REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL FIRST DIVISION

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COLLIERS INTERNATIONAL PHILS., INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 7768

Members:

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

Promulgated:
APR 18 2011; 3:07 pm.

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AMENDED DECISION

CASANOVA, *J.*:

For resolution is petitioner's **"Motion For Reconsideration (of the Decision dated May 31, 2010) with Motion to Admit Original Income Tax Return for Taxable Years 2005 and 2006"** filed on June 22, 2010, without respondent's comment despite notice.

Petitioner prays for the following:

a. the setting aside of this Court's Decision dated May 31, 2010, which reads:

> "**WHEREFORE**, premises considered, the *Petition for Review* is hereby **DENIED** for lack of merit.
>
> **SO ORDERED**."

b. admission of petitioner's original Annual Income Tax Returns for taxable years 2005 and 2006; and

c. the granting of petitioner's request for a tax credit certificate in the total amount of P5,514,715.00.

In the Resolution[1] dated September 14, 2010, this Court allowed petitioner to present in evidence the documents attached to the instant *Motion*, as prayed for, and this case was set for hearing for the presentation of petitioner's additional evidence.

On November 19, 2010, petitioner filed its Supplemental Formal Offer of Evidence[2] submitting exhibits "W^8", "W^8-1", "W^8-2", "W^8-3", "X^8", "X^8-1", "X^8-2", "X^8-3" "X^8-4", X^8-5", "X^8-6", "X^8-7", "Y^8", "Y^8-1" to "Y^8-30", "Z^8" to "Z^8-3" and "Z^8-4"; which this Court admitted in the Resolution dated January 19, 2011. On February 3, 2011, petitioner filed its Supplemental Memorandum.

On February 15, 2011, the Motion for Reconsideration was deemed submitted for resolution in view of respondent's failure to file her Supplemental Memorandum despite the lapse of the period given by this Court to submit the same.

Petitioner avers that a taxpayer is allowed by law to file an amended income tax return pursuant to Section 6(A) of the National Internal Revenue

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[1] Docket, pp. 377 and 378.
[2] Docket, pp. 382-384.

Code (NIRC) of 1997 and that it opted to file an amended income tax return in order to correct errors and/or omissions in its originally filed income tax return. Petitioner further claims that in its original Income Tax Return for taxable year 2005, filed on April 17, 2006, it did not indicate an "x" mark on any of the options provided in Line 31; hence, when it filed its amended Income Tax Return on May 2, 2006, it marked the box "To be issued a Tax Credit Certificate" to expressly indicate its intention that a tax credit certificate, be issued for its excess/unutilized creditable withholding tax for taxable year 2005 in the amount of P5,514,715.00. Petitioner also pointed out that it was consistent in its choice to be issued a tax credit certificate for its excess/unutilized creditable withholding tax for taxable year 2005, as shown in its original and amended income tax return for taxable year 2006 where petitioner did not carry-over the same.

Petitioner finally avers that it complied with all the requisites provided under the law in order to claim for refund/tax credit certificate; that it filed the subject claim for issuance of a tax credit certificate within the two-year reglementary period; it presented Quarterly and Annual Income Tax Returns for the years 2005, 2006 and 2007 and Quarterly Income Tax Returns for the first and second quarters of 2008 in order to prove its total creditable withholding tax and the fact that the amounts were declared as part of its gross income; and it presented several certificates of income tax withheld at source corresponding to the period of claim to prove the total amount of the taxes erroneously withheld.

After a careful evaluation of the arguments and additional evidence adduced by petitioner, this Court hereby partially reconsiders.

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/applied to the succeeding taxable years. However, once the option to carry-over has been made, the same becomes irrevocable for that taxable period.

During the hearing to adduce additional evidence incident to the Motion, petitioner presented and formally offered in evidence, the following income tax returns: original Annual Income Tax Return[3] for taxable year 2005, original Annual Income Tax Return[4] for taxable year 2006 and amended Annual Income Tax Return[5] also for taxable year 2006. The returns were presented to assist the Court in determining whether or not petitioner carried-over the 2005 unutilized creditable withholding taxes to the subsequent taxable quarters/year.

