CPA under item "a" of the revised Summary of Findings, only the amount of P32,709,917.79 (*P32,860,166.11 less P150,248.32)* represents petitioner's valid claim.

Likewise, the creditable withholding taxes in the amount of P5,383,867.33 described as "CWT supported with original and appropriate documents, no income earned or loss recognized from the transaction" under item "b" of the revised Summary of Findings represents petitioner's valid claim. Pursuant to Section 32(3) of the Tax Code of 1997, the gross income for income tax purposes, as far as dealings in property is concerned, only refers to the amount of gain(s) derived from the dealings in property (*i.e.*, gross selling price minus cost basis). Since the selling prices were equal to the book values of the properties sold, no gain or loss is to be recognized from the transactions.

In the same breadth, petitioner's claimed creditable withholding taxes in the amount of P4,362,884.19 under item "c" of the revised Summary of Findings, which was duly supported with Certificates of Creditable Tax Withheld at Source and the related income of which was verified to have been reported either in 2003, 2001 and prior years, should be granted.

To recapitulate, out of the total claimed creditable withholding taxes of P49,763,700.00, the amount of P7,307,031.04 shall be disallowed and only the remaining amount of P42,456,668.96 shall be granted, computed as follows:

Amount of claimed creditable withholding taxes		P 49,763,700.00
Less: Disallowances		
a. Creditable withholding taxes supported with original Certificates of Creditable Tax Withheld at Source dated other than year 2002, Deeds of Absolute Sale executed other than year 2002 with income reported outside the year 2002	P 4,848,444.49	
b. Creditable withholding taxes not properly supported with Certificates of Creditable Tax Withheld at Source	150,248.32	
c. Creditable withholding taxes supported with original Certificates of Creditable Tax Withheld at Source and Deeds of Absolute Sale but the related income of which was not verified to have been included as part of petitioner's taxable income	2,308,338.23	7,307,031.04
Refundable creditable withholding taxes		**P 42,456,668.96**

IN VIEW OF THE FOREGOING, the Petition for Review is **PARTIALLY GRANTED.** Respondent is ordered to **REFUND** to petitioner the reduced amount of P42,456,668.96 representing unutilized excess creditable withholding taxes for the taxable year 2002.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

LOVELL R. BAUTISTA
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ERNESTO D. ACOSTA
Presiding Justice
Chairman, First Division