REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-versus-

NISSAN MOTOR PHILIPPINES, INC.,
Respondent.

C.T.A. EB No. 137
(C.T.A. Case No. 6622)

x- -x

NISSAN MOTOR PHILIPPINES, INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. EB No. 139
(C.T.A. Case No. 6622)

Present:

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

Promulgated:
OCT 06 2006

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DECISION

CASTAÑEDA, JR., *J.:*

The above-captioned cases are twin Petitions for Review of the July 15, 2005 Decision of the First Division of the Court of Tax Appeals (the Court in Division) pursuant to Section 18 of Republic Act No. 1125 (An Act Creating the Court of Tax Appeals) as amended by Republic Act No. 9282 (An Act Expanding the Jurisdiction of the Court of Tax Appeals).

The assailed Decision partially granted therein petitioner's judicial claim for refund and/or issuance of tax credit certificate for its excess creditable income tax for the taxable year 2000. The total amount claimed by the petitioner in C.T.A. CASE No. 6622 was P5,176,187.00 but the Court in Division found that petitioner is only entitled to P4,697,541.68. The Court in Division disallowed a portion of petitioner's claim amounting to P478,645.00 representing petitioner's prior year's excess credits for failure to substantiate the same. The dispositive portion of the assailed Decision reads as follows:

> "**WHEREFORE**, premises considered, the Petition for Review is hereby **GRANTED** but in a reduced amount of P4,697,541.68. Accordingly, the respondent Commissioner of Internal Revenue is hereby **ORDERED TO ISSUE A TAX CREDIT CERTIFICATE** in favor of the petitioner in the amount of P4,697,541.68.
>
> **SO ORDERED**."

Both parties filed their respective Motions for Reconsideration of the above Decision which were both denied by the Court in Division in a Resolution dated October 12, 2005, the dispositive portion thereof reads as follows:

> "**IN VIEW OF THE FOREGOING,** the motions of both parties are hereby **DENIED**.

SO ORDERED."

Hence, both parties filed their respective appeals with the Court of Tax Appeals *en banc* (the Court *en banc*). The Commissioner of Internal Revenue filed his Petition for Review on November 29, 2005 docketed as C.T.A. EB No. 137. On the other hand, Nissan Motor Philippines, Inc. filed its Petition for Review on December 5, 2005 docketed as C.T.A. EB No. 139. Considering that both petitions are appeals from the July 15, 2005 Decision and the October 12, 2005 Resolution of the Court in Division, this Court ordered the consolidation of C.T.A EB No. 139 with C.T.A. EB No. 137 in a Resolution dated January 30, 2006 pursuant to Section 1 of Rule 31 of the Revised Rules of Court

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

> Petitioner is a domestic corporation duly organized and existing under the laws of the Republic of the Philippines, with principal office at Nissan Technopark, Barangay Pulong Sta. Cruz, Sta. Rosa, Laguna.
>
> On April 16, 2001, petitioner duly filed with the Bureau of Internal Revenue its Annual Income Tax Return for the calendar year ended December 31, 2000. The said return shows that petitioner declared a net loss of P334,796,325.00 and a minimum corporate income tax (MCIT) due of P3,958,694.00 *(pars. 3 & 4, Joint Stipulation of Facts and Issues)*. Petitioner indicated an overpayment amounting to P5,176,187.00, consisting of its prior year's excess credits and creditable income taxes withheld during the year *(Exhibit A-2)*. Petitioner opted to be issued a tax credit certificate for the said excess creditable income tax of P5,176,187.00 *(Exhibit A-1)*.

On April 15, 2002, petitioner duly filed with the Bureau of Internal Revenue (BIR) its Annual Income Tax Return for the calendar year ended December 31, 2001 *(par. 6, Joint Stipulation of Facts and Issues).*

On August 3, 2001, petitioner, in a letter dated August 1, 2001, requested for the issuance of a tax credit certificate for its excess creditable withholding tax for the year ended 2000, with the Large Taxpayers Service of the BIR *(par. 7, Joint Stipulation of Facts and Issues; Exhibit C).*

Alleging inaction on the part of the respondent, petitioner filed the instant Petition for Review [C.T.A. CASE No. 6622] with this Honorable Court [the Court in Division] on March 27, 2003 in order to preserve its right to claim for a refund of its excess or unutilized creditable income tax for the taxable year 2000 in the total amount of P5,176,187.00.

