REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

C.T.A. EB No. 393
(C.T.A. Case No. 6918)

Present:

-versus-

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

ROXAS LAND CORPORATION,
Respondent.

Promulgated:
OCT 15 2008 3:35p.m.

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DECISION

BAUTISTA, J.:

The Case

Before Us is a Petition for Review[1] filed on June 2, 2008, praying for the reversal of:

1. the Decision dated December 18, 2007 of the Second Division of the Court ("Court in Division") in C.T.A. Case No. 6918, granting herein respondent's claim for a tax credit certificate in the amount

[1] *Rollo*, C.T.A. EB No. 393 (C.T.A. Case No. 6918), pp. 7 - 44 with Annexes.

of Forty Six Million Five Hundred Ten Thousand Four Hundred Seventy Five and 93/100 (P46,510,475.93), representing its excess and unutilized creditable withholding taxes ("CWT") for taxable year 2001; and

2. the Resolution dated April 30, 2008, denying the "Motion for Reconsideration" of herein petitioner and the "Motion for Partial Reconsideration" of herein respondent.

Antecedent Facts

The undisputed facts of the case, as found by the Court in Division, are as follows:

> "Petitioner,[2] Roxas Land Corporation, is a corporation duly organized and existing under the laws of the Republic of the Philippines with principal office at 31/F, Tower One, Ayala Triangle, Ayala Avenue, Makati City. It is engaged in the real estate business, specifically to hold, develop, manage, administer, sell, convey, encumber, purchase, acquire, lease or otherwise deal in and dispose of, for itself or for others, for profit and advantage, real properties intended for residential or commercial condominium projects, office buildings or industrial parks.
>
> Respondent[3] is the duly-appointed Commissioner of Internal Revenue, vested with authority to carry out all the functions, duties and responsibilities of said office, including among others, the power to decide, approve, and grant refunds and/or tax credits of overpaid and erroneously paid or collected internal revenue taxes. He[4] holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.
>
> On April 10, 2002, petitioner filed with the Bureau of Internal Revenue (BIR) its Annual Income Tax Return for taxable year 2001, showing a net loss and declaring an income tax overpayment in the amount of P92,164,882.50, which consisted of the prior year's excess credits of P45,148,361.00 and creditable taxes withheld during the same year in the amount of P47,016,521.50, as shown hereunder:

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[2] Herein Respondent.
[3] Herein Petitioner.
[4] At present, the Commissioner is a "She."

Sales/Revenues/Receipts/Fees	P843,130,025.00
Less: Cost of Sales/Services	1,204,468,221.00
Gross Income from Operation	P(361,338,196.00)
Add: Non-operating & Other Income	151,061,005.00
Total Gross Income	P(210,277,191.00)
Less: Deductions	42,804,847.00
Taxable Income	P(253,082,038.00)
Income Tax Due (32%)	–
Minimum Corporate Income Tax (MCIT) Due	–
Less: Tax Credits	
Prior Years' Excess Credits	P45,148,361.00
Creditable Tax Withheld for the First Three Quarters 2001	45,676,065.15
Creditable Tax Withheld for the Fourth Quarter 2001	1,340,456.35
Total Tax Credits	P92,164,882.50
Overpayment	**P(92,164,882.50)**

On March 19, 2003, however, petitioner amended its 2001 Annual Income Tax Return; this time to report an excess tax credit in the reduced amount of P47,016,521.50, or the amount of its excess creditable taxes withheld for the same year. Subsequently, on March 26, 2003, petitioner filed its second Amended Income Tax Return for the year 2001 to indicate its choice of being issued a tax credit certificate as regards the excess tax credits of P47,016,521.50.

Consequently, on April 3, 2003, petitioner filed a letter claim with respondent, requesting issuance of tax credit certificate of its total excess and unutilized creditable taxes withheld for taxable year 2001 in the amount of P47,016,521.50.

Since respondent had not acted with finality on its claim and before it could be barred by prescription, petitioner filed this judicial claim before this Court on April 6, 2004, in accordance with Sections 204 (C) and 229 of the National Internal Revenue Code (NIRC) of 1997.

