REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

C.T.A. EB No. 407
(C.T.A. Case No. 7219)

Present:

-versus-

Acosta, *P.J.*,
Castañeda, Jr.,
Bautista,
Uy,
Casanova, and
Palanca-Enriquez, ***JJ.:***

ROXAS LAND CORPORATION,
Respondent.

Promulgated:
FEB 18 2009 5:40 p.m.

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DECISION

CASTAÑEDA, JR., J.:

THE CASE

Assailed in this Petition are the Decision dated January 18, 2008 granting the issuance of a tax credit certificate in the amount of

P43,928,693.68 representing unutilized excess creditable taxes withheld for taxable years 2002 and 2003, in favor of Roxas Land Corporation, and the Resolution dated July 11, 2008 denying the Motion for Reconsideration of the Commissioner of Internal Revenue.

THE FACTS

Roxas Land Corporation ("respondent") is a corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines; while the Commissioner of Internal Revenue ("petitioner") is vested by law to decide, approve and grant claims for refund or tax credit of erroneously or excessively paid taxes pursuant to the 1997 National Internal Revenue Code ("NIRC"), as amended.

On April 15, 2003, respondent filed its Annual Income Tax Return ("ITR") for the taxable year 2002 showing an overpayment of income tax of P21,341,193.00, and indicating its option to be issued a tax credit certificate.[1]

On April 15, 2004, respondent through electronic filing submitted an annual ITR for the taxable year 2003.[2] In the amended annual ITR filed on April 29, 2004 covering the same period, the return reflected an

[1] See docket of CTA Case No. 7219, Exhibit "B", pp. 87 &129.
[2] See docket of CTA Case No. 7219, Exhibit "C", p. 144.

overpayment of income tax of P25,507,531.00 and respondent's option to be issued a tax credit certificate.[3]

In the belief that it is entitled to the excess amount of the income tax paid, respondent filed on April 14, 2005 before the petitioner's Large Taxpayer's Division, a written claim for the issuance of a tax credit certificate in the amount of P 46,848,724.00 representing excess income tax credits for the taxable years 2002 and 2003.[4]

Petitioner's inaction on the claim for refund prompted respondent to seek recourse before the Court in Division by filing a Petition for Review docketed as C.T.A Case No. 7219 on April 15, 2005.

In ruling for respondent, the Court in Division issued a Decision dated January 18, 2008 granting a tax credit certificate in the reduced amount of P43,928,693.68 representing unutilized excess creditable taxes withheld for the taxable years 2002 and 2003, the decretal portion of which reads:

	2002	2003	Total
Claimed creditable taxes withheld with valid proof of withholding	P 19,085,242.18	P 25,070,987.64	P 44,156,229.82
Less: Creditable taxes withheld with related income not determined to be fully included in petitioner's income tax return	227,536.14		227,536.14
Refundable Excess Creditable Taxes Withheld	**P18,857,706.04**	**P25,070,987.64**	**P 43,928,693.68**

[3] See docket of CTA Case No. 7219, Exhibit "D", p. 152.
[4] See docket of CTA Case No. 7219, Joint Stipulation of Facts and Issues and Exhibits "E" and "E-1", pp. 87 & 170.

In view of the foregoing, this Court finds the Petition for Review partly meritorious.

WHEREFORE, the Court hereby **ORDERS** respondent to issue a Tax Credit Certificate in the amount of P43,928,693.68 in favor of herein petitioner representing its unutilized excess creditable taxes withheld for taxable years 2002 and 2003.

SO ORDERED. [5]

Dissatisfied, petitioner moved to reconsider the assailed Decision which the Court in Division denied in the Resolution dated July 11, 2008 for lack of merit.[6]

THE ISSUE

Unfazed, petitioner appealed to the Court *en banc* by way of a Petition for Review interposing the sole ground that:

WHETHER OR NOT RESPONDENT IS ENTITLED TO THE ISSUANCE OF TAX CREDIT CERTIFICATE IN THE AMOUNT OF P43,928,693.68 REPRESENTING ALLEGED UNUTILIZED EXCESS CREDITABLE TAXES WITHHELD FOR TAXABLE YEARS 2002 AND 2003.[7]

Petitioner alleges that respondent's failure to both prove that a) the creditable withholding taxes amounting to P43,928,693.68 are duly supported by valid certificates of creditable tax withheld at source ("CWT

[5] Rollo, p. 40.
[6] Rollo, p. 42.
[7] Rollo, p. 12.

Certificates"), and b) establish the fact of remittance disqualifies it from claiming a refund.

The burden of proof lies with the respondent to show its entitlement to the claimed amount by establishing the fact of withholding and subsequent remittance of taxes to the BIR.

Petitioner further argues that the person who prepared the contents of a document is a competent witness to prove the truth of the entries therein. Respondent's failure to present the various withholding agents/payors who will attest on the validity of the contents of the CWT Certificates, is fatal. Even on the assumption that the entries in the withholding tax certificates were duly identified by withholding agents, it was only before the Court in Division that respondent submitted the same allegedly supporting its claim for refund. Settled is the rule that matters not raised in the administrative level cannot be raised for the first time on appeal. Respondent should have been mindful of the function of an administrative body in evaluating its claim, in relation to the doctrine of exhaustion of administrative remedies prior to resort of judicial remedy.

The government is not duty bound to restore what was not originally received by mistake, assuming respondent is entitled to the said claim, thus, the principle of *solutio indebiti* does not apply in this case.

