REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL FIRST DIVISION

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PRHC PROPERTY MANAGERS, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 7615

Members:

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

Promulgated:

SEP 14 2010 ; 4:30 pm

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DECISION

BAUTISTA, *J.*:

This case is a claim for refund of the amount of P1,623,841.00, allegedly representing petitioner's unutilized creditable withholding taxes for taxable year 2004.

PRHC Property Managers, Inc. (Petitioner) is a corporation duly organized and existing under and by virtue of the laws of the Philippines, with principal offices and business address at E-2003B East Tower, PSE Centre, Exchange Road, Ortigas Center, Pasig City. Petitioner is engaged in the business of managing, operating, administering, maintaining, servicing, buying, leasing or selling real and personal properties either for itself or others.[1]

Respondent is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR), vested with the authority to act as such, including, *inter alia*, the power to decide, approve, and grant refunds or tax credits of erroneously paid taxes. He holds office at the BIR National Office Building, BIR Road, Diliman, Quezon City.

On April 14, 2005, petitioner filed with the Bureau of Internal Revenue its Annual Income Tax Return (BIR Form 1702)[2] for taxable year 2004.

On April 15, 2005, petitioner filed an Amended Income Tax Return[3] for the year 2004, showing Corporate Income Tax Due of P495,470.00 and a creditable tax withheld in the amount of P2,119,311.00, resulting in an excess creditable tax withheld of P1,623,841.00.

Petitioner filed another Amended Income Tax Return[4] for the year 2004 on March 22, 2006. It reported a Corporate Income Tax Due of P495,470.00 and a creditable tax withheld in the amount of P2,119,311.00. Petitioner also indicated the amount of P5,679,812.00 as its prior year's excess credits.

On April 20, 2006, petitioner filed another Amended Annual Income Tax Return, showing the same figures as its first Amended Annual Income Tax Return filed on April 15, 2005. Petitioner also marked the box "To be refunded" in Line 30 of the said Return, indicating its intention to claim a

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[1] Annex "A", Petition for Review, docket, pp. 9-19; pars. 1 and 3, Stipulation of Facts, Joint Stipulation of Facts, docket, pp. 89-90
[2] Par. 4, Stipulation of Facts, Joint Stipulation of Facts, docket, p. 90
[3] Exhibit "F"
[4] Exhibit "G"

refund of its excess/unutilized creditable withholding tax for 2004 in the amount of P1,623,841.00.[5]

On November 9, 2006, petitioner filed its letter dated November 8, 2006 with the BIR Revenue District Office (RDO) No. 43, requesting issuance of tax credit certificate for the excess creditable tax withheld for taxable year 2004 in the amount of P1,623,841.00.[6]

On December 12, 2006, petitioner received a copy of the Letter of Authority No. 2001-00043948 issued by BIR RDO No. 43, authorizing Revenue Officer Melendrina Malate to examine petitioner's books of accounts and other accounting records for taxable year 2004, in connection with petitioner's application for refund of its 2004 unutilized creditable taxes withheld at source.[7]

Due to respondent's failure to render a decision on petitioner's claim for refund, petitioner filed the instant Petition for Review on April 16, 2007.

In his Answer filed on May 22, 2007, respondent interposed the following Special and Affirmative Defenses[8]:

> "7. The claim for refund is still under examination by the respondent's Bureau since the taxpayer had just submitted certain documents subject of the examination only a few days prior to the filing of this instant petition;
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> 8. The burden of proof is upon the petitioner to prove that it is entitled to the claim for refund or issuance of tax credit certificate;
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> 9. The grant of claim for refund tantamount to an exemption from taxation which is construed strictly against the claimant and in favor of the taxing authority;

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[5] Exhibit "D"
[6] Exhibit "A"; par. 8, Stipulation of Facts, Joint Stipulation of Facts, docket, p. 91
[7] Exhibit "C"; par. 9, Stipulation of Facts, Joint Stipulation of Facts, docket, p. 91
[8] Docket, p. 65

10. The taxes sought to be refunded were paid in accordance with law, the burden of proof to the contrary is upon the petitioner-claimant to show with clear and unambiguous provision of law supporting the same."

During trial, petitioner presented testimonial and documentary evidence. Thereafter, petitioner formally offered Exhibits "A" to "J-22-b", "L" to "Q-1", and "R" to "W", which this Court admitted in the Resolutions dated June 3, 2008, July 31, 2008, and July 1, 2009.[9] Respondent presented his documentary evidence and his lone witness, Ms. Melendrina Malate. Respondent then formally offered Exhibits "1" to "5-C", which were admitted in evidence via Resolution[10] dated February 27, 2009.