A perusal of petitioner's **original** Annual Income Tax Return for taxable year 2005[6] reveals excess tax credits as of December 31, 2005 in the amount of P11,506,612.00, consisting of the balance of the prior year's (2004) excess credits in the amount of P5,991,897.00 and net creditable

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[3] Exhibit "W[8]", inclusive of sub-markings.
[4] Exhibit "X[8]", inclusive of sub-markings.
[5] Exhibit "Y[8]", inclusive of sub-markings.
[6] Exhibit "W[8]".

taxes withheld during the year (2005) in the amount of P5,514,715.00, as shown below:

Minimum Corporate Income Tax	P	408,399.00
Less: Creditable Taxes Withheld During the Year		5,923,114.00
Balance of Creditable Taxes Withheld During the Year	P	5,514,715.00
Add: Prior Year's Excess Credits		5,991,897.00
Excess Tax Credits	**P**	**11,506,612.00**

In the same return, petitioner did not mark any option regarding its excess tax credits of P11,506,612.00. However, in petitioner's original and amended Annual Income Tax Return for the subsequent taxable year[7], only the prior year's (2004) excess credits in the amount of P5,991,897.00 were reflected. This means that the excess credits for taxable year 2005, which is the subject of the instant claim, were not carried-over to the succeeding taxable year of 2006. Moreover, a perusal of petitioner's **Amended** Annual Income Tax Return for taxable year 2005[8] shows that petitioner marked the option "To be issued a Tax Credit Certificate", indicating its choice to be issued with tax credit certificate for its excess creditable taxes withheld for taxable year 2005.

Considering the foregoing, the claimed excess tax credits for taxable year 2005 in the amount of P5,514,715.00, appears to be refundable/creditable pursuant to Section 76 of the NIRC of 1997, as amended.

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

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[7] Exhibits "X8" and "SSSSSSSS-4".
[8] Exhibit "C".

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 was included in the return of the recipient.[9]

Anent the first requisite, Sections 204(C) and 229 of the NIRC of 1997, provide that:

> "**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.*)
>
> "**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.

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[9] Section 2.58, Revenue Regulations No. 2-98, as amended; Citibank N.A. vs. Court of Appeals and CIR, 280 SCRA 459; ACCRA Investment Corporation vs. CA, 204 SCRA 957.

> **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 therefore, 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. Court of Appeals,*[10] the Supreme Court held 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. 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.[11]

From the foregoing, petitioner has two years from the filing of the Final Adjustment Return within which to file a claim for the issuance of tax credit certificate of excess creditable income taxes withheld both in the administrative and judicial level.

In this case, petitioner filed its original Annual Income Tax Return[12] on April 17, 2006. It follows that the two year prescriptive period to file a claim for the issuance of tax credit certificate would be on April 17, 2008. Records reveal that the administrative[13] and judicial claims were filed simultaneously on April 16, 2008. Both dates fell within the two-year prescriptive period. Further, the parties stipulated that the instant claim for refund was filed

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[10] G.R. No. 96322, December 20, 1991.
[11] Commissioner of Internal Revenue vs. TMX Sales Inc., *et al.*, G.R. No. 83736, January 15, 1992.
[12] Exhibit "W[8]".
[13] Exhibit "D"; Paragraph 1(c), Joint Stipulation of Facts and Issues, docket, p. 116.

within the two-year reglementary period based on Section 204(C) of the NIRC of 1997, as amended.[14]

Anent the second requisite, petitioner submitted Certificates of Creditable Tax Withheld at Source (BIR Form No. 2307)[15], which were examined by the Court-commissioned Independent CPA (ICPA)[16].

Upon review of the ICPA's amended report[17] and the supporting documents, the Court finds that the following creditable withholding taxes in the amount of P1,636,645.93 should be disallowed from petitioner's claim:[18]

Findings	**Attached to Exhibit "TTTTTTTT" as**	**Amount of CWT**
Creditable withholding taxes supported by BIR Form 2307 of which the period is beyond the taxable year of claim	Annex A-7	P 8,421.15
Creditable withholding taxes supported by BIR Form 2307 indicated by the ICPA as "certified true copy" but no such certification can be found from the records or on the face of the BIR Form 2307	Annex A-8	73,500.00
Creditable withholding taxes supported by photocopy of BIR Form 2307	Annex A-9	12,464.84
Creditable withholding taxes with no supporting BIR Form 2307	Annex A-11	821,120.25
Difference between amount actually withheld and amount indicated per BIR Form 2307	Annexes A-2 and A-5	721,139.69
Total		**P1,636,645.93**

