REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

DOOSAN HEAVY INDUSTRIES & CONSTRUCTION CO. LTD. (PHILIPPINE BRANCH),

Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

CTA CASE NO. 8626

Members:

DEL ROSARIO, *Chairperson,*
UY, *and*
MINDARO-GRULLA, *JJ.*

Promulgated:

SEP 17 2014 ; 2:30p.m.

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DECISION

DEL ROSARIO, P.J.:

The instant Petition for Review filed by Doosan Heavy Industries & Construction Co. Ltd. (Philippine Branch) pursuant to Section 7(a)(2) of Republic Act (RA) No. 1125, as amended by RA No. 9282, seeks the refund of the amount of **NINE MILLION THREE HUNDRED TWENTY FIVE THOUSAND THREE HUNDRED TWENTY THREE PESOS** (₱9,325,323.00), allegedly representing excess and unutilized creditable withholding taxes (CWTs) for calendar year ending December 31, 2010 arising from petitioner's service income from the construction of a power plant.

THE PARTIES

Petitioner Doosan Heavy Industries & Construction Co. Ltd. (Philippine Branch) (Doosan) is a foreign company organized and existing under and by virtue of the laws of the Republic of Korea. It established its Philippine Branch and obtained a license to transact business in the

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Philippines from the Securities and Exchange Commission (SEC) on April 4, 2008. It started commercial operation in April 2008 and has its principal office at KEPCO Power Plant, Colon, City of Naga, Cebu.[1]

Respondent is the Commissioner of Internal Revenue (CIR), who is duly appointed and empowered to perform the duties of her office, including, among others, the duty to act and approve claims for refund or tax credit as provided by law, with office address at the Bureau of Internal Revenue (BIR), National Office Building, BIR Road, Diliman, Quezon City.[2]

THE FACTS

On April 13, 2011, petitioner Doosan filed with the BIR its Annual Income Tax Return (Annual ITR) for calendar year 2010 which shows a net loss of ₱477,968,764.00 and an overpayment of income tax of ₱9,325,323.00. Petitioner Doosan opted to be issued a tax credit certificate (TCC) by marking the appropriate box in the ITR. [3]

On May 2, 2012, petitioner Doosan filed an Amended Annual ITR for calendar year 2010 showing the same result of operations as indicated in the original return filed and opted to be refunded by marking the appropriate box in the ITR.[4]

On January 29, 2013, petitioner Doosan filed a written claim for issuance of a TCC with the BIR [5] in the amount of ₱9,325,323.00, representing petitioner Doosan's excess and unutilized CWTs for taxable year 2010.

On April 4, 2013, in order to preserve its right and to toll the running of the prescriptive period for its judicial claim, petitioner Doosan filed a Petition for Review before this Court.[6]

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[1] Par. 1, Admitted Facts, Joint Stipulation of Facts and Issues (JSFI); CTA Docket, p. 787.
[2] Par.2, Admitted Facts, JSFI; CTA Docket, p 787.
[3] Exhibit "P-1-8".
[4] Exhibit "P-2-3".
[5] Exhibit "P-11".
[6] CTA Docket, p. 6.

In the Resolution[7] dated July 3, 2013, the Court admitted respondent's belatedly filed Answer. In her Answer,[8] respondent raised the following special and affirmative defenses: (a) the instant claim for tax refund is tainted with procedural infirmity due to petitioner's failure to submit complete documents in support of its administrative claim for refund; (b) petitioner miserably failed to exhaust administrative remedies before elevating the case to the Honorable Court; and, (c) claims for refund are construed strictly against the taxpayer and in favor of the government.

During pre-trial, both parties filed their respective pre-trial briefs.[9] The parties filed their Joint Stipulation of Facts and Issues on October 24, 2013[10] which the Court approved in the Resolution[11] dated November 14, 2013. In the same Resolution, the pre-trial was deemed terminated and the parties were ordered to proceed with the trial.