On June 30, 2003, the petitioner and respondent filed the following jointly stipulated issues which was approved by the Court on July 3, 2003:

1. Whether petitioner has complied with the provisions of Sections 204 (C) and 229 of the Tax Code on the prescriptive period for filing administrative and judicial claims for refund and or issuance of a tax credit certificate.

2. Whether petitioner established the fact of withholding with copies of the withholding tax statements duly issued by the various payors to the petitioner showing the date, the amount paid, the amount of tax withheld therefrom, and the fact of its remittance to the BIR.

3. Whether the income payments from which the taxes were withheld were included in petitioner's gross income for the calendar year ended December 31, 2000.

4. Whether the amount of excess/unutilized creditable income tax as of the end of taxable year 2000 in the amount of P5,176,187.00 was utilized or carried over to the succeeding taxable year.

5. Whether petitioner is entitled to the refund of the amount of P5,176,187.00 representing unutilized withholding tax credits for the calendar year ended December 31, 2000.

The Court in Division found that the administrative and judicial claims for refund were filed within the two-year prescriptive period and that petitioner was able to prove the three (3) basic requirements in claims for refund of excess creditable withholding taxes, namely:

1. That the claim for refund is filed with the Commissioner of Internal Revenue within the two-year prescriptive period from the date of payment of the tax (Section 229, NIRC);

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 it must be shown in the return of the recipient that the income payment received was declared as part of the gross income.[1]

In view of the foregoing findings, the Court in Division partially granted petitioner's claim for refund in the reduced amount of P4,697,541.68. As stated above, both parties appealed from the Decision and Resolution of the Court in Division. The issues presented by the petitioners in their respective appeals are as follows:

In **C.T.A. EB No. 137**, petitioner Commissioner of Internal Revenue raised a sole issue:

> **WHETHER OR NOT RESPONDENT IS ENTITLED TO A REFUND IN THE TOTAL AMOUNT OF P4,697,541.68.**

In **C.T.A. EB No. 139**, petitioner Nissan Motor Philippines, Inc. likewise raised a sole issue:

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[1] Assailed Decision, p. 6.

WHETHER OR NOT THE COURT IN DIVISION ERRED IN PARTIALLY DISALLOWING PETITIONER'S CLAIM FOR REFUND OF UNUTILIZED CREDITABLE WITHHOLDING TAXES FOR CALENDAR YEAR 2000 TO THE EXTENT OF P479,645.00 ON THE GROUND THAT PETITIONER FAILED TO SUBSTANTIATE IT AS PRIOR YEAR'S EXCESS TAX CREDITS.

Considering that both parties filed their respective appeals, they are at the same time petitioners and respondents in their own right. For purposes of clarity, the parties shall be referred to by their respective names in the succeeding pages of this decision.

THE ARGUMENTS OF THE COMMISSIONER OF INTERNAL REVENUE

The grounds relied upon by the Commissioner of Internal Revenue (hereafter "the Commissioner" for brevity) in **C.T.A. EB No. 137** are the following: 1) The administrative and judicial claims for refund were filed outside of the two-year prescriptive period; and 2) assuming the same was filed within the prescriptive period, respondent failed to discharge its burden of proving entitlement to the issuance of tax credit certificates.

According to the Commissioner, settled is the rule that in the case of taxes withheld under the withholding tax system, the two-year prescriptive period on refunds is counted not from the date the tax is withheld and remitted to the BIR but from the end of the taxable year. The Commissioner argues that the alleged unutilized Creditable

Withholding Tax (CWT) in the amount of P5,176,187.00 or in the reduced amount of P4,697,541.68 pertains to the calendar year ending December 31, 2000, which should have been properly applied for refund/credit, administratively and judicially, within two (2) years from the calendar year ending December 31, 2000 or until December 31, 2002. Nissan Motor Philippines, Inc., however, filed its refund only on March 27, 2003 which was already outside of the two-year prescriptive period.

