REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL FIRST DIVISION

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WINEBRENNER & IÑIGO INSURANCE BROKERS, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 7440

Members:

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

Promulgated:

JUL 27 2011 ; 10:28 am

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AMENDED DECISION

CASANOVA, *J.*:

This resolves the following:

1) Petitioner's "**Motion for Partial Reconsideration (re: Decision dated April 13, 2010)** with Motion for Leave to Submit Supplemental Evidence" filed on May 4, 2010; and

2) Respondent's "**Motion for Reconsideration**" filed on May 4, 2010 *via* registered mail, with petitioner's "**Comment**" filed on June 11, 2010.

Both parties seek reconsideration of the Decision promulgated on April 13, 2010, the dispositive portion of which reads:

> "In view of the foregoing, the *Petition for Review is* hereby **PARTIALLY GRANTED**. Accordingly, respondent is hereby **ORDERED** to **REFUND** or **ISSUE A TAX CREDIT CERTIFICATE** in favor of the petitioner in the reduced amount of P2,737,903.34 representing its excess/unutilized creditable withholding taxes for the year 2003.
>
> **SO ORDERED**."

Petitioner's Motion for Partial Reconsideration

Petitioner argues that (1) its Creditable Withholding Tax (CWT) Certificates from 2002 in the amount of P1,454,232.44 were not used to offset the taxes due for 2002 and were more than enough to cover its income tax liability for 2003; and (2) its annual income tax returns (ITRs) for 2002 and 2003 should be presumed true and correct; thus, it should not have been required to submit proof beyond the requirements of the law.

In addition thereto, petitioner requests leave to submit and offer the documents enumerated in the Motion for Partial Reconsideration in order to show that no amount of the subject claim for refund was utilized to pay its income tax liability for 2003.

Petitioner, therefore, prays for reconsideration of the assailed Decision and for the Court to issue an amended decision granting its claim for refund. In the alternative, it prays that it be allowed to submit and offer as supplemental evidence the attached Annexes, with the end in view that this Court will render an amended decision granting refund of the disallowed amount.

Respondent's Motion for Reconsideration

Respondent's Motion for Reconsideration, on the other hand, is anchored on the following grounds:

> (a) Petitioner failed to fully substantiate its claim for refund/tax credit for taxable year 2003, in violation of the requirements under Section 76 of the 1997 Tax Code;
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> (b) Petitioner in its Annual Income Tax Returns for taxable years 2003 and 2004 indicated therein its option to carry-over its claimed excess creditable withholding taxes for taxable year 2003 to the succeeding taxable year 2004, hence, pursuant to Section 76 of the 1997 Tax Code, no claim for refund is allowed since such option is considered irrevocable;
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> (c) The statements and certificates of taxes withheld presented and offered by petitioner as proof of withholding are not conclusive evidence of payment and remittance to the Bureau of Internal Revenue; and
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> (d) No sufficient proof that the tax withheld went into government coffers.

In support thereof, respondent argues that Section 76 of the 1997 Tax Code speaks of quarterly income tax payments, hence, a corporate taxpayer is required to present its quarterly ITRs duly filed with the BIR. Accordingly, considering that petitioner failed to present its quarterly ITRs for 2003 and 2004, it cannot be determined whether petitioner has indeed exercised its option to refund or carry-over the alleged unutilized and excess CWT for the four quarters of 2003 to the succeeding four quarters of 2004.

Aside from the alleged failure to present the quarterly ITRs, respondent asserts that petitioner is already estopped from claiming that it did not exercise the option to carry-over its claimed excess CWT to the succeeding years of 2004 and 2005. She claims that although petitioner did mark the option "To be carried as tax credit next year" in its 2003, 2004 and 2005 ITRs, nonetheless, it declared the amount of P4,379,518.00 as "Prior year's excess tax credit" in the said ITRs. It is her conclusion that such declaration is more than sufficient manifestation of petitioner's decision or intention to exercise the option to carry-over its 2003 excess CWT to the succeeding taxable years of 2004 and 2005.

Furthermore, respondent avers that although it admits the existence of the Certificates of Creditable Tax Withheld at Source presented and offered by petitioner in support of the latter's claim, she, however, argues that these documents are mere proof of withholding taxes and are not conclusive evidence of payment and remittance to the BIR of the final taxes withheld by petitioner's withholding agents.

Lastly, she argues that nowhere in the course of the proceedings nor in the documentary evidence offered by the petitioner can it be seen that the taxes withheld by the payor were remitted to the BIR.

