REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

PRIMETOWN PROPERTY GROUP, INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE and ARTURO V. PARCERO,
Respondents.

CTA CASE NO. 6113

Members:

ACOSTA, *Chairman*
BAUTISTA, and
CASANOVA, *JJ.*

Promulgated:
NOV 23 2009; 10:15am

x - x

DECISION

CASANOVA, J.:

The *Petition for Review* seeks for refund or issuance of tax credit certificate in the amount of P26,318,399.00 allegedly representing excessively paid/unutilized creditable withholding income taxes for the taxable year 1997.

Petitioner, Primetown Property Group, Inc., is a corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines with principal office at 28th Floor, Century Citadel Inn Makati, 5007 P. Burgos Street, Bel-Air, Makati City.[1]

Respondents, on the other hand, are the Commissioner of Internal Revenue (respondent-CIR), who is impleaded herein in his official capacity as

[1] Petition for Review, par. 1; CTA Division Docket, p. 1

such; and, Arturo V. Parcero (respondent-Parcero), who is the Revenue District Officer of Revenue District No. 0-49.[2]

On April 16, 2000, petitioner filed a *Petition for Review*[3] which was received by this Court on May 17, 2000, praying for the refund/tax credit of P26,318,399.00 representing excessively paid/untilized creditable withholding income taxes for the taxable year 1997.

From respondent-CIR's *Answer*[4], the following Special and Affirmative Defenses were cited:

> "3. Petitioner's claim has prescribed;
>
> 4. Petitioner failed to show proof that it incurred losses in the year 1997;
>
> 5. Petitioner applied as credit the amount claimed for refund/tax credit to the next succeeding taxable year, 1998, hence, no longer refundable;
>
> 6. The petition states no cause of action as it does not allege the dates when the taxes sought to be refunded were actually paid;
>
> 7. Claims for refund are construed strictly against the claimant, the same being in the nature of exemption from taxes (Commissioner of Internal Revenue vs. Ledesma, 31 SCRA 95; Manila Electric Co. vs. Commissioner of Internal Revenue, 67 SCRA 35);
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> 8. One who claims exempt from payment of a particular tax must do so under clear and unmistakable terms found in the statute (Asiatic Petroleum vs. Llanes, 49 Phil. 466; Union Garment Co. vs. Court of Tax Appeals, 4 SCRA 304);
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> 9. In an action for refund, the burden is upon the taxpayer to prove that he is entitled thereto, and failure to sustain the same is fatal to the action for tax refund;
>
> 10. It is incumbent upon petitioner to show compliance with the provisions of Section 229 of the National Internal Revenue Code;

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[2] Ibid, par. 3 & 4
[3] Ibid, pp. 1-8
[4] Ibid, pp. 140 & 141

11. Taxes paid and collected are presumed to have been made in accordance with law and regulations, hence not refundable."

After the parties filed their respective Petitioner's Pre-Trial Brief[5] and Pre-Trial Brief of Respondent[6], both on September 22, 2000, respondent filed a *Motion to Dismiss*[7] on October 2, 2000 while petitioner filed its *Comment/Opposition*[8] thereto on October 27, 2000.

In a *Resolution*[9] dated December 15, 2000, the Court ruled as follows:

> "**WHEREFORE**, in the light of all the foregoing, the instant petition is hereby dismissed on the ground of prescription.
>
> **SO ORDERED**."

Consequently, petitioner filed a *Motion for Reconsideration*[10] on January 24, 2001 and respondent filed its *Comment on the Motion for Reconsideration*[11] on March 9, 2001. In a Resolution[12] dated April 19, 2001, the Court resolved to deny petitioner's motion for lack of merit. Hence, petitioner filed a *Petition for Review*[13] before the Court of Appeals on June 6, 2001, which this Court received on June 18, 2001.

On August 1, 2003, the Court of Appeals rendered a *Decision*[14], which We quote:

> "**WHEREFORE**, the Resolution dated December 15, 2001 (sic) and April 19, 2001 of the Court of Tax Appeals are **REVERSED** and **SET ASIDE** and the said

[5] Division Docket, pp. 149-151
[6] Division Docket, pp. 153-154
[7] Division Docket, pp. 157-161
[8] Division Docket, pp. 171-174
[9] Division Docket, pp. 176-179
[10] Division Docket, pp. 181-184
[11] Division Docket, p. 190
[12] Division Docket, p. 192
[13] Division Docket, pp. 200-206
[14] Division Docket, pp. 359-363

> Court is directed to give due course to the petition for review filed by petitioner.
>
> **SO ORDERED**."

Respondent filed a Motion for Reconsideration of the above Decision which was subsequently denied by the Court of Appeals in a Resolution[15] dated February 9, 2004.