Thus, petitioner was able to satisfy the second requisite only to the extent of P3,878,069.07, out of the total claim of P5,514,715.00, computed as follows:

Claimed Creditable Withholding Tax(CWT)		P 5,514,715.00
Less:	CWT not properly supported by BIR Forms No. 2307	1,636,645.93
Excess CWT with valid BIR Forms No. 2307		**P 3,878,069.07**

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14 Paragraph 1(d), Joint Stipulation of Facts and Issues, docket, p. 116.
15 Exhibits "E" to "KKKKKKKK".
16 Emmanuel Y. Mendoza of Mendoza Querido & Co.
17 Exhibit "TTTTTTTT".
18 Exhibit "TTTTTTTT", pp. 3-4.

As regards the third requisite, a review of the withholding tax certificates reveals that the creditable income taxes were withheld from gross income payments of P85,119,614.94.[19] On the other hand, petitioner's Annual Income Tax Return for taxable year 2005, disclosed a lower gross income amount of P55,963,304.00.[20] As evaluated by the ICPA, petitioner's revenues for the year 2005 likewise amounted to P55,963,304.41, which included adjustments and write-offs.[21]

The Court traced the corresponding invoices of the income payments from which valid creditable taxes were withheld as listed in Annexes A-1 to A-6 of the amended ICPA Report with the Schedule of Revenues for the year 2005, Annex B of the same report, and found that the following income payments in the amount of P1,001,671.76, with creditable withholding taxes in the amount of P57,823.37 did not form part of petitioner's declared revenues per its 2005 Annual Income Tax Return:

Exh	Payor/Withholding Agent	Income Payment	CWT
QQQQQQ	Caltex (Asia) Ltd.	P 8,181.82	P 409.09
RRRRRR	Caltex (Asia) Ltd.	51,590.91	2,579.55
WWWWWW	E-Data Services Phils. Inc.	49,909.09	998.18
XXXXXX	E-Data Services Phils. Inc.	49,909.09	2,495.45
YYYYYY	Hitachi, Ltd.	49,909.09	2,454.54
FFFFFFF	Infonxx Phils. Inc.	54,590.91	2,729.55
JJJJJJJ	KLM Royal Dutch Airlines	75,900.00	1,518.00
KKKKKKK	KLM Royal Dutch Airlines	80,100.00	1,602.00
LLL	Malayan Insurance Co. Inc.	181,818.10	27,272.73
MMMMMMM	Mitsubishi Heavy Industries	24,682.00	493.64
NNNNNNN	Mitsubishi Heavy Industries	96,900.20	4,845.01
QQQQQQQ	Nippon Express Phils. Corp.	36,272.00	1,813.63
AAAA	Pacific Northstar Inc.	34,909.09	698.18
BBBB	Pacific Northstar Inc.	34,909.09	698.18
VVVVVVV	Phil. Cosmo Computer Business Inc.	16,581.82	872.73
ZZZZZZZ	Reach Network Phils. Inc.	47,600.00	952.00
IIIIIII	Siemens Inc.	76,363.00	3,818.18
JJJJJJJJ	Steag State Power Inc.	14,000.00	700.00

[19] Exhibit "TTTTTTTT", Annex A.
[20] Exhibit "C", Line 15.
[21] Exhibits "TTTTTTTT", Annex B and "PPPPPPPP-10".

KKKKKKKK	Steag State Power Inc.	17,545.55	872.73
	TOTAL	**P 1,001,671.76**	**P 57,823.37**

As indicated in the amended ICPA report, the foregoing income payments of P1,001,671.76, represent reimbursable expenses that were subjected to creditable withholding tax. However, petitioner failed to provide documents to corroborate such statement. Thus, the creditable taxes withheld therefrom in the amount of P57,823.37 shall be disallowed.

Likewise, creditable withholding taxes in the amount of P1,290,217.93[22] is denied because it cannot be ascertained whether the related income payments in the amount of P36,746,771.04 formed part of petitioner's declared revenues per Income Tax Return as petitioner failed to present the corresponding Sales Invoices.