The Commissioner likewise argues that Nissan Motor failed (1) to establish the fact of withholding and remittance of the taxes withheld to the Bureau of Internal Revenue (BIR); (2) to establish that the income payments received have been declared as part of its Gross Income; and (3) to prove that the alleged excess CWT in the amount of P5,176,187.00 or the reduced amount of P4,697,541.68 has not been utilized or carried over to the succeeding taxable year. The Commissioner concludes that Nissan Motor failed to discharge its burden of proving its entitlement to a refund.

In his Comment to the Petition for Review filed by Nissan Motor in C.T.A. EB No. 139, the Commissioner argues that it is a basic requirement in both administrative and judicial level that a taxpayer-claimant must be able to substantiate its claim for refund *in toto* among other things. According to the Commissioner, when the parties drafted their Joint Stipulation of Issues in C.T.A. CASE No. 6622, it was agreed that Nissan Motor will have to prove the following issues, among others, viz:

> 2. Whether petitioner established the fact of withholding with copies of the withholding tax statements duly issued by the various payors to the petitioner showing the date, the amount paid, the amount of tax withheld therefrom, and the fact of its remittance to the BIR.
>
> xxx xxx xxx
>
> 5. Whether petitioner is entitled to the refund of the amount of P5,176,187.00 representing unutilized withholding tax credits for the calendar year ended December 31, 2000.

The Commissioner further argues that Nissan Motor's allegation that the law and regulations do not require it to substantiate its prior year's excess credits is clearly bereft of merit because it is incumbent upon the claimant to prove its entitlement to the refund of the excess or unutilized tax credits appearing on its final adjustment return. The Commissioner avers that Nissan Motor did not present the original certificates or any document pertaining to the alleged prior year's excess credits during the trial of the case.

THE ARGUMENTS OF NISSAN MOTOR PHILIPPINES, INC.

In C.T.A. EB No. 139, Nissan Motor argues that the provisions of the Tax Code and pertinent revenue regulations do not require a taxpayer to prove and substantiate its prior year's excess credits in order to establish its entitlement to the refund or issuance of a tax credit certificate for its unutilized withholding tax credits for the succeeding taxable year[2]. It contends that in requiring proof of substantiation of its prior year's excess credits, the Court in Division had, in effect added another requisite in claiming a refund of excess and unutilized income tax credits. It avers that the only requirements for a taxpayer's claim for refund of excess or unutilized creditable withholding taxes based on law and jurisprudence are the following:

> (a) That the claim for refund is filed with the Commissioner of Internal Revenue ("CIR") within the two-year prescriptive period provided under Section 229 of the Tax Code;
>
> (b) That the income upon which the taxes were withheld was included in the income tax return of the recipient; and
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> (c) 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.

Nissan Motor asserts that through the documentary exhibits it offered and the testimony of its witness, it has proven all the requisites provided under the law, pertinent regulations and jurisprudence, to establish its entitlement to the full refund of its unutilized creditable withholding taxes for calendar year 2000 in the total amount of P5,176,187.00.

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2 Petition for Review, C.T.A. EB No. 139, p. 7.

In its Comment to the Petition for Review filed by the Commissioner in C.T.A. EB No. 137, Nissan Motor argues that it is well settled that the reckoning date for the two-year prescriptive period within which to file a claim for refund of overpaid taxes, regardless of whether it consists of excess quarterly income tax payments or excess creditable withholding taxes, is the date of filing of the final adjustment return or annual income tax return[3]. It likewise reiterated its arguments that it has fully substantiated its withholding tax credits for taxable year 2000 by presenting as evidence the Certificates of Creditable Tax Withheld at Source issued by its clients; that the income upon which the creditable taxes were withheld was included as part of the gross income declared in respondent's Annual Income Tax Return for the taxable year 2000; and that said unutilized creditable withholding taxes were not applied against respondent's income tax liability for the taxable year 2001.

THIS COURT'S RULING

In both cases, a single common issue needs to be resolved and that is whether or not Nissan Motor Philippines, Inc. (hereafter "Nissan Motor" for brevity) is entitled to the refund of the full amount of

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3 *Citing ACCRA Investment Corp. vs. Court of Appeals, et al.,* G.R. No. 96322, December 20, 1991; *Commissioner of Internal Revenue vs. TMX Sales, Inc.,* G.R. No. 83736, January 15, 1992; *Commissioner of Internal Revenue vs. The Philippine American Life Insurance Co., et al.,* G.R. No. 105208, May 29, 1995.