On March 24, 2004, this Court was furnished with a copy of a *Petition for Review*[16] filed before the Supreme Court by the Commissioner of Internal Revenue and Arturo V. Parcero.

On June 18, 2004[17], the Court approved the parties' *Second Amended Joint Stipulation of Facts*[18] filed on June 1, 2004, which stipulated on the following facts and issue:

> "1. Parties stipulate on the identities of the Petitioner and Respondents in above-captioned case;
>
> 2. On March 11, 1999, Petitioner wrote Respondent Regional Director Arturo V. Parcero requesting for a refund/tax credit in the amount of P26,318,398.00 (sic) representing overpaid income tax and creditable withholding tax for 1997. Respondent Parcero received the said letter on March 22, 1999;
>
> 3. On May 14, 1999, Petitioner received a letter dated May 13, 1999 from Revenue Officer Elizabeth Y. Santos requesting the former to submit the documents listed therein in order to facilitate the processing of refund/tax credit for the year 1997;
>
> 4. On November 8, 1999, Petitioner complied with the request of Ms. Santos contained in her letter of May 13, 1999 and submitted the required documents;
>
> 5. On April 14, 2000, on account of the inaction amounting to denial of the refund/tax credit, Petitioner filed the instant Petition;

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[15] Division Docket, pp. 395-397
[16] Division Docket, pp. 412-424
[17] Division Docket, p. 765
[18] Division Docket, p. 763 & 764

> 6. Issue – whether or not petitioner suffered a net loss from business operations in taxable year 1997 so much so that creditable income tax payments paid in the first (three) 3 quarters of 1997 should be refunded."

However, on February 10, 2005, due to the Petition for Review filed by herein respondents before the Supreme Court, this Court resolved to archive the case for a period of six (6) months.[19]

On September 26, 2007, a *Notice of Judgment*[20] was received with attached *Decision*[21] rendered by the Supreme Court on August 28, 2007, which states:

> "Accordingly, the petition is hereby **DENIED**. The case is **REMANDED** to the Court of Tax Appeals which is ordered to expeditiously proceed to hear C.T.A. Case No. 6113 entitled *Primetown Property Group, Inc. vs. Commissioner of Internal Revenue and Arturo V. Parcero*.
>
> No costs.
>
> **SO ORDERED**."

After presentation of its evidence, petitioner filed its *Formal Offer of Evidence*[22] on May 12, 2008. The Court resolved the same in a *Resolution*[23] dated June 26, 2008.

Petitioner's *Motion for Reconsideration (of the Order dated 26 June 2008)*[24] filed on July 17, 2008, and *Supplemental Motion (To the Motion for Reconsideration dated 15 July 2008)*[25] filed on July 25, 2008 were resolved in a

[19] Division Docket, pp. 763-764
[20] Division Docket, p. 879
[21] Division Docket, pp. 880-891
[22] Division Docket, pp. 979-987
[23] Division Docket, pp. 1092 & 1093
[24] Division Docket, pp. 1096-1099
[25] Division Docket, pp. 1129-1132

Resolution[26] dated August 29, 2008; while the *Supplemental Formal Offer of Evidence*[27] filed on July 31, 2008 was resolved in a *Resolution*[28] dated November 18, 2008.

On January 19, 2009, the case was submitted for decision taking into consideration petitioner's *Memorandum*[29] posted on December 18, 2008, sans respondent's *Memorandum*.[30]

Issue

> Whether or not petitioner suffered a net loss from business operations in taxable year 1997 so much so that creditable income tax payments paid in the first (three) 3 quarters of 1997 should be refunded.

Petitioner quoted the provisions of Section 76 of the National Internal Revenue Code (NIRC) of 1997, as amended, and Section 7 of Revenue Regulations No. 10-77, to wit:

> "**Section 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

26 Division Docket, pp. 1140 & 1141
27 Division Docket, pp. 1135-1138
28 Division Docket, pp. 1149 & 1150
29 Division Docket, pp. 1152-1159
30 Division Docket, p. 1161

> 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."
>
> "**Section 7.** *Revenue Regulation No. 10-77.* Any excess of the total quarterly payments over the actual income tax computed and shown in the adjustment or final corporate income tax return shall either (a) be refunded to the corporation, or (b) maybe credited against the estimated quarterly income tax liabilities for the quarters of the succeeding taxable year. The corporation must signify in its annual corporate adjustment return its intention whether to request for the refund of the overpaid income tax or claim for automatic tax credit to be applied against its income tax liabilities for the quarters of the succeeding taxable year by filling up the appropriate box on the corporate tax return."