In addition, petitioner's claim should be reduced by P1,577,896.38 as there is a discrepancy in the amounts of income payments per BIR Form 2307 and revenues declared per petitioner's Schedule of Revenues, to wit:

Exh.	**Payor**	**Income Payment per BIR Form 2307 (Exh. "TTTTTTTT", Annexes A1-A6)**	**Amount Declared as Revenue per Schedule of Revenues (Exh. "TTTTTTTT", Annex B)**	**CWT Per BIR Form 2307 (Exh. "TTTTTTTT" pnnexes A1-A6)**	**Allowable CWT[23]**	**Difference**
DD	Emerald Mansion Condo	P 7,260.00	P 72,600.00	P 7,260.00	P 7,260.00	P -
FF	Emerald Mansion Condo	4,840.00	48,400.00	4,840.00	4,840.00	-
HH	Emerald Mansion Condo	9,680.00	96,800.00	9,680.00	9,680.00	-
UUU	Mitsubishi Corp.	888,240.00	688,386.00	88,824.00	68,838.60	19,985.40
KKKKK	Phil. AXA Life Insurance	17,000.00	15,454.54	1,545.45	1,404.95	140.50
LLLLL	Phil. AXA Life Insurance	7,500.00	6,818.18	681.82	619.84	61.98
WW	Insular Life Assurance Co.	590,542.80	280,507.83	59,054.28	28,050.78	31,003.50
I	Ayala Land Inc.	132,000.00	120,000.00	13,200.00	12,000.00	1,200.00
J	Ayala Land Inc.	341,000.00	310,000.00	34,100.00	31,000.00	3,100.00
J	Ayala Land Inc.	618,000.00	590,000.00	12,360.00	11,800.00	560.00
CCCC	Panorama Devt. Corp.	44,575.00	42,346.25	4,457.50	4,234.63	222.88

[22] Exhibit "TTTTTTTT", Annex A-10.

[23] Amount declared as revenue x Actual tax rate used per BIR Form 2307.

