REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

PRHC PROPERTY MANAGERS, INC.,
Petitioner,

- versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent,

C.T.A. Case No. 7914

Members:

Bautista, *Chairperson*
Palanca-Enriquez,
Cotangco-Manalastas, *JJ.*

Promulgated:
JAN 13 2012
ABFernando 10:12 a.m.

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D E C I S I O N

COTANGCO-MANALASTAS, *J.:*

This is a Petition for Review filed on April 15, 2009 by petitioner to seek the refund of the amount of P1,606,654.00, allegedly representing petitioner's unutilized creditable withholding taxes for taxable year 2006.

STATEMENT OF FACTS

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 Center, Exchange Road, Ortigas Center, Pasig City. Petitioner is engaged in the business of managing, operating, administering, maintaining, servicing, buying, leasing or selling real and/or personal properties either for itself or for others.[1] It is registered with the Bureau of Internal Revenue (BIR) with Taxpayer Identification No. 001-009-400-000 and BIR Certificate of Registration bearing RDO Control No. OCN 3RC0000200797.[2]

Respondent is the duly appointed Commissioner of the Bureau of Internal Revenue, 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. She holds office at the BIR National Office Building, BIR Road, Diliman, Quezon City.

On April 13, 2007, petitioner filed with the BIR its Annual Income Tax Return (BIR Form No. 1702) for the taxable year ending December 31, 2006, showing a taxable income of P1,502,346.00 and a corresponding tax due of P525,821.00. In the said Annual Income Tax Return, petitioner also reported its creditable tax withheld at source in the amount of P1,606,654.00, computed as follows:[3]

Creditable Tax Withheld for the First Three Quarters	P1,178,665.00
Plus: Creditable Tax Withheld for the Fourth Quarter	427,989.00
Total Tax Credits/Payments	**P1,606,654.00**

On April 13, 2007, petitioner likewise filed its (a) Schedule of Taxes and Licenses Testing as of December 31, 2006 and (b) Audited Financial Statements as of December 31, 2006.[4]

On February 15, 2008, petitioner filed an amended Annual Income Tax Return for the year 2006, showing a taxable income of P1,502,346.00 and a corresponding tax due of P525,821.00. It also reported the amounts of P1,178,665.00 and

[1] Exhibit "H"; pars. 1 and 3, Admitted Facts, Joint Stipulation of Facts; docket, pp. 134-135.
[2] Exhibit "L".
[3] Exhibit "B", inclusive of sub-markings.
[4] Exhibits "B-8" and "C".

P427,989.00 pertaining to creditable taxes withheld for the first three quarters and for the fourth quarter, respectively; and prior year's excess credits of P5,369,130.00.[5]

The amount of P5,369,130.00 was derived from petitioner's Annual Income Tax Return for the year 2003, computed as follows:[6]

Prior year's excess credits	P5,679,812.00
Less: Aggregate Income Tax Due for 2003	310,682.00
Total Tax Credits/Payments	**P5,369,130.00**

Petitioner's Annual Income Tax Return for the year 2003 had already been duly considered in this Court's Decision over its claim for refund of unutilized creditable taxes withheld for 2003 in the case entitled "PRHC Property Managers, Inc. vs. Commissioner of Internal Revenue," docketed as CTA Case No. 7442, which was promulgated on October 23, 2008, with Entry of Judgment dated November 14, 2008.[7]

Petitioner also marked the box "To be Refunded" in its original Annual Income Tax Return and amended Annual Income Tax Return covering taxable year 2006, indicating its intention to claim a refund of its unutilized creditable withholding tax.[8]

On November 4, 2008, petitioner filed a letter dated October 23, 2008 and an Application for Tax Credits/Refunds (BIR Form No. 1914) with the BIR Revenue District Office No. 43, requesting the refund of its purported unutilized creditable taxes withheld for taxable year 2006 in the amount of P1,606,654.00.[9]

Due to respondent's failure to render a decision on petitioner's claim for refund, petitioner filed the instant Petition for Review on April 15, 2009.

[5] Exhibit "A", inclusive of sub-markings.
[6] Par. 16, Admitted Facts, Joint Stipulation of Facts; docket, p. 138.
[7] Exhibit "N"; par. 17, Admitted Facts, Joint Stipulation of Facts; docket, p. 138.
[8] Exhibits "A-5" and "B-5".
[9] Exhibits "J" and "K".

In her Answer[10] filed on May 15, 2009, respondent interposed the following Special and Affirmative Defenses:

> "8. The claim for refund is still under examination by the respondent's Bureau;
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> 9. 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;
>
> 10. 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;
>
> 11. 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 its documentary evidence and its lone witness Ms. Ma. Theresa L. Kampitan, its Senior Accountant. Thereafter, petitioner filed its Formal Offer of Evidence[11] submitting Exhibits "A" to "N", and "P" to "R," inclusive of sub-markings; which this Court admitted in the Resolution[12] dated April 30, 2010. On February 23, 2011, petitioner also filed a Supplemental Formal Offer of Evidence[13], submitting Exhibits "S" to "X-2," inclusive of sub-markings; which were admitted in evidence in the Resolution[14] dated March 14, 2011.