Petitioner argued that from the foregoing provisions, it is clear that any excess of the total quarterly payments over the income tax computed and declared in the final adjustment return shall either be refunded to the corporation or be credited against the estimated quarterly income tax liabilities for the quarters of the succeeding taxable year.

Petitioner further asserted that its final adjustment return for 1997 clearly showed that its operation resulted in a loss and, therefore, no corporate income tax and creditable withholding tax was due from it for the said year. Thus, it had sufficiently proven that it had made an overpayment of corporate income tax and creditable withholding tax from real estate sales for the year 1997.

From its Annual Income Tax Return for the year 1997, petitioner reported a net loss of P71,879,228.00 and an income tax overpayment of P26,318,399.00[31], computed as follows:

Gross Income			P 273,019,537.00
Less:	Deductions		344,898,765.00
Taxable Income			P (71,879,228.00)
Income Tax Due			P -
Less:	Tax Credits/Payments		
	Quarterly Payments	P21,554,453.00	
	Creditable Taxes Withheld	4,763,946.00	26,318,399.00
Tax Refundable			**P (26,318,399.00)**

In his *Judicial Affidavit*[32], Mr. Wilfred S. Tiu, stated that the overpayment was due to petitioner's practice to recognize the installment sales on contracts with reservation fee payments as completed and realized sales. This resulted in a net loss at the end of the year when its external auditor, SGV & Co., instructed petitioner to reverse the said recognized sales. Moreover, according to petitioner's vice-chairman, Mr. Gilbert Y. Yap, the Asian economic crisis in 1997 caused many of their prospective buyers to back out.[33]

An examination of petitioner's 1997 audited financial statements revealed that SGV & Co. noted the following in the Notes to Financial Statements:[34]

"14. **Recent Economic Events**

> The Philippines is experiencing an economic slowdown which has been characterized by volatile foreign currency exchange rates, high

[31] Exhibit "G", Division Docket, p. 1010
[32] Exhibit "M", Division Docket, p. 963 (962-966)
[33] Exhibit "N", Division Docket, pp. 1082-1084
[34] Exhibit "H", pp. 1027-1042 (1040-1041)

interest rates and declining stock prices due to the effects of the regional currency turmoil on the domestic economy.

These unfavorable market conditions adversely affected the real estate developers who have pre-sold their would-be inventories and are just to start construction and development. Selling prices are already pegged, but costs of development and construction are expected to unpredictably increase. On the other hand, those with unsold inventories can only benefit to the extent of the increase in property values.

The Company's operations in the current year have been affected significantly by the following:

a. Slowdown in sales performance due to the deteriorating purchasing power of the peso, higher lending rates and higher prices of units;

b. Delay in the construction of the projects which resulted in the cancellation of sales. As of December 31, 1997, net sales cancellations amounted to about P700 million, which explains the lower revenue, costs and gross profit realization during the current year.

   The major reasons for the delay in construction were the following:

   1. Higher prices of materials, labor and other construction related costs.

   2. Trying times in meeting the working capital requirements of the projects especially during the last two quarters of the year, due to the following:

      a. Poor collections from contracts receivable due to delinquent customers.

Reduced funding from local banks and other financial institutions."

We find petitioner's declarations in its 1997 income tax return and audited financial statements sufficient to prove that it actually incurred a net loss for the said year. We quote the following relevant provisions of Sections 45(a) and 266 of the NIRC of 1977, as amended to wit:

> "**Section 45.** *Corporation Returns.* — (a) *Requirements.*— Every corporation, subject to the tax herein imposed, except foreign corporations not engaged in trade or business in the Philippines shall render, in duplicate, a true and accurate quarterly income tax return and final or adjustment return in accordance with the provisions of Chapter IX of this Title. The return shall be filed by the president, vice-president or other principal officer, and **shall be sworn to** by such officer and by the treasurer or assistant treasurer.
>
> xxx xxx xxx
>
> "**Section 266.** *Declaration under Penalties of Perjury.* — **Any declaration, return and other statements required under this Code, shall, in lieu of an oath, contain a written statement that they are made under the penalties of perjury.** Any person who willfully files a declaration, return or statement containing information which is not true and correct as to every material matter shall, upon conviction, be subject to the penalties prescribed for perjury under the Revised Penal Code." *(Emphasis supplied)*

Further, in the case of Citibank, N.A. vs. Court of Appeals and Commissioner of Internal Revenue,[35] the Supreme Court stated that:

> "A refund claimant is required to prove the inclusion of the income payments which were the bases of the withholding taxes and the fact of withholding. However, **detailed proof of the truthfulness of each and every item in the income tax return is not required**. That function is lodged in the Commissioner of Internal Revenue by the NIRC which requires the Commissioner to assess internal revenue taxes within three years after the last day prescribed by law for the filing of the return. In San Carlos Milling Co., Inc. vs. Commissioner of Internal Revenue, the Court held that the internal revenue branch of government must investigate and confirm the claims for tax refund or credit before taxpayers may avail themselves of this option. **The grant of a refund is founded on the assumption that the tax return is valid: that is, the facts stated therein are true and correct. In fact even without Petitioner's tax claim, the Commissioner can proceed to examine the books, records of the petitioner-bank, or any data**