Respondent, in his Answer filed on June 1, 2004, averred the following Special and Affirmative Defenses:

> '4. He reiterates and repleads the preceding paragraphs of this Answer as part of his **Special and Affirmative Defenses;**
>
> 5. Petitioner's alleged claim for refund is subject to administrative investigation/examination by the Bureau of Internal Revenue;
>
> 6. Be that as it may, the necessity to prove refund claims applies in the instant case. Meaning, a claim for refund partakes the nature of an exemption which cannot be allowed unless granted in the most explicit and categorical language. The Honorable Supreme Court has consistently ruled that "**exemptions from taxations are**

> **highly disfavored in law and he who claims exemption must be able to justify his claim by the clearest grant of organic or statutory law. An exemption from common burden cannot be permitted to exist upon the vague implications."** *(Asia Petroleum Co. vs. Llanes, 49 Phil 466);*
>
> 7. Being in the nature of an exemption from taxation, a claim for refund is strictly construed against the claimant, and failure to discharge said burden is fatal to the claim.'

Both parties having presented their testimonial and documentary evidence in support of their claims, the Court then ordered the parties to simultaneously file their respective Memorandum. This case was submitted for decision on September 4, 2007, with only petitioner filing its Memorandum.

The issues, jointly stipulated by the parties for this Court's resolution, are as follows:

> '1. Whether or not petitioner's administrative and judicial claims for refund of its unutilized excess CWT for CY 2001 were filed within the two-year prescriptive period provided under Sections 204 and 229 of the National Internal Revenue Code of 1997;
>
> 2. Whether or not the fact of withholding of CWT in the amount of P47,016,521.50 is duly supported by appropriate documents and returns;
>
> 3. Whether or not the income upon which the taxes were withheld were included in the income tax returns of the petitioner;
>
> 4. Whether or not petitioner was able to utilize the amount of P47,016,521.50 CWT withheld from its sales of real property for CY 2001; and
>
> 5. Whether or not petitioner has carried over its unutilized excess CWT for CY 2001 to the succeeding taxable periods.' "[5] *(Citations omitted)*

The Ruling of the Court in Division

On December 18, 2007, the Court in Division rendered a Decision in favor of herein respondent.

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[5] *Rollo*, pp. 23 - 27, Assailed Decision, pp. 1 - 5.

At the outset, the Court in Division ruled that the administrative claim filed on April 3, 2003 and the judicial claim filed on April 6, 2004 were well within the two-year reglementary period given that respondent filed its original Annual Income Tax Return ("ITR") on April 10, 2002.

The Court in Division then proceeded to determine whether the fact of withholding of the CWT in the amount of P47,016,521.50 is duly supported by appropriate documents and returns. Based on the report submitted by the Court-commissioned Independent Certified Public Accountant ("CPA"), Ms. Milagros F. Padernal, the Court in Division declared that out of the total claim of P47,016,521.50, respondent was only able to substantially prove the fact of withholding and subsequent remittance to the BIR of the amount of P46,510,475.93. The Court in Division likewise found respondent to have complied with Section 2.58.3 (B) of Revenue Regulations No. 2-98 ("RR 2-98"), which states that:

> "(B) Claims for tax credit or refund of any creditable income tax which was deducted and withheld on income payments shall be given due course only when it is shown that the income payment has been declared as part of the gross income and the fact of withholding is established by a copy of the withholding tax statement duly issued by the payor to the payee showing the amount paid and the amount of tax withheld therefrom."

Anent the fourth and fifth issues, the Court in Division resolved the same in favor of respondent and ruled that respondent did not utilize nor chose to carry-over any of the substantiated creditable taxes withheld in the amount of P46,510,475.93 in the year 2002 or in any succeeding year.

In view of the foregoing, the Court in Division disposed of the case in this wise:

> "**WHEREFORE**, petitioner's Petition for Review is hereby **GRANTED**. Accordingly, respondent is **ORDERED TO ISSUE** a tax credit certificate in favor of petitioner in the amount of **FORTY SIX MILLION FIVE HUNDRED TEN THOUSAND FOUR HUNDRED SEVENTY FIVE AND 93/100 PESOS** (P46,510,475.93) representing petitioner's excess and unutilized creditable withholding taxes for taxable year 2001, with breakdown as follows:

Sales/Revenues/Receipts/Fees	P 843,130,025.00
Less: Cost of Sales/Services	1,204,468,221.00
Gross Income from Operation	P (361,338,196.00)
Add: Non-operating & Other Income	151,061,005.00
Total Gross Income	P (210,277,191.00)
Less: Deductions	42,804,847.00
Taxable Income	P (253,082,038.00)
Income Tax Due	—
Less: Creditable Taxes Withheld during the year	P 46,510,475.93
Excess Tax Credits	P (46,510,475.93)