P5,176,187.00 representing its alleged excess or unutilized tax credits for the taxable year 2000.

This Court finds no merit in both petitions.

THE JUDICIAL CLAIM FOR REFUND IN C.T.A. CASE NO. 6622 WAS FILED WITHIN THE TWO-YEAR PRESCRIPTIVE PERIOD

It is well-settled that the two-year prescriptive period provided for in Sec. 204 (C) and Sec. 229 of the 1997 NIRC, within which a corporation may claim for a refund of overpaid income tax, shall be counted from the date the final adjustment return was filed after the end of the taxable year[4]. This is clear from Sec. 76 of the 1997 National Internal Revenue Code which requires every corporation to file a final adjustment return for the preceding calendar or fiscal year, thus:

> "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.

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4 *Commissioner of Internal Revenue vs. TMX Sales, Inc., et al.,* G.R. No. 83736, January 15, 1992 (205 SCRA 184); *Commissioner of Internal Revenue vs. Philippine American Life Insurance Co., et al.,* G.R. No. 105208, May 29, 1995 (244 SCRA 446); *Commissioner of Internal Revenue vs. Court of Appeals, et al.,* G.R. No. 117254, January 21, 1999 (301 SCRA 435).

> 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)*

The Supreme Court had explained that the determination of whether or not there had been an overpayment of the income tax on the part of the corporate taxpayer can only be had after the final adjustment return has been filed [5] as provided for in the afore-quoted Sec. 76 of the 1997 NIRC. Hence, the two-year prescriptive period under Sec. 229 should be computed from the time of filing of the final adjustment return or the Annual Income Tax Return.

The factual findings of the Court in Division as stated in the assailed Decision show that Nissan Motor Philippines, Inc. complied with the two-year prescriptive period within which both the administrative and judicial claims for refund should be filed, thus:

> The two-year prescriptive period for the filing of a claim for refund commences from the date of filing of the final adjustment return *(Section 229 in relation to Sections 76 & 77 of the NIRC of 1997; ACCRA Investments Corporation vs. Court of Appeals, supra).* **Petitioner filed its Annual Income Tax Return** for the calendar year ended 2000 **on April 16, 2001** *(Exhibit A).* Pursuant to Section 77 of the NIRC of 1997 in relation to Sections 229 and 204(C) of the same Code, petitioner had until April 15, 2003 to file its claims. **Petitioner filed the administrative claim** for refund **on August 3, 2001** *(Exhibit C)* and the present **petition was filed on March**

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5 *Commissioner of Internal Revenue vs. Court of Appeals, et al., supra.* (footnote no. 3)

> **27, 2003**. Clearly, both the administrative and judicial claims were filed well within the two-year period allowed by law. [6]

Clearly, the first ground relied upon by the Commissioner of Internal Revenue (hereafter "the Commissioner") in C.T.A. EB No. 137, that the administrative and judicial claims for refund were filed outside of the two-year prescriptive period cannot be sustained. It has no basis in law and jurisprudence. The Court in Division, therefore, did not err when it ruled that both the administrative and judicial claims were filed well within the two-year prescriptive period.

Similarly, the second ground relied upon by the Commissioner in his appeal that Nissan Motor failed to discharge its burden of proving entitlement to the issuance of tax credit certificates is likewise untenable in view of the factual finding of the Court in Division that Nissan Motor's excess creditable income tax amounting P4,697,541.68 was fully substantiated by testimonial and documentary evidence. The Court in Division ruled that Nissan Motor was able to prove compliance with the three (3) basic requirements in claims for refund of excess creditable withholding tax, as follows:

1. That the claim for refund is filed with the Commissioner of Internal Revenue within the two-year prescriptive period from the date of payment of the tax (Section 229, NIRC);

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

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6 Assailed Decision, p. 7.

3. That it must be shown in the return of the recipient that the income payment received was declared as part of the gross income.