[35] G.R. No. 107434, October 10, 1997

which may be relevant or material in accordance with Section 16 of the present NIRC." *(Emphasis supplied)*

Inasmuch as petitioner's 1997 income tax return was prepared under penalties of perjury, the figures appearing therein are presumed to be true and correct in the absence of contrary evidence. Thus, as represented in its duly filed Annual Income Tax Return for taxable year 1997[36], petitioner suffered a net loss amounting to P71,879,228.00.

As ruled by the Supreme Court[37], the instant claim was filed within the two-year prescriptive period. Petitioner's claim consists of income taxes paid in the amount of P21,554,452.81, and creditable taxes withheld amounting to P4,763,945.51

The paid taxes are evidenced by quarterly income tax returns duly filed with and validated by respondent's accredited bank, broken down as follows:

Period	Date Filed	Income Tax Paid	Exhibit
1st Quarter	5/30/97	P 3,440,082.00	"B"
2nd Quarter	8/29/97	15,694,502.00	"D"
3rd Quarter	12/1/97	2,419,868.81	"F"
Total		**P 21,554,452.81**	

As regards the claimed creditable taxes withheld in the amount of P4,763,945.51, petitioner must satisfy the following requisites:[38]

1. 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

2. That the income upon which the taxes were withheld were included in the return of the recipient.

[36] Exhibit "G", Division Docket, pp. 1010-1026
[37] G.R. No. 162155, August 28, 2007
[38] Section 10, Revenue Regulations No. 6-85, as amended; Citibank N.A. vs. Court of Appeals and CIR, 280 SCRA 459 October 10, 1997

From the records of the case, petitioner submitted its Monthly Remittance Returns of Income Taxes Withheld (BIR Form No. 1743W) for the months of January to December 1997. However, it cannot be ascertained from a perusal of the said documents whether the taxes remitted by petitioner pertain to the claimed creditable withholding taxes.

Further, the remittance returns were insufficient to establish that petitioner declared the income pertaining to the claimed creditable withholding taxes on its uncancelled sales transactions. Neither was there any proof that the claimed creditable withholding taxes pertain to its cancelled sales transactions.

Moreover, while Section 69 of the NIRC of 1977, as amended, provided that "xxx in case the corporation is entitled to a refund of the excess estimated quarterly income taxes paid, the refundable amount shown on its final adjustment return may be credited against the estimated quarterly income tax liabilities for the taxable quarters of the succeeding taxable year", Section 5(b) of Revenue Regulations No. 12-94 stated:

> (b) *Excess Credits.* — A taxpayer's excess expanded withholding tax credits for the taxable quarter/taxable year shall automatically be allowed as a credit for purposes of filing his income tax return for the taxable quarter/taxable year immediately succeeding the taxable quarter/taxable year in which the aforesaid excess credit arose, provided, however, he submits with his income tax return a copy of his income tax return for the aforesaid previous taxable period showing the amount of his aforementioned excess withholding tax credits.
>
> If the taxpayer, in lieu of the 'aforesaid automatic application of his excess credit, wants a cash refund' or a tax credit certificate for use in payment of his other national internal tax liabilities, he shall make a written request therefor. Upon filing of his request, the taxpayer's income tax return showing the excess of expanded withholding tax credits shall be examined. The excess expanded withholding tax, if any, shall be determined and refunded/credited to the taxpayer-applicant. The refund/credit shall be made within a period of sixty (60) days from date of the taxpayer's request provided, however, that the taxpayer-applicant submitted for audit all his pertinent accounting records and that the aforesaid records

established the veracity of his claim for a refund/credit of his excess expanded withholding tax credits.

It is worthy to note that in its Annual Income Tax Return for the year 1997, petitioner marked the box *"To be applied as credit to next year"*. While Mr. Wilfred S. Tiu testified that there were no income taxes due for the next two years[39], petitioner failed to submit its Quarterly Income Tax Returns and Final Adjustment Return for the said years to prove that the tax credits in 1997 which are being claimed for refund were indeed not applied or utilized in the taxable quarters of the succeeding taxable years.

In view of the foregoing, the *Petition for Review* is hereby **DENIED** for insufficiency of evidence.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

LOVELL R. BAUTISTA
Associate Justice

[39] Exhibit "M", p. 5

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.

ERNESTO D. ACOSTA
Presiding Justice