In its "Comment" to respondent's Motion for Reconsideration, petitioner counter-argues that (1) the presentation of Quarterly ITRs for 2003 and 2004 is not a legal requisite in claiming a refund of excess CWT for 2003; (2) it opted to "be issued a Tax Credit Certificate" with respect to the amount of P4,073,954.00, subject of the claim for refund; (3) the amount of P4,379,518.00 pertains to its CWT carried over from 2002, which was indicated as "Prior Year's Excess Credits" in its 2003 Annual ITR; and, (4) the CWT Certificates presented are conclusive evidence of payment and remittance of taxes to the BIR for purposes of claiming refund of excess CWT.

In a Resolution[1] dated July 23, 2010, the Court granted petitioner's "Motion for Leave to Submit Supplemental Evidence" and, subsequently, court hearings were conducted for the reception of petitioner's additional evidence. Thereafter, petitioner filed its "Supplemental Formal Offer of Evidence"[2] on October 1, 2010, which was favorably resolved in a Resolution dated December 14, 2010.

In a hearing held on March 17, 2011, the parties were granted a period of thirty (30) days within which to file their respective memorandum. In compliance therewith, respondent filed her Memorandum on April 18, 2011 via registered mail while petitioner filed its Supplemental Memorandum on May 6, 2011.

Hence, this resolution in view of the filing of the parties' respective memorandum.

To begin with, it is important to point out that petitioner seeks the refund or issuance of a tax credit certificate of its excess/unutilized CWT for 2003 in the amount of P4,073,954.00. However, as pointed out in the assailed Decision, petitioner was only able to substantiate, with corresponding Certificates of Creditable Tax Withheld at Source, the amount of P3,860,931.79, which were withheld from its commission income of P38,609,317.90. Considering, however, that the reported commission income

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[1] Docket, pp. 1490-1492.
[2] Ibid, pp. 1550-1576.

in the 2003 ITR is only P35,997,739.00, the related CWT of P261,157.89 was, therefore, disallowed from petitioner's claim. The resulting substantiated CWT of P3,599,773.90 was further reduced by the remaining income tax due of P861,870.56 *(income tax due of P1,259,259.00 less prior year's excess credits of P397,388.44)*, which resulted into a refundable excess creditable taxes withheld of P2,737,903.34, computed as follows:

Income Tax Due	P 1,259,259.00
Less: Prior Year's Excess Credits	397,388.44
Income Tax Still Due	P 861,870.56
Less: Substantiated Creditable Taxes Withheld	3,599,773.90
Refundable Excess Creditable Taxes Withheld	P 2,737,903.34

The Court will discuss the 2003 income tax liability, which was deducted from the refundable and substantiated CWT, since it has something to do with petitioner's Motion. As previously stated, it is petitioner's stance that the substantiated CWT Certificates from 2002 in the amount of P1,454,232.44 were not used to offset the taxes due for 2002 and were more than enough to cover its income tax liability for 2003 and that it should not have been required to submit proof beyond the requirements of the law since its annual ITRs for 2002 and 2003 should be presumed true and correct.

Foremost, it should be stressed that the mere presentation of petitioner's Annual ITRs for taxable years 2002 and 2003 is not enough to prove that its income taxes due for the said years were paid through offsetting against its excess creditable withholding taxes for the years 2001 and 2002.

As held by the Court *En Banc* in the case of **Commissioner of Internal Revenue vs. Nissan Motor Philippines, Inc.**[3], a tax overpayment is composed of the taxpayer's prior year's credits, current year's tax payments, creditable taxes withheld for the current year and even foreign tax credits (if applicable). Accordingly, it is necessary to prove or substantiate each and every component of the Total Tax Credits/Payments reflected on the taxpayer's final adjustment return, including its prior year's excess tax credits, because ultimately the remaining balance of the Total Tax Credits/Payments, after deducting its income tax liability, becomes the tax overpayment. For easy reference, we quote hereunder the relevant part of the above-cited *Decision*:

> "Secondly, contrary to what Nissan Motor wants this Court to believe that there is no need to substantiate its prior year's excess credits, the Supreme Court had ruled that if the claim for refund is based on the taxpayer's final adjustment tax return, said claim should not be treated as a claim for refund of overpaid withholding taxes per se, thus:
>
>> The petitioner corporation is not claiming a refund of overpaid withholding taxes, per se. **It is asking for the recovery of** the sum of P82,751.91, **the refundable or creditable amount determined upon the petitioner corporation's filing of its final adjustment return** on or before 15 April 1982 when its tax liability for the year 1981 fell due. The distinction is essential in the resolution of this case for it spells the difference between being barred by prescription and entitlement to refund.[4] (*Emphasis supplied*)

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[3] CTA EB No. 137 and 139, October 6, 2006.
[4] ACCRA Investments Corporation vs. Court of Appeals, *et al.*, G.R. No. 96322, December 20, 1991.