Respondent counters that it proffered certificates of creditable taxes withheld at source, withholding tax remittance returns and related machine validated bank deposit slips, bank official receipts and miscellaneous receipts to establish the fact of withholding of creditable taxes withheld in support of its claim for the issuance of a tax credit certificate. These pieces of documents were examined by the Court commissioned certified public accountant ("CPA") firm.

THE COURT'S RULING

The Petition is unmeritorious.

The claimant seeking for refund of unutilized excess creditable withholding taxes must satisfy the following requisites: 1)the claim is filed with the Commissioner of Internal Revenue within the two year period from the date of payment of the tax; 2) it is shown on the return of the recipient that the income payment received was declared as part of the gross income; and, 3) the fact of withholding is established by a copy of a statement duly issued by the payor to the payee showing the amount paid and the amount of the tax withheld therefrom.[8]

[8] *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, 96,100; and *Commissioner of Internal Revenue vs. PERF Realty Corporation*, G.R. No. 163345, July 4, 2008, 557 SCRA 165.

The petitioner is not questioning whether or not respondent complied with the first and second requisites, but only as to the third requisite. The third condition stems from Section 10 of Revenue Regulations No. 6-85, reading:

> Sec. 10. *Claims for tax credit or refund.* –(a) Claims for Tax Credit or Refund of income tax deducted and withheld on income payments shall be given due course only when it is shown on the return that the income payment received has been declared as part of the gross income and the fact of withholding is established by a copy of the statement duly issued by the payor to the payee showing the amount paid and the amount of tax withheld therefrom xxx.[9]

The document required by the third requisite, or also known as CWT Certificate (BIR Form No. 2307)[10], must emanate from the payor itself indicating the name of the payor, the income payment basis of the tax withheld, the amount of the tax withheld and the nature of the tax paid. A CWT Certificate is complete in relevant details which would aid the courts in the evaluation of any claim for refund of creditable withholding taxes.[11]

The figures appearing in the CWT certificates should be taken at face value since these documents are executed under the penalties of perjury pursuant to Section 267 of the 1997 NIRC, as amended which provides: gr

[9] Cited in the case of *Far East Bank and Trust Company vs. Court of Appeals*, G.R. No. 129130, December 9, 2005, 477 SCRA 49, 54.
[10] Formerly Form 1743-70.
[11] *Banco Filipino Savings and Mortgage Bank vs. Court of Appeals, Court of Tax Appeals and Commissioner of Internal Revenue*, supra note 8 at 100.

> SEC. 267. Declaration under Penalties of Perjury.- Any declaration, return and other statement 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.

Considering that a CWT Certificate covers essential matters to prove the fact of withholding, and the statements therein are executed under the penalties of perjury, there is no need to present as evidence the testimony of the person who made entries in this document.[12]

Contrary to petitioner's assertion, the validly substantiated creditable taxes withheld for taxable years 2002 and 2003 amount to P44,156,229.82. Only a portion of the claimed amount is not covered by CWT certificates and fall beyond the period of claim. The Court in Division aptly observed that:

> In sum, out of the claimed creditable taxes withheld for taxable years 2002 and 2003 in the respective amounts of P21,341,193.00 and P25,507,531.00 totalling P46,848,724.00, petitioner was able to substantiate only the amounts of P19,085,242.18 and P25,070,987.64 or in the sum of P44,156,229.82, computed as follows:

[12] *Commissioner of Internal Revenue vs. Team(PHILIPPINES)OPERATIONS CORPORATION[Formerly: Mirant (Philippines) Operations Corporation]*, C.T.A. E.B. No. 369, August 27, 2008; and *Commissioner of Internal Revenue vs. F.F. Cruz and Company, Inc.* C.T.A. EB. No. 372, June 12, 2008.

	2002	2003	Total
Amount of Claimed Creditable Taxes Withheld	P21,341,193.00	P25,507,531.00	P46,848,724.00
Less: Disallowances Creditable withholding taxes without valid supporting documents		P 342,867.16	P 342,867.16
Creditable withholding taxes which fall outside the period of claim	P 2,255,950.82	P 93,676.20	2,349,627.02
Total Disallowances	P 2,255,950.82	P 436,543.36	P 2,692,494.18
Validly Substantiated Creditable Taxes Withheld	**P 19,085,242.18**	**P25,070,987.64**	**P44,156,229.82**[13]

It bears stressing that petitioner did not interpose objections as to the admissibility of the CWT certificates when these were formally offered by the respondent before the Court in Division. As ruled by the Supreme Court, the failure to object to the offered evidence renders it admissible, and the court cannot, on its own, disregard such evidence.[14]

Petitioner's posture that respondent is required to establish actual remittance to the BIR deserves scant consideration. Proof of actual remittance is not a condition to claim for a refund of unutilized tax credits. Under Sections 57 and 58 of the 1997 NIRC, as amended, it is the payor-withholding agent, and not the payee-refund claimant such as respondent who is vested with the responsibility of withholding and remitting income taxes.

[13] Rollo, p. 36.
[14] *Asian Construction and Development Corporation vs. COMFAC Corporation*, G.R. No. 163915, October 16, 2006, 504 SCRA 519, 524.

WHEREFORE, premises considered, the Petition for Review is hereby **DISMISSED**. The assailed Decision dated January 18, 2008 and Resolution dated July 11, 2008 are **AFFIRMED**.

SO ORDERED.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

OLGA PALANCA-ENRIQUEZ
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.

ERNESTO D. ACOSTA