On October 13, 2009, this case was submitted for decision, considering petitioner's Memorandum filed on September 25, 2009, sans respondent's Memorandum.[11]

The following are the parties' jointly stipulated issues[12] submitted for this Court's consideration:

"I. WHETHER OR NOT PETITIONER OVERPAID ITS CREDITABLE WITHHOLDING TAXES FOR THE TAXABLE YEAR 2004 IN THE AMOUNT OF PHP1,623,841.00

II. WHETHER OR NOT THE INCOME UPON WHICH THE TAXES WERE WITHHELD FOR THE TAXABLE YEAR 2004 WERE INCLUDED IN THE INCOME TAX RETURN OF THE PETITIONER FOR THE YEAR 2004.

III. WHETHER OR NOT PETITIONER'S OVERPAID CREDITABLE WITHHOLDING TAX IN THE AMOUNT OF PHP1,623,841.00 IS SUBSTANTIATED BY DOCUMENTARY EVIDENCE.

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[9] Docket, pp. 347-348, 363-365, and 422
[10] Docket, pp. 375-377 and 397-398
[11] Docket, p. 448
[12] Docket, p. 92

IV. WHETHER OR NOT PETITIONER IS ENTITLED TO REFUND THE AMOUNT OF PHP1,623,841.00 REPRESENTING ITS OVERPAID CREDITABLE WITHHOLDING TAX FOR THE TAXABLE YEAR 2004."

The foregoing issues can be summarized as follows:

"Whether or not petitioner is entitled to a refund of the amount of P1,623,841.00, allegedly representing petitioner's unutilized creditable withholding taxes for taxable year 2004."

Under Section 76 of the National Internal Revenue Code (NIRC) of 1997, as amended, the corporate taxpayer's excess tax credits or overpaid income tax in a given taxable year may either be refunded (either in the form of cash or tax credit certificate) or carried over and applied to the succeeding taxable years. However, once the option to carry-over has been made, the same becomes irrevocable for that taxable period. Section 76 of the NIRC of 1997 states as follows:

> "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 amountpaid, 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.**" *(Emphasis supplied)*

Records reveal that petitioner marked the box "To be refunded" in the original[13], first amended[14], second amended[15], and final amended[16] Annual Income Tax Returns for taxable year 2004, showing petitioner's firm decision to choose refund of its excess creditable taxes withheld for taxable year 2004.

A perusal of petitioner's final amended Annual Income Tax Return for taxable year 2004[17] shows that the excess tax credits as of December 31, 2004 in the amount of P1,623,841.00 consisted of creditable taxes withheld during taxable year 2004 in the amount of P2,119,311.00, less its income tax due for the same period in the amount of P495,470.00, as shown below:

Income Tax	P 495,470.00
Less: Tax credits	
Prior year's excess credits	-
Creditable tax withheld for the first three quarters	P 1,608,306.00 [18]
Creditable tax withheld for the fourth quarter	511,005.00 [19]
Total Tax Credits	P (2,119,311.00)
Excess Tax Credits	**P (1,623,841.00)**

Pursuant to Section 76 of the NIRC of 1997, as amended, petitioner's excess creditable withholding taxes for taxable year 2004 in the amount of P1,623,841.00 appears to be refundable, considering that petitioner firmly

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[13] Exhibit "J"
[14] Exhibit "F"
[15] Exhibit "G"
[16] Exhibit "D"
[17] Exhibit "D"
[18] Exhibit "D-1"
[19] Exhibit "D-2"

signified its intention to claim for refund by marking the box "To be refunded" in its 2004 Annual Income Tax Return.

However, in order for petitioner to be entitled to a refund of excess creditable withholding tax at source, it must satisfy the following requisites:

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 NIRC 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.[20]

Anent the first requisite, the provisions of the NIRC of 1997, as amended, pertinent to claiming a tax refund are Sections 204(C) and 229, which provide:

> "SEC. 204. *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.* – The Commissioner may -
>
> xxx xxx xxx
>
> (C) Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. **No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two (2) years after the payment of the tax or penalty**: *Provided, however,* That a return filed showing an overpayment shall be considered as a written claim for credit or refund." *(Emphasis supplied)*

[20] Section 2.58, Revenue Regulations No. 2-98, as amended; Citibank N.A. vs. Court of Appeals, *et al.*, G.R. No. 107434, October 10, 1997; ACCRA Investments Corporation vs. The Honorable Court of Appeals, *et al.*, G.R. No. 96322, December 20, 1991

> "SEC. 229. *Recovery of Tax Erroneously or Illegally Collected.* - No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.
>
> **In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment**: *Provided, however,* That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid." *(Emphasis supplied)*