In the above-quoted decision, the Supreme Court categorically made a distinction between a claim for refund of overpaid withholding taxes per se and a claim for refund of the refundable or creditable amount reflected on the taxpayer's final adjustment return. Nissan Motor's claim for refund is of the latter type, that is, based on the refundable amount indicated on Nissan Motor's final adjustment return for the taxable year 2000. A component of the refundable amount reflected on its final adjustment return is its prior year's excess credits of P478,645.00. The other components are Nissan Motor's Minimum Corporate Income Tax (MCIT) amounting to P3,958,694.00 and the total amount of withheld taxes for the taxable year 2000 amounting to P8,656,236.00. These components are shown on Nissan Motor's Annual Income Tax Return as follows:

Aggregate Income Tax Due		P3,958,694.00
Less: Tax Credits/Payments		
Prior Year's Excess Credits	478,645.00	
xxx xxx xxx	-	
xxx xxx xxx	-	
Creditable Tax Withheld per BIR Form No. 2307 for the Fourth Quarter	8,656,236.00	
Total Tax Credits/Payments		P9,134,881.00
Tax Payable/(Overpayment)		**(5,176,187.00)**

It is undeniable that Nissan Motor's prior year's excess credits formed part of its *Total Tax Credits/Payments* amounting to P9,134,881.00 that was used or applied to cover its MCIT liability for the taxable year 2000 and that the *Tax Overpayment* of P5,176,187.00 resulted from its Total Tax Credits/Payments less its MCIT liability. Clearly, its prior year's excess credits is a part of Nissan Motor's *Tax Overpayment* reflected on its Annual Income Tax Return.

In one case[5], the Supreme Court had explained that "money is fungible property" and the amount to be applied against the income tax due in the final adjustment return of petitioner may be taken from its excess credits in a prior year or from those withheld in the current year or from both. This emphasizes that a *Tax Overpayment* is composed of the taxpayer's prior year's credits, current year's tax payments, creditable taxes withheld for the current year and even foreign tax credits (if applicable). It is therefore necessary to prove or

[5] Philam Asset Management, Inc. vs. Commissioner of Internal Revenue, G.R. No. 156637 and 162004, December 14, 2005, 477 SCRA 761.

substantiate each and every component of the *Total Tax Credits/Payments* reflected on Nissan Motor's final adjustment return, including its prior year's excess tax credits, because ultimately the remaining balance of the *Total Tax Credits/Payments* after deducting its MCIT liability becomes the **Tax Overpayment** which is precisely the subject of Nissan Motor's claim for refund in C.T.A. CASE No. 6622."

The argument of the petitioner that its 2002 CWT Certificates in the amount of P1,454,232.44 were not used to offset the taxes due for 2002 cannot be sustained. We already addressed the said argument in the assailed Decision in this wise:

> "Petitioner has an excess tax credit of P4,379,518.00 as reflected in its 2002 ITR; the said amount being the difference between the income tax liability in the amount of P1,056,844.00 and the accumulated tax credits in the amount of P5,436,362.00, the latter being the sum of the excess credits in the amount of P2,675,971.00 for the year 2001 and the creditable taxes withheld in the amount of P2,760,391.00 for the year 2002.
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> Since petitioner failed to present withholding tax certificates of excess credits in the amount of P2,675,971.00 for the year 2001, the creditable taxes withheld in 2002 in the amount of P1,454,232.44 shall be offset against the 2002 income tax liability of P1,056,844.00, leaving an unutilized tax credit of P397,388.44 which petitioner may validly apply against the 2003 income tax liability of P1,259,259.00. The remaining 2003 income tax liability of P861,870.56 shall be deducted from petitioner's substantiated claim of P3,599,773.90."

However, with the admission of petitioner's supplemental evidence, *particularly, its Schedules of Creditable Tax Withheld for taxable years 2001*[6] *and 2002*[7] *and the related Certificates of Creditable Tax Withheld at Source*

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[6] Exhibit "K^{11}".
[7] Exhibit "L^{11}".

(BIR Forms No. 2307)[8], *as well as the Supplemental Sworn Statement*[9] *of Ms. Soo Yuk "Irene" L. Yu to Questions Propounded by Atty. Arthur Raymund A. Enerio dated August 26, 2010*, petitioner was able to prove that it had enough prior year's excess credits to pay for its 2003 income tax liability.