K	Ayala Land Inc.	399,999.00	430,000.00	7,980.00	7,980.00	-
EEE	KSY Land Devt. Corp.	16,176.32	17,793.95	1,617.63	1,617.63	-
MMMMM	Post Oaks Properties Corp.	232,520.83	120,000.00	23,252.08	12,000.00	11,252.08
Q	Chartex International Corp.	73,452.50	66,775.00	7,345.25	6,677.50	667.75
UU	HSBC EDPI	350,000.00	85,831.55	52,500.00	12,874.73	39,625.27
FF	Emerald Mansion Condo	4,840.00	48,400.00	4,840.00	4,840.00	-
MM	Equitable Bank Tower Condo	141,750.00	94,500.00	6,615.00	4,410.00	2,205.00
QQ	Equitable Bank Tower Condo	236,250.00	141,750.00	21,735.00	13,041.00	8,694.00
CCC	International School Inc.	80,360.00	18,000.00	1,607.20	360.00	1,247.20
WWW	Nol Madrigal Realty	99,000.00	66,000.00	9,900.00	6,600.00	3,300.00
DDDDD	Philexcel Business Park	735,000.00	239,345.75	73,500.00	23,934.58	49,565.43
EEEEE	Philexcel Business Park	735,000.00	722,253.46	73,500.00	72,225.35	1,274.65
FFFFF	Philexcel Business Park	735,000.00	245,689.90	73,500.00	24,568.99	48,931.01
FFFF	Phil. Bank of Communications	185,850.00	129,800.00	27,877.50	19,470.00	8,407.50
GGGG	Phil. Bank of Communications	185,850.00	123,900.00	27,877.50	18,585.00	9,292.50
QQQQ	Petron Megaplaza Condo	210,800.00	204,000.00	21,080.00	20,400.00	680.00
TTTT	Petron Megaplaza Condo	136,000.00	204,000.00	13,600.00	13,600.00	-
JJJJJ	Phil. Plaza Holdings	100,000.00	90,909.10	15,000.00	13,636.37	1,363.64
NNNNN	RCBC Realty Corp.	912,441.00	755,716.50	91,244.10	75,571.65	15,672.45
TTTTT	Renaissance 2000 Condo	919,768.60	618,181.84	91,976.84	61,818.17	30,158.67
H	Ayala Land Inc.	202,540.00	200,134.80	20,254.00	20,013.48	240.52
DDD	Itochu Corp.	346,500.00	315,000.00	51,975.00	47,250.00	4,725.00
III	Macho Holding Corp.	105,263.16	95,693.78	10,526.32	9,569.38	956.94
RRRR	Petron Megaplaza Condo	272,000.00	204,000.00	27,200.00	20,400.00	6,800.00
GGG & HHH	Landbank of the Phils.	1,200,181.80	633,696.00	180,027.27	95,054.40	84,972.87
M	Citicenter Bldg. Corp.	1,695,366.64	253,646.10	169,536.66	25,364.61	144,172.05
N	Citicenter Bldg. Corp.	2,291,965.32	153,746.10	229,196.53	15,374.61	213,821.92
O	Citicenter Bldg. Corp.	1,718,974.01	153,746.10	257,846.10	23,061.91	234,784.19
P	Citicenter Bldg. Corp.	1,718,974.01	153,746.10	257,846.10	23,061.91	234,784.19
R	Citibank Square Condo	4,579,492.16	707,850.00	91,589.84	14,157.00	77,432.84
S	Citibank N.A.	3,828,294.55	208,362.00	76,565.89	4,167.24	72,398.65
W	Citibank N.A.	3,747,919.83	312,543.00	72,769.90	6,068.36	66,701.54
Z	Citibank N.A.	4,216,297.72	208,362.00	78,789.85	3,893.66	74,896.19
ZZ	International School Inc.	1,582,589.00	166,403.03	31,651.78	3,328.06	28,323.72
BBB	International School Inc.	249,691.00	104,013.14	4,993.82	2,080.26	2,913.56
HHHH	Petron Corp.	225,849.07	50,000.00	4,516.98	1,000.00	3,516.98
LLLL	Petron Corp.	254,315.83	50,000.00	5,086.32	1,000.00	4,086.32
MMMM	Petron Corp.	386,002.89	50,000.00	7,720.06	1,000.00	6,720.06
NNNN	Petron Corp.	397,083.70	50,000.00	7,941.67	1,000.00	6,941.67
PPPP	Petron Corp.	209,755.38	50,000.00	4,195.11	1,000.00	3,195.11
AAA	International School Inc.	801,497.00	272,181.81	16,029.94	5,443.64	10,586.30
IIII	Petron Corp.	210,141.71	50,000.00	4,202.83	1,000.00	3,202.83
OOOO	Petron Corp.	205,577.09	50,000.00	4,111.54	1,000.00	3,111.54
	TOTAL	**P39,596,967.92**	**P11,187,283.81**	**P 2,497,124.66**	**P919,228.28**	**P1,577,896.38**

In sum, petitioner has sufficiently proven its entitlement to a tax credit certificate of excess creditable withholding taxes for taxable year 2005 in the reduced amount of P952,131.39, computed as follows:

Amount of Claimed Excess CWT			P 5,514,715.00
Less:	Disallowances		
	CWT not properly supported by BIR Forms 2307	P1,636,645.93	
	CWT the related income payments of which did not form part of Petitioner's declared gross income per income tax return	57,823.37	
	CWT the related income payments of which do not have supporting invoices	1,290,217.93	
	CWT pertaining to the discrepancies in income as reflected in the BIR Forms 2307 *vis-à-vis* the Schedule of Revenues	1,577,896.38	4,562,583.61
Refundable Excess CWT			**P 952,131.39**

WHEREFORE, premises considered, petitioner's "**Motion for Reconsideration**" is hereby **PARTIALLY GRANTED** and the assailed *Decision* dated May 31, 2010 denying petitioner's claim for issuance of tax credit certificate of unutilized creditable withholding taxes for taxable year 2005 is hereby **REVERSED. ACCORDINGLY**, respondent Commissioner of Internal Revenue is hereby **ORDERED** to **ISSUE A TAX CREDIT CERTIFICATE** to petitioner in the amount of **P952,131.39**, representing unutilized creditable withholding taxes for taxable year 2005.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

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's Division.

ERNESTO D. ACOSTA
Presiding Justice
Chairperson, First Division