Petitioner Doosan presented its testimonial and documentary evidence during trial. Its pieces of documentary evidence were admitted in the Court's Resolution dated March 25, 2014.[12] On the other hand, in a hearing held on April 8, 2014, respondent's counsel manifested that she has no witness to present. Upon motion of the parties, they were granted thirty (30) days or until June 7, 2014 to file their respective memoranda.[13]

The parties filed their respective memoranda within the extended period allowed by the Court.[14] Subsequently, the case was submitted for decision on July 21, 2014.[15]

Hence, the Court's instant decision

ISSUE

For the Court's resolution, the parties raised the sole issue of "whether petitioner is entitled to a refund or issuance of tax credit certificate in the total amount of NINE MILLION THREE HUNDRED TWENTY FIVE

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[7] CTA Docket, p. 136.
[8] CTA Docket, pp. 124 to 134.
[9] CTA Docket, pp. 156 to 160 & 199 to 208.
[10] CTA Docket, pp. 787 to 795.
[11] CTA Docket, p. 827.
[12] CTA Docket, p. 922.
[13] CTA Docket, pp. 923 to 924.
[14] CTA Docket, pp. 928 to 947 & 969 to 978.
[15] CTA Docket, p. 981.

THOUSAND THREE HUNDRED TWENTY THREE PESOS (₱9,325,323.00) allegedly representing its excess and unutilized CWTs for taxable year 2010".[16]

THE COURT'S RULING

Section 76 of the National Internal Revenue Code (NIRC) of 1997, as amended, provides:

> "SEC. 76. *Final Adjustment Return.* – Every corporation liable to pay 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:
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> A. Pay the balance of the 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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> 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 quarter 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 tax credit certificate shall be allowed therefor."

Pursuant to the above-quoted provision, 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 against the income tax liabilities of the succeeding taxable years. The carry-over option, however, once taken is irrevocable for the taxable period and no application for a tax refund or issuance of a tax credit certificate shall then be allowed.[17]

In exercising its option, the corporation must signify in its Annual Corporate Adjustment Return (by marking the option box provided in the

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[16] JSFI, CTA Docket, p. 788.
[17] *Philam Asset Management, Inc. vs. Commissioner of Internal Revenue,* G.R. Nos. 156637 and 162004, December 14, 2005; *Systra Philippines, Inc. vs. Commissioner of Internal Revenue,* G.R. No. 176290, September 21, 2007.

BIR Form) its intention either to carry over the excess credit or to claim a refund. To facilitate tax collection, the remedies are in the alternative and the choice of one precludes the other.[18]

As shown in petitioner Doosan's original and amended Annual ITRs[19] for the year 2010, petitioner had no income tax liability, computed either at the regular rate of thirty percent (30%) or Minimum Corporate Income Tax rate of two percent (2%), as petitioner Doosan incurred a net loss in the amount of ₱477,968,764.00 and a gross loss of ₱270,911,382.00. Thus, petitioner Doosan's creditable tax withheld for the first three quarters and fourth quarter of 2010 in the amounts of ₱6,986,455.00 and ₱2,338,868.00, respectively, or in the total amount of ₱9,325,323.00, remained unutilized as of December 31, 2010, as shown below:

Sales/Revenues/Receipts/Fees	₱ 1,444,788,657.00
Less: Cost of Sales/Services	1,715,700,039.00
Gross Income from Operation	₱ (270,911,382.00)
Add: Non-Operating & Other Income	4,167,050.00
Total Gross Income	₱ (266,744,332.00)
Less: Deductions	211,224,432.00
Taxable Income	₱ (477,968,764.00)
Income Tax Due	₱ -
Less: Tax Credits	
Creditable Tax Withheld for the First Three Quarters	₱ 6,986,455.00
Creditable Tax Withheld for the Fourth Quarter	2,338,868.00
Total Tax Credits	₱ 9,325,323.00
Tax Overpayment	**₱ (9,325,323.00)**

Since petitioner Doosan marked the option "To be issued a Tax Credit Certificate" in its original Annual ITR[20] for the year 2010, and considering that it did not carry-over the excess CWTs of ₱9,325,323.00 in its Quarterly Income Tax Returns[21] and Annual ITR[22] for the succeeding taxable year 2011, the amount of ₱9,325,323.00 may be the proper subject of a claim for refund under Section 76 of the NIRC of 1997, as amended.