> **SO ORDERED.**"[6]

On January 22, 2008, petitioner filed a "Motion for Reconsideration"[7] while respondent filed a "Motion for Partial Reconsideration."[8] Both parties subsequently filed their respective Oppositions.[9]

On April 30, 2008, the Court in Division denied both Motions for Reconsideration for lack of merit.[10]

The Issue

Dissatisfied, petitioner filed the instant recourse, interposing the lone issue of:

> "WHETHER OR NOT RESPONDENT IS ENTITLED TO THE ISSUANCE OF A TAX CREDIT CERTIFICATE IN THE AMOUNT OF P46,510,475.93

[6] *Rollo*, p. 34, Assailed Decision, p. 12.
[7] *Records*, C.T.A. Case No. 6918, pp. 651 - 661.
[8] *Id.*, pp. 662 - 668.
[9] *Id.*, pp. 670 - 674, Opposition (Re: Motion for Partial Reconsideration); and pp. 675 - 679, Opposition to Respondent's Motion for Reconsideration dated January 22, 2008.
[10] *Rollo*, pp. 36 - 38, Assailed Resolution, pp. 1 - 3.

REPRESENTING ALLEGED EXCESS AND UNUTILIZED CREDITABLE WITHHOLDING TAXES FOR TAXABLE YEAR 2001."[11]

Petitioner's Arguments

Petitioner's main contention is that respondent failed to discharge its burden of proving its entitlement to a refund. She claims that respondent failed to prove that the CWT amounting to P46,510,475.93 are duly supported by valid Certificates of Creditable Tax Withheld at Source. And even if the originals of the certificates were offered in evidence, petitioner argues that there is, however, no presumption on the validity of the contents of the said certificates.

Furthermore, she puts in issue not only the failure of respondent to have its documents, particularly the alleged withholding tax certificates, identified by the respective withholding agents, but more importantly, its failure to prove actual remittance to the BIR of the amounts alleged to have been withheld.

Finally, on the assumption that the entries in the alleged withholding tax certificates were duly identified by the respective withholding agents, petitioner insists that respondent's claim must still fail, as it failed to submit to the BIR copies of the withholding tax certificates when it filed its administrative claim for refund, which would have shown its entitlement to a refund.

Respondent's Counter-arguments

In its Comment,[12] respondent counter-argues that it was able to prove the fact of withholding and the actual remittance of the CWT to the BIR. It reiterates that the documents it submitted proved the withholding and the remittance to

[11] *Rollo*, p. 12, Petition for Review, p. 6.
[12] *Id.*, pp. 52 - 59.

the BIR of the CWT. It points out that even the Revenue Accounting Division of the BIR itself has acknowledged that based on the records of the BIR, the taxes withheld from the respondent's income in calendar year 2001 were remitted and paid to the BIR. Having been able to sufficiently establish the fact of withholding and the subsequent remittance to the BIR of the CWT, respondent maintains that the Court in Division did not err in granting respondent a tax credit certificate in the amount of P46,510,475.93.

The Ruling of the Court En Banc

The Petition for Review must fail.

In the case of *Banco Filipino Savings and Mortgage Bank v. Court of Appeals, et. al.,*[13] the Supreme Court provided three conditions for the grant of a claim for refund of creditable withholding tax, to wit:

1) the claim is filed with the CIR 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.

In addition to these, the claimant must also prove that it did not opt to carry-over and credit the excess income tax to the taxable quarters of the

[13] G.R. No. 155682, 519 SCRA 93, March 27, 2007.

succeeding taxable years, in accordance with Section 76 of the NIRC of 1997, as amended,[14] which provides:

> "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."

As to the first requirement, it is already well-settled in our jurisprudence that the two-year prescriptive period within which to claim a refund commences to run, at the earliest, on the date of the filing of the adjusted final tax return.[15] The reason is obvious: it is only when the Adjustment Return covering the whole year is filed that the taxpayer would know whether a tax is still due or a refund can be claimed based on the adjusted and audited figures.[16]

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[14] Commissioner of Internal Revenue v. Philippine National Bank, C.T.A. EB No. 285 (C.T.A. Case No. 6652), October 1, 2007.