In **ACCRA Investments Corporation vs. The Honorable Court of Appeals, *et al.***[21], the Supreme Court held that the two-year prescriptive period for claiming a refund commences to run on the date of filing of the Final Adjustment Return. It is only when the Final 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.[22] The two-year period within which to claim a refund commences to run, at the earliest, on the date of filing of the Final Adjustment Return.[23]

Based on the foregoing, petitioner has two years from the filing of the Final Adjustment Return within which to file a claim for refund of excess creditable withholding taxes both in the administrative and judicial levels. In

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[21] G.R. No. 96322, December 20, 1991
[22] Commissioner of Internal Revenue vs. TMX Sales Inc., *et al.*, G.R. No. 83736, January 15, 1992
[23] Commissioner of Internal Revenue vs. Asia Australia Express Ltd., G.R. No. 85956, April 10, 1989

this case, petitioner filed its original Annual Income Tax Return[24] on April 14, 2005, and two years from this date would be April 14, 2007, but considering that April 14, 2007 was a Saturday, the end of the two-year prescriptive period to file a claim for tax refund would be on April 16, 2007. The record indicates that the administrative claim for refund was filed on November 9, 2006[25] and the Petition for Review was filed before this Court on April 16, 2007. Both dates are well within the two-year reglementary period.

Anent the second requisite, petitioner submitted Schedules of Creditable Tax Withheld At Source[26] for the four quarters of taxable year 2004, Certificates of Creditable Tax Withheld at Source (BIR Form No. 2307)[27], Quarterly Income Tax Returns[28], and its originally filed Annual Income Tax Return[29] for taxable year 2004, showing that creditable taxes in the amount of P2,119,311.00 were withheld from income payments it received in the year 2004.

Evaluation of the foregoing documents revealed that petitioner's creditable taxes withheld for taxable year 2004 are properly substantiated, except for an income payment received in the second quarter from Philippine Stock Exchange, Inc., with creditable tax withheld in the amount of P957.82.[30] The Certificate of Creditable Tax Withheld at Source (BIR Form No. 2307) is for the first quarter; the same tax had been claimed already in

[24] Exhibit "J"
[25] Exhibit "A"
[26] Exhibits "J-4", "L-4", "M-5", and "N-1"
[27] Exhibits "J-5" to "J-22", "L-5" to "L-24", "M-6" to "M-24", and "N-2" to "N-20"
[28] Exhibits "L", "M", and "N"
[29] Exhibit "J"
[30] Exhibit "M-18"

the first quarter as evidenced by another Certificate of Creditable Tax Withheld at Source.[31]

As regards the third requisite, the 2004 withholding tax certificates revealed that the creditable income taxes of P2,119,311.00 were withheld from gross income payments of P20,671,369.68. On the other hand, petitioner's income tax return for 2004 disclosed a higher gross income amount of P21,102,120.00.[32] In other words, petitioner has sufficiently proven that the income from its business of managing, operating, administering, maintaining, servicing, buying, leasing or selling real and/or personal properties either for itself or others, from which the creditable tax of P2,119,311.00 was withheld, was reported in petitioner's Annual Income Tax Return for the year 2004.

It should be noted, however, that while petitioner substantially complied with the three afore-mentioned requirements, petitioner failed to present its subsequent Quarterly and Annual Income Tax Returns to prove that the claimed creditable taxes were not carried over to the succeeding periods and were not utilized to pay petitioner's income tax liability. If petitioner applied the unutilized creditable withholding taxes against the income tax due for the succeeding quarters of taxable year 2005, it would mean that petitioner effectively exercised the option to carry-over the 2004 unutilized creditable withholding taxes to the succeeding taxable year/quarters. Accordingly, its claim for refund must be denied, pursuant to Section 76 of the NIRC of 1997, as amended.

[31] Exhibit "L-21"
[32] Exhibit "F", Line 14C

The presentation of the succeeding Quarterly and Annual Income Tax Returns is very important, without which, it cannot be ascertained whether petitioner carried over the 2004 excess/unutilized creditable withholding taxes to the subsequent quarters/years. This doubt could have been avoided had petitioner presented its Quarterly and Annual Income Tax Returns for the succeeding quarters/years.[33]

WHEREFORE, premises considered, petitioner's claim for refund is hereby **DENIED** for lack of merit.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

CAESAR A. CASANOVA
Associate Justice

[33] Millenium Business Services, Inc. vs. The Commissioner of Internal Revenue, CTA Case No. 7441, February 11, 2009

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
Chairperson, First Division