On the other hand, during the July 11, 2011 hearing, counsel for respondent manifested that since there is no terminated investigation on petitioner's administrative claim for refund, he is submitting this case for decision without presenting any evidence. As a result, the Court directed both parties to submit their respective memorandum within thirty (30) days.[15]

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[10] Docket, pp. 93-95.
[11] Docket, pp. 214-246.
[12] Docket, pp. 405-406.
[13] Docket, pp. 452-457.
[14] Docket, pp. 470-471.
[15] Docket, p. 486.

On September 15, 2011, this case was submitted for decision, considering petitioner's Memorandum filed on August 10, 2011 and the Report dated September 5, 2011 of the Judicial Records Division stating that no memorandum has been filed by respondent.[16]

STATEMENT OF ISSUES

The parties submitted the following issues[17] for this Court's consideration:

> "I. WHETHER OR NOT PETITIONER OVERPAID ITS CREDITABLE WITHHOLDING TAXES FOR THE TAXABLE YEAR 2006 IN THE AMOUNT OF PHP1,606,654.00.
>
> II. WHETHER OR NOT THE INCOME UPON WHICH THE TAXES WERE WITHHELD FOR THE TAXABLE YEAR 2006 WERE INCLUDED IN THE INCOME TAX RETURN OF PETITIONER FOR THE YEAR 2006.
>
> III. WHETHER OR NOT PETITIONER'S OVERPAID CREDITABLE WITHHOLDING TAX IN THE AMOUNT OF PHP1,606,654.00 IS SUBSTANTIATED BY DOCUMENTARY EVIDENCE.
>
> IV. WHETHER OR NOT PETITIONER IS ENTITLED TO THE REFUND OF THE AMOUNT OF PHP1,606,654.00 REPRESENTING ITS OVERPAID CREDITABLE WITHHOLDING TAX FOR THE TAXABLE YEAR 2006."

The foregoing issues can be summarized as follows:

> "Whether or not petitioner is entitled to a refund of the amount of P1,606,654.00, allegedly representing its unutilized creditable withholding taxes for taxable year 2006."

DISCUSSION/RULING

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

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[16] Resolution dated September 15, 2011, docket, p. 517.
[17] Docket, pp. 138-139.

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

Based on the above-quoted provision, the corporate taxpayer's excess tax credits or overpaid income tax in a given taxable year may either be refunded (in the form of cash or tax credit certificate) or carried over and applied to the succeeding taxable years. However, once the carryover option is taken, actually or constructively, it becomes irrevocable for that taxable period, and no application for a tax refund or issuance of tax credit certificate will be allowed.[18]

In exercising its option, the corporation must signify in its annual corporate adjustment return (by marking the option box provided in the BIR Form) its intention, whether to request a refund or an automatic tax credit for the succeeding taxable year. To ease the administration of tax collection, these remedies are in the alternative, and the choice of one precludes the other.[19]

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[18] *Philam Asset Management, Inc. vs. Commissioner of Internal Revenue*, G.R. Nos. 156637/162004, December 14, 2005; *Systra Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 176290, September 21, 2007.

[19] *Philippine Bank of Communications vs. Commissioner of Internal Revenue, et al.*, G.R. No. 112024, January 28, 1999.

Records reveal that petitioner marked the box "To be Refunded" in its original[20] and amended[21] Annual Income Tax Returns for taxable year 2006, showing petitioner's decision to choose refund of its excess creditable taxes withheld for taxable year 2006.

A perusal of petitioner's amended Annual Income Tax Return[22] for taxable year 2006 indicates that the total excess tax credits as of December 31, 2006 in the amount of P6,975,784.00 consisted of the prior year's excess credits in the amount of P5,369,130.00 and creditable taxes withheld during the year 2006 in the amount of P1,606,654.00. Petitioner's income tax due in the amount of P525,821.00 was paid using a portion of its prior year's excess credits of P5,369,130.00, leaving the prior year's excess credits in the amount of P4,843,309.00 (P5,369,130.00 less P525,821.00) and creditable taxes withheld during the year 2006 in the amount of P1,606,654.00, or a total of P6,449,963.00, unutilized as of December 31, 2006, as shown below:

Income Tax Due			P 525,821.00
Less:	Prior Year's Excess Credits		5,369,130.00
Balance of Prior Year's Excess Credits			P 4,843,309.00
Add:	Creditable Taxes Withheld During the Year		
	For the First Three Quarters	P 1,178,665.00	
	For the Fourth Quarter	427,989.00	1,606,654.00
Excess Tax Credits as of December 31, 2006			**P 6,449,963.00**

The present claim covers only the excess creditable taxes withheld in 2006 in the amount of P1,606,654.00.

[20] Exhibit "B-5".
[21] Exhibit "A-5".
[22] Exhibit "A".

Inasmuch as petitioner indicated its intention to have the excess amount of P1,606,654.00 refunded by marking the appropriate box in its original[23] and amended[24] Annual Income Tax Returns for taxable year 2006 and that only the amount of P4,843,309.00 pertaining to its excess tax credits prior to taxable year 2006 was carried over to the succeeding taxable year 2007[25], the amount of P1,606,654.00 may be a proper subject of a claim for refund pursuant to Section 76 of the NIRC of 1997, as amended.