[15] Atlas Consolidated Mining and Development Corporation v. Commissioner, G.R. Nos. 141104 & 148763, 524 SCRA 73, June 8, 2007; Commissioner of Internal Revenue v. Philippine American Life Insurance Co., G.R. No. 105208, 244 SCRA 446, 453, May 29, 1995; Commissioner of Internal Revenue v. TMX Sales, Inc., G.R. No. 83736, 205 SCRA 184, January 15, 1992; ACCRA Investments Corporation v. Court of Appeals, G.R. No. 96322, 204 SCRA 957, December 20, 1991.

[16] Commissioner of Internal Revenue v. TMX Sales, Inc., *supra*, note 15.

In the case at bar, records show that respondent filed its original Annual ITR on April 10, 2002. Accordingly, We agree with the ruling of the Court in Division that the filing of the administrative claim on April 3, 2003 and the judicial claim on April 6, 2004 are well within the two-year reglementary period.[17]

In order to prove compliance with the second requirement, respondent submitted a "Sales Report" for the year 2001 which enumerated the gross selling prices of the condominium units sold, and the related gross revenues it recognized for the same period based on percentage of completion method. According to the Court in Division, the gross revenues of P843,130,024.98 or the P843,130,025.00 as reflected on the "Sales Report," is the very same figure reported by respondent as "Sales/Revenues/Receipts/Fees (Sch.1)" under item 14C, Part II of its 2001 second Amended ITR. It further said that although there is a difference of P7,892,969.00 between the gross revenues of P851,022,994.00 as appearing on its Computation of Gross Profit Rate and Realized Gross Profit for 2001 and the reported gross "Sales/Revenues/Receipts/Fees (Sch. 1)" of P843,130,025.00, such discrepancy is found to have formed part of the reconciling item described as "difference between installment and percentage of completion" in the amount of P143,990,135.00, which was declared as "Other Income" by petitioner in its 2001 Annual ITR.[18] Considering the foregoing, We are convinced that respondent was able to show that the income, upon which the taxes were withheld, was indeed included in its ITR for 2001.

[17] *Rollo*, p. 28, Assailed Decision, p. 6.
[18] *Id.*, pp. 31 - 32, Assailed Decision, pp. 9 - 10.

As regards the third requirement, We have examined the records and We fully subscribe to the findings of the Court in Division that respondent was able to substantially prove the fact of withholding and the subsequent remittance to the BIR of the amount of P46,510,475.93. Thus, We quote with approval the following disquisition of the Court in Division:

"Going now to the second issue, the Court-commissioned Independent Certified Public Accountant (CPA), Ms. Milagros F. Padernal, submitted her Report dated June 29, 2006, showing the following data:

Exhibit No.	BIR Form No. 1606	Amount
KK	Supported by photocopies marked as certified true copy by BIR	P17,750,437.01
LL	Supported by photocopies not marked as certified true copy by BIR	21,997,799.43
	Subtotal	P39,748,236.44
	No supporting BIR Form No. 1606	7,268,285.07
	Total	**P47,016,521.51**

Upon thorough examination by this Court, it is established that the claim of creditable withholding taxes in the amount P17,750,437.01, found by the Independent CPA as properly marked by the BIR as certified true copies from the original Withholding Tax Remittance Returns (BIR Form No. 1606), is valid. This Court, however, finds that while the creditable withholding taxes in the amount of P21,997,799.43 were supported by photocopies of Withholding Tax Remittance Returns (BIR Form No. 1606) not marked as 'CERTIFIED TRUE COPY FROM THE ORIGINAL' by the BIR, **the actual remittance thereof can be traced to the Certification dated November 18, 2003 issued by Carmelita SJ. Pascual, Chief of the BIR, Revenue Accounting Division. As verified by Ms. Pascual, Roxas Land Corporation duly remitted the tax payments pertaining to the collections listed and the same check payments were not included in the list of dishonored checks.**

Nonetheless, out of the total creditable withholding taxes of P21,997,799.43, the amount of P474,919.59 pertaining to December 2000 should be denied outright for being outside the subject period of the instant Petition. Below is the breakdown of the said amount of P474,919.59:

Exh	**Period Covered**	**Payor**	**Amount of Tax**
LL-1	Dec-00	Sharon Pureta in trust for a corp.	P10,000.00
LL-2	Dec-00	Gary E.P. Cheng/Monica Consing	10,000.00
LL-3	Dec-00	Sylvia H. Lopez in trust for a corp.	90,503.59
LL-4	Dec-00	Patricia Zobel de Ayala in trust for a corp.	165,127.95
LL-5	Dec-00	Beatriz Susana Zobel de Ayala in trust for a corp.	154,136.53
LL-6	Dec-00	VGL Realty Holdings, Inc.	25,000.00