[18] *Philippine Bank of Communications vs. Commissioner of Internal Revenue, et. al.*, G.R. No. 112024, January 28, 1999.
[19] Exhibits "P-1" and "P-2".
[20] Exhibit "P-1-8".
[21] Exhibits "P-7-4", "P-8-3" and "P-9-3".
[22] Exhibit "P-6-3".

As oft-cited by this Court in a number of similar cases, however, the refund of excess CWTs is dependent on the taxpayer's compliance with the following three basic requirements:

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.[23]

A taxpayer has two (2) years from the date of payment of the tax within which to claim a tax refund. Sections 204(C) and 229 of the NIRC of 1997, as amended, provide:

> "SEC. 204. *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.* - The Commissioner may –
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> xxx xxx xxx
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> (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."
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> "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

[23] 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

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."

The reckoning date of the two-year prescriptive period for instituting a suit or proceeding for refund of excess and unutilized CWT is the date of filing of the Final Adjustment Return (Annual ITR).[24] In the present case, petitioner Doosan filed its original Annual ITR for calendar year ending December 31, 2010 on April 13, 2011.[25] Counting two years from that date, petitioner Doosan had until April 13, 2013 within which to file its administrative claim as well as the corresponding judicial claim (by way of a petition for review) before this Court. Considering that the administrative and judicial claims for refund were filed on January 29, 2013[26] and April 4, 2013, respectively, the refund claims were filed within the reglementary period.

With regard to the second requisite, petitioner Doosan likewise complied with the same. It presented the Certificates of Creditable Tax Withheld at Source duly issued by its withholding agent KEPCO SPC Power Corporation for the year 2010, reflecting CWTs in the total amount of ₱9,325,323.00, detailed as follows:

Exhibit	Withholding Agent	Period Covered	Revenues	Creditable Withholding Tax
P-10-3	KEPCO SPC Power Corporation	01/01/10 to 01/31/10	₱ 74,418,540.18	₱ 1,488,370.80
P-10-4	KEPCO SPC Power Corporation	02/01/10 to 02/28/10	44,561,124.18	891,222.48
P-10-5	KEPCO SPC Power Corporation	03/01/10 to 03/31/10	38,981,140.18	779,622.80
P-10-6	KEPCO SPC Power Corporation	04/01/10 to 04/30/10	38,981,140.18	779,622.80
P-10-7	KEPCO SPC Power Corporation	05/01/10 to 05/31/10	38,981,140.00	779,622.80
P-10-8	KEPCO SPC Power Corporation	06/01/10 to 06/30/10	35,437,400.00	708,748.00

[24] *Commissioner of Internal Revenue vs. The Philippines American Life Insurance Co., et. al.,* G.R. No. 105208, May 29, 1995.
[25] Exhibit "P-1".
[26] Exhibit "P-11".

P-10-9	KEPCO SPC Power Corporation	07/01/10 to 07/31/10	38,981,140.00	779,622.80
P-10-10	KEPCO SPC Power Corporation	08/01/10 to 08/31/10	38,981,140.00	779,622.80
P-10-11	KEPCO SPC Power Corporation	09/01/10 to 09/30/10	31,893,660.00	637,873.20
P-10-12	KEPCO SPC Power Corporation	10/01/10 to 10/31/10	31,893,660.00	637,873.20
P-10-13	KEPCO SPC Power Corporation	11/01/10 to 11/30/10	31,893,660.00	637,873.20
P-10-14	KEPCO SPC Power Corporation	12/01/10 to 12/31/10	21,262,440.00	425,248.80
	TOTAL		**₱ 466,266,184.72**	**₱ 9,325,323.68**

Anent the third requisite, the Certificates of Creditable Tax Withheld at Source show that the creditable taxes in the amount of ₱9,325,323.00 were withheld on income payments received by petitioner Doosan for the year 2010 amounting to ₱466,266,184.72. Since petitioner Doosan is reporting its income based on percentage of completion method, petitioner Doosan's 2010 Annual ITR reflected a gross sales of ₱1,444,788,657.00[27] that is higher by ₱978,522,472.28 when compared with the income payments per certificates of ₱466,266,184.72.