However, in order for petitioner to be entitled to a refund of excess creditable withholding tax, 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 it is shown on the return of the recipient that the income payment received was declared as part of gross income.[26]

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 state as follows:

> "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

[23] Exhibit "B-5".
[24] Exhibit "A-5".
[25] Exhibits "S", "V", "W", and "X".
[26] 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.

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.

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)*

Equally significant are Section 3(a)(2) of Rule 4 and Section 3(a) of Rule 8 of the Revised Rules of the Court of Tax Appeals, which are quoted hereunder for easy reference:

"RULE 4
JURISDICTION OF THE COURT

xxx xxx xxx

SEC. 3. *Cases within the Jurisdiction of the Court in Division.* — The Court in Division shall exercise:

(a) Exclusive original over or appellate jurisdiction to review by appeal the following:

xxx xxx xxx

(2) Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code or other applicable law provides a specific period for action: *Provided*, that in case of disputed assessments, the inaction of the Commissioner of Internal Revenue within the one hundred eighty day-period under

> Section 228 of the National Internal Revenue Code shall be deemed a denial for purposes of allowing the taxpayer to appeal his case to the Court and does not necessarily constitute a formal decision of the Commissioner of Internal Revenue on the tax case; *Provided, further*, that should the taxpayer opt to await the final decision of the Commissioner of Internal Revenue on the disputed assessments beyond the one hundred eighty day-period abovementioned, the taxpayer may appeal such final decision to the Court under Section 3(a), Rule 8 of these Rules; and *Provided, still further*, that **in the case of claims for refund of taxes erroneously or illegally collected, the taxpayer must file a petition for review with the Court prior to the expiration of the two-year period under Section 229 of the National Internal Revenue Code**;" *(Emphasis supplied)*
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> "RULE 8
> PROCEDURE IN CIVIL CASES
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> xxx xxx xxx
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> SEC. 3. *Who may appeal; period to file petition.* —
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> (a) A party adversely affected by a decision, ruling or the inaction of the Commissioner of Internal Revenue on disputed assessments or claims for refund of internal revenue taxes, or by a decision or ruling of the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry, the Secretary of Agriculture, or a Regional Trial Court in the exercise of its original jurisdiction may appeal to the Court by petition for review filed within thirty days after receipt of a copy of such decision or ruling, or expiration of the period fixed by law for the Commissioner of Internal Revenue to act on the disputed assessments. **In case of inaction of the Commissioner of Internal Revenue on claims for refund of internal revenue taxes erroneously or illegally collected, the taxpayer must file a petition for review within the two-year period prescribed by law from payment or collection of the taxes.**" *(Emphasis supplied)*

From the foregoing, it is clear that the appellate jurisdiction of this Court may be exercised, provided that, in the case of claims for refund of taxes erroneously or illegally collected, the taxpayer files a petition for review with this Court prior to the expiration of the two-year period under Section 229 of the NIRC of 1997, as amended.

In *ACCRA Investments Corporation vs. The Honorable Court of Appeals, et al.*[27], the Supreme Court held that the two-year prescriptive period for filing a claim

[27] G.R. No. 96322, December 20, 1991.

for 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.[28]

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 this case, petitioner filed its original Annual Income Tax Return on April 13, 2007[29], and two years from this date would be **April 13, 2009**. Records indicate that while petitioner's administrative claim for refund was seasonably filed on November 4, 2008[30], the instant Petition for Review was filed only on **April 15, 2009**, or two (2) days beyond the two-year reglementary period under Section 229 of the NIRC of 1997, as amended. Therefore, the action for refund is barred by prescription.[31]

The right to appeal is not a natural right. It is also not part of due process. It is merely a statutory privilege and may be exercised only in the manner and in accordance with the provisions of law. One who seeks to avail of the right to appeal must comply with the requirements of the Rules. Failure to do so often leads to the loss of the right to appeal.[32]

In view of the foregoing, this Court deems it no longer necessary to discuss petitioner's compliance with the other requisites and/or to address the other issues raised.

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[28] *Commissioner of Internal Revenue vs. TMX Sales Inc., et al.*, G.R. No. 83736, January 15, 1992.
[29] Exhibit "B-6"; par. 4, Admitted Facts, Joint Stipulation of Facts, docket, p. 135.
[30] Exhibits "J" and "K".
[31] *Commissioner of Internal Revenue vs. Court of Appeals, et al.*, G.R. No. 117254, January 21, 1999.
[32] *Commissioner of Internal Revenue vs. Fort Bonifacio Development Corporation*, G.R. No. 167606, August 11, 2010.

WHEREFORE, petitioner's claim for refund is hereby **DENIED** for being filed out of time.

SO ORDERED.

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

WE CONCUR:

LOVELL R. BAUTISTA
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

ATTESTATION

I attest 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.

LOVELL R. BAUTISTA
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution and the Division Chairperson's Attestation, 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