It is likewise well-settled that the findings of fact of the Court of Tax Appeals are entitled to the highest respect and can only be disturbed on Appeal if they are not supported by substantial evidence or there is a showing of gross error or abuse on the part of the tax court.[7] We see no cogent reason to deviate from this principle. Nissan Motor was able to prove compliance with the above-mentioned requirements in claims for refund of excess creditable withholding taxes. Its administrative and judicial claims for refund were both filed within the two-year prescriptive period; it presented nineteen (19) Certificates of Creditable Tax Withheld at Source showing income payments and amounts of taxes withheld for taxable year 2000; and it was able to prove that all of the income payments from which the taxes were withheld were reported as part of its gross income for the same year.

Finding that Nissan Motor was able to prove that creditable taxes were withheld from its income for calendar year 2000, the Court in Division ruled that Nissan Motor is partially entitled to its claim for refund in the reduced amount of P4,697,541.68. On the other hand, the Court in Division denied the portion of Nissan Motor's claim

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7 *Commissioner of Internal Revenue vs. Court of Appeals, et al.,* G.R. No. 124043, October 14, 1998 (298 SCRA 83)

representing its prior year's excess tax credits for failure to substantiate, as follows:

> However, petitioner **failed to substantiate its Prior Year's Excess Credits in the amount of P478,645.00** (Line 26 A of Exhibit A) claimed as tax credits against income tax due for the taxable year 2000. Hence, the MCIT liability in the amount of P3,958,694.00 shall be totally offset against the substantiated creditable withholding taxes of P8,656,235.68 thereby leaving a total excess tax credits of P4,697,541.68 computed as follows:
>
> | | |
> |---|---|
> | Minimum Corporate Income Tax (MCIT) Due | P3,958,694.00 |
> | Less: Substantiated Creditable Taxes Withheld | P8,656,235.68 |
> | Excess Tax Credits | P4,697,541.68 |
>
> *(Emphasis supplied)*

Nissan Motor appealed the partial denial of its claim for refund docketed as C.T.A. EB No. 139. It argues that the partial disallowance of its claim for refund in the amount of P478,645.00 is erroneous on the grounds that it is not required to substantiate the excess income tax credits carried over from calendar year 1999 and the figures appearing in its Annual Income Tax Return for Calendar Year 2000 are presumed to be true and correct.

We are not persuaded.

NISSAN MOTOR FAILED TO PROVE ITS PRIOR YEAR'S EXCESS CREDITS

By asserting that it is not required to substantiate its prior year's excess tax credits, Nissan Motor in effect admits the finding of the Court in Division that it failed to substantiate the same. It may have lost sight of the fact that its Petition for Review in C.T.A. CASE No. 6622 is a judicial claim for refund which partakes of the nature of an exemption which is strictly construed against the claimant[8]. It is well-settled that the claimant has the burden of proof to establish the factual basis of its claim for refund and the failure to discharge said burden is fatal to its claim[9]. Nissan Motor, being the claimant, is duty-bound to prove its entitlement to the entire amount of its claim for refund.

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.[10] *(Emphasis supplied)*

In the above-quoted decision, the Supreme Court categorically made a distinction between a claim for refund of overpaid withholding

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8 *Commissioner of Internal Revenue vs. Tokyo Shipping Co., Ltd., et al.,* G.R. No. 68252, May 26, 1995 (244 SCRA 333)

9 *Citibank N.A. vs. Court of Appeals, et al., G.R. No. 107434,* October 10, 1997 (280 SCRA 459)

10 *ACCRA Investment Corp. vs. Court of Appeals, et al.,* G.R. No. 96322, December 20, 1991 (204 SCRA 957)

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)		**(P5,176,187.00)**

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, 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[11]. 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 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.

Nissan Motor failed to substantiate its prior year's excess tax credits, thus, it failed to meet the burden of proof required in order to establish the factual basis of its claim for refund insofar as its prior year's excess credits in the amount of P478,645.00 is concerned. In

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11 *Philam Asset Management, Inc. vs. Commissioner of Internal Revenue,* G.R. Nos. 156637 and 162004, December 14, 2005 (477 SCRA 761)

fine, the Court in Division did not err in denying the refund of Nissan Motor's prior year's excess credits.

WHEREFORE, in view of all the foregoing, we see no cogent reason to reverse or modify the rulings in the July 15, 2005 Decision of the Court in Division. Accordingly, the assailed Decision is hereby **AFFIRMED** and the present Petitions for Review are both **DENIED** for lack of merit.

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

ERNESTO D. ACOSTA
Presiding Justice