As found by the Court-commissioned Independent Certified Public Accountant (ICPA), the discrepancy of ₱978,522,472.39[28] was due to the following:

Contract Revenues per ITR CY 2010	P-1 & P-2		₱1,444,788,657.00
Less: Collections	P-20		466,266,184.61
Difference			978,522,472.39
Unearned contract revenues at December 31, 2009 realized in CY 2010	P-1-9-2	₱889,092,851.00	
Uncollected receivables at December 31, 2010	P-1-9-4	89,430,061.00	978,522,912.00
Difference			₱ (439.61)

The amount of ₱889,092,851.00 pertained to the cumulative balance of Unearned Contract Revenue at December 31, 2009 which was recognized as part of the income realized in CY 2010 amounting to ₱1,444,788,657.00. The remaining amount of ₱89,430,061.00 pertained to the uncollected receivables of petitioner Doosan from KEPCO SPC Power Corporation.

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[27] Exhibits "P-1-3" and "P-2-4".
[28] Exhibit "P-29", Independent CPA Report, p. 9.

The Independent CPA confirmed the computations and findings as correct and in order, as stated in her report in the following manner:

> "2.1 I found that the income reported for the year is computed based on the percentage of completion at the end of the calendar year which is in accordance with Section 48 of the Tax Code requiring the reporting of income based on percentage of completion for long term contracts.
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> The reported Contract Revenue for CY 2010 is correct. This was computed based on the Contract Price[29] under the Construction Contract with adjustments based on the Change Orders[30] multiplied by the agreed percentage of completion rate of 95.310%[31] at December 31, 2010 less the amount accomplished in CY 2008 and CY 2009.
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> 2.2 As shown in the Findings and Observations 1 of this report, I noted that the income payments on billings collected in CY 2010 which was subjected to creditable withholding tax amounted to ₱466,266,184.61. The billings was part of the recorded Contract Revenues (computed based on the percentage of completion) in the amount of ₱1,444,788,657.00.
>
> 2.3 The cumulative balance of the Unearned Contract Revenue at December 31, 2009 amounting to ₱889,092,851.00[32] was recognized as part of the income realized in CY 2010 amounting to ₱1,444,788,657.00."[33]

Indubitably, petitioner Doosan was able to show that the income payments, from which the CWTs in the total amount of ₱9,325,323.00 were withheld, were declared in its Annual ITR for CY 2010.

From all the foregoing, the Court finds that petitioner Doosan was able to prove its entitlement to the subject claim for refund or issuance of a tax credit certificate in the amount of ₱9,325,323.00 representing its excess and unutilized excess CWTs for taxable year 2010.

WHEREFORE, premises considered, the instant Petition for Review is hereby **GRANTED**. Accordingly, respondent Commissioner of Internal Revenue is hereby ordered to refund or to issue a tax credit certificate in favor of petitioner **DOOSAN HEAVY INDUSTRIES & CONSTRUCTION CO. LTD. (PHILIPPINE BRANCH)** in the amount of **NINE MILLION THREE HUNDRED TWENTY FIVE THOUSAND**

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[29] Exhibit "P-13".
[30] Exhibits "P-14", "P-15" and "P-16".
[31] Exhibits "P-11-4" and "P-11-4-2"
[32] Exhibit "P-1-9-2".
[33] Exhibit "P-29", Independent CPA Report, p. 8.

THREE HUNDRED TWENTY THREE PESOS (₱9,325,323.00), representing its excess and unutilized creditable withholding taxes for the year ending December 31, 2010.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

WE CONCUR:

ERLINDA P. UY
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

CERTIFICATION

Pursuant to Section 13 of Article VIII 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.

ROMAN G. DEL ROSARIO
Presiding Justice