LL-7	Dec-00	VRJ Holdings	20,151.52
		Total	**P474,919.59**

As to the creditable withholding taxes in the amount of P7,268,285.07, the same was accounted for by the commissioned Independent CPA as follows:

Exhibit No.	BIR Form No. 1954	Amount
MM	Supported with original copies of BIR Form No. 1954	P7,237,159.09
	No supporting BIR Form No. 1954	31.125.98
	Total	P7,268,285.07

The Court was able to determine the accuracy of the creditable withholding taxes reflected in the Certificates Authorizing Registration (BIR Forms No. 1954) upon verification of the buyer's name, purchase unit, and purchase price shown in the applicable Deeds of Absolute Sale and Contracts to Sell and schedule of creditable withholding taxes submitted by petitioner.

As to the creditable withholding taxes of P31,125.98 which were found by the commissioned Independent CPA to be without Certificates Authorizing Registration (BIR Forms No. 1954), the same shall be denied. A close scrutiny of petitioner's Schedule of Creditable Withholding Taxes, shows that the amount of P31,125.98 (P49,875.98 – P18,750.00) actually pertains to documentary stamp taxes (DST) erroneously recorded by petitioner as creditable withholding taxes.

In sum, out of the total claim of P47,016,521.50, petitioner was only able to substantially prove the fact of withholding and subsequent remittance to the BIR of the amount of P46,510,475.93, computed as follows:

Claimed Creditable Withholding Taxes	P 47,016,521.50
Less: Disallowances	
a. Creditable withholding taxes outside the subject period of claim	474, 919.59
b. DST erroneously recorded/claimed as creditable withholding taxes	31,125.98
Total Disallowances	P 506,045.57
Validly Substantiated Creditable Withholding Taxes	**P 46,510,475.93**"[19]

(Emphasis supplied)

As We see it then, the contention of petitioner that respondent failed to prove actual remittance of the alleged unutilized CWT to the BIR was adequately addressed by the Court in Division.

Moreover, contrary to the stand of petitioner, respondent's alleged failure to submit to the BIR copies of the withholding tax certificates when it filed its

[19] *Rollo*, pp. 28 - 31, Assailed Decision, pp. 6 - 9.

claim for refund, does not run counter to the settled rule that matters not raised in the administrative level cannot be raised for the first time on appeal.

In fact, in the case of *Commissioner of Internal Revenue v. Philippine National Bank,*[20] We rejected a similar argument and ruled that: "The Commissioner is in no position to assail the authenticity of the CWT certificates due to PNB's alleged failure to submit the same before the administrative level since he could have easily directed the claimant to furnish copies of these documents, if the refund applied for casts him any doubt."

Finally, We sustain the Court in Division's findings that respondent did not opt to carry-over and credit the excess income tax to the taxable quarters of the succeeding taxable years, as its 2002 Annual ITR shows that under the item "Prior Year's Excess Credits," no amount was declared.[21]

Without a doubt, respondent is entitled to a refund in the amount of P46,510,475.93. Thus, there is no cogent justification to disturb the findings and conclusion of the Court in Division, as it is supported by the evidence on record and is consistent with prevailing law and jurisprudence.

In closing, it is well to note that the question of whether or not the evidence submitted by a party is sufficient to warrant the granting of its prayer lies within the sound discretion and judgment of the Court.[22] And in the absence of the Court's abuse or improvident exercise of authority, findings of facts made

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[20] *Supra*, note 14.
[21] *Records*, p. 302, Exhibit "H-1."
[22] El Greco Ship Manning and Management Corporation v. Commissioner of Customs, C.T.A. EB No. 172 (C.T.A. Case No. 6618), March 14, 2007.

by the Court in Division, especially if supported by the evidence, must be accorded deference and respect.[23]

WHEREFORE, the instant Petition for Review is hereby **DISMISSED**. Accordingly, the Decision dated December 18, 2007 and the Resolution dated April 30, 2008 are hereby **AFFIRMED**.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

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[23] Union Refinery Corporation v. Commissioner of Customs, C.T.A. EB No. 149 (C.T.A. Case No. 5917), January 15, 2007.

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the above Decision has been reached in consultation with the members of the Court *En Banc* before the case was assigned to the writer of the opinion of this Court.

ERNESTO D. ACOSTA
Presiding Justice