The Court noted that although the excess tax credits declared in petitioner's Annual ITRs for taxable years 2001 and 2002 were not fully substantiated by BIR Forms No. 2307, the substantiated prior year's excess credits were more than enough to cover its income tax liabilities for taxable years 2001, 2002 and 2003, as illustrated below:

Taxable Year	**2000**		**2001**		**2002**	
Aggregate Income Tax Due	P 253,382.00	[10]	P 202,294.00	[11]	P 1,056,844.00	[12]
Less: Tax Credits						
Prior Year's Excess Credits	-		935,362.00		2,413,730.33	
Creditable Tax Withheld per BIR Form No. 2307	1,188,744.46	[13]	1,680,662.33	[14]	2,182,134.66	[15]
Total Tax Credits	P1,188,744.46		P 2,616,024.33		P 4,595,864.99	
Total Overpayment	**P 935,362.46**		**P 2,413,730.33**		**P 3,539,020.99**	

The above table indicates that as of December 31, 2002, petitioner had excess tax credits in the amount of P3,539,020.99 which can be applied against its 2003 income tax liability in the amount of P1,259,259.00, thus, leaving the substantiated creditable withholding taxes for taxable year 2003 in the amount of P3,599,773.90[16] unutilized as of December 31, 2003.

[8] Exhibits "M^{11}" to "Z^{11}"; "A^{12}' to "Z^{12}"; "A^{13}" to "Z^{13}"; A^{14} to Z^{14}; A^{15} to Z^{15}; A^{16} to Z^{16}; and "A^{17}" to "T^{17}".
[9] Exhibits "U-^{17}" to "U$^{17-1}$".
[10] Exhibit "U^{15}".
[11] Exhibit "V^{15}".
[12] Exhibit "J^{7}".
[13] Exhibit "W^{15}".
[14] Exhibit "K^{11}".
[15] Exhibit "L^{11}".
[16] Decision, p. 11, Docket, p. 1010.

Nevertheless, petitioner's substantiated excess creditable withholding taxes for taxable year 2003 in the amount of P3,599,773.90 cannot be granted.

As correctly pointed out by the respondent in her Motion for Reconsideration, petitioner failed to sufficiently prove that it did not carry-over the claimed creditable withholding taxes to the succeeding first, second and third quarters of 2004 as petitioner merely presented its 2004 Annual ITR.[17] While there was no amount of "Prior Year's Excess Credits" reflected in petitioner's 2004 Annual ITR[18], however, this evidence is not enough to conclude that petitioner did not apply the said unutilized creditable withholding taxes against the income tax due for the first three quarters of 2004. Petitioner should have presented as evidence its 1st, 2nd and 3rd Quarterly ITRs for the year 2004 to prove that the claimed amount has not been carried over to the succeeding quarters following the "irrevocability rule" in Section 76 of the 1997 Tax Code.[19]

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[17] Exhibit "A".
[18] Exhibit "A", line 27A.
[19] 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 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.

Since it is already settled that the option to carry-over is irrevocable[20] and the said option may be taken either actually or constructively,[21] the examination of the quarterly ITRs together with the annual ITR, is necessary in order for the Court to determine the subsequent act of the claimant, whether it has effectively chosen the carry-over option. Section 2.58.3 of Revenue Regulations No. 2-98,[22] which implements Section 76 of the 1997 Tax Code, provides that if the option to apply the excess credit is initiated in the first quarter *(i.e. in the first quarter of 1998)*, the taxpayer cannot avail of a refund/tax credit certificate of the excess credit *(in 1997)*.

If petitioner applied the said unutilized creditable withholding taxes against the income tax due for the first three quarters of taxable year 2004, it therefore effectively exercised the option to carry over the 2003 unutilized creditable withholding taxes to the succeeding taxable year 2004; thus, its claim for refund should be denied pursuant to Section 76 of the 1997 Tax Code.

In the recent case of *Millenium Business Services, Inc. vs. The Commissioner of Internal Revenue*,[23] the Court *En Banc* ruled that:

> "Since the burden of proof is upon the claimant to show that the amount claimed was not utilized or carried over to the succeeding taxable quarters, the presentation of the succeeding

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[20] Belle Corporation vs. Commissioner of Internal Revenue, G.R. No. 181298, March 2, 2011 Resolution.
[21] Philam Asset Management, Inc. vs. Commissioner of Internal Revenue, G.R. Nos. 156637/162004, December 14, 2005; and Systra Philippines, Inc. vs. Commissioner of Internal Revenue, G.R. No. 176290, September 21, 2007 Resolution.
[22] Section 2-58-3. Claim for Tax Credit or Refund.-xxx
(C) Excess Credits. – xxx
(2) xxx In the above illustration, there is an excess credit in 1997 that can be applied to the subsequent quarter. And if the option to apply the excess credit is initiated in the first quarter of 1998, the taxpayer cannot avail of a refund/tax credit certificate of the excess credit of P500 in 1997.
[23] CTA EB No. 510, September 29, 2010.

quarterly income tax return and final adjustment return is indispensable to prove that it did not carry over or utilize the claimed excess creditable withholding taxes. Absent thereof, there will be no basis for a taxpayer's claim for refund since there will be no evidence that the taxpayer did not carry over or utilize the claimed excess creditable withholding taxes to the succeeding taxable quarters.

Significantly, a taxpayer may amend its quarterly income tax return or annual income tax return or Fiscal Adjustment Return which in any case may modify the previous intention to carry-over, apply as tax credit certificate or refund, as the case may be. But the option to carry-over in the succeeding taxable quarters under the irrevocable rule cannot be modified in its final adjustment return.

The presentation of the final adjustment return does not the *(sic)* shift the burden of proof that the excess creditable withholding tax was not utilized or carried over to the first three (3) taxable quarters. It remains with the taxpayer claimant. It goes without saying that final adjustment returns of the preceding and the succeeding taxable years are not sufficient to prove that the amount claimed was utilized or carried over to the first three (3) taxable quarters.

The importance of the presentation of the succeeding quarterly income tax return and the annual income tax return of the subsequent taxable year need not be overly emphasized. All corporations subject to income tax, are required to file quarterly income tax returns, on a cumulative basis for the preceding quarters, upon which payment of their income tax has been made. In addition to the quarterly income tax returns, corporations are required to file a final or adjustment return on or before the fifteenth day of April. The quarterly income tax return, like the final adjustment return, is the most reliable firsthand evidence of corporate acts pertaining to income taxes, as it includes the itemization and summary of additions to and deductions from the income tax due. These entries are not without rhyme of reason. They are required, because they facilitate the tax administration process, and guide this Court to the veracity of a petitioner's claim for refund without which petitioner could not prove with certainty that the claimed amount was not utilized or carried over to the succeeding quarters or the option to carry-over and apply the excess was effectively chosen despite the intent to claim a refund.

> In the same vein, if the government wants to disprove that the excess creditable withholding tax was not utilized or carried over to the succeeding taxable quarters, the presentation of the succeeding quarterly income tax return and the annual income tax return of the subsequent taxable year indicating utilization or carrying over are indispensable. However, the claimant must first establish its claim for refund, such that it did not utilize or carry over or that it opted to utilize and carry over to the 1st, 2nd, 3rd quarters and final adjustment return of the succeeding taxable year.
>
> Concomitantly, the presentation of the quarterly income tax return and the annual income tax return to prove the fact that excess creditable withholding tax was not utilized or carried over or opted to be utilized and carried over to the 1st, 2nd, 3rd quarters and final adjustment return of the succeeding taxable year is not only for convenience to facilitate the tax administration process but it is part of the requisites to establish the claim for refund. Section 76 of the NIRC of 1997 provides that if the taxpayer claimant carries-over and applies the excess quarterly income tax against the income tax due for the taxable quarters of the succeeding taxable years, the same is irrevocable and no application for cash refund or issuance of a tax credit certificate shall be allowed."

In line with the basic rule in taxation that "tax refunds, like exemptions, are construed strictly against the taxpayer. Petitioner as a claimant, has the burden of proof to establish the factual basis of its claim for tax credit or refund.[24] Thus, petitioner's failure to offer as evidence its 2004 Quarterly ITRs is fatal to its claim for refund.

WHEREFORE, in view of the foregoing, petitioner's *Motion for Partial Reconsideration* is hereby **DENIED** while respondent's *Motion for Reconsideration* is hereby **GRANTED**. Accordingly, the *Decision* dated April 13, 2010 granting petitioner's claim in the reduced amount of P2,737,903.34

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[24] Silicon Philippines, Inc. vs. Commissioner of Internal Revenue, CTA EB Case No. 298, January 18, 2008 *citing Citibank, N.A. vs. Court of Appeals and the Commissioner of Internal Revenue, 280 SCRA 459.*

is hereby **REVERSED AND SET ASIDE.** Consequently, the instant Petition for Review is hereby **DENIED** due to insufficiency of evidence.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

ON LEAVE

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 Amended Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ERNESTO D. ACOSTA
Presiding Justice