REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus -

TEAM (PHILIPPINES) ENERGY CORPORATION,
Respondent.

CTA EB No. 694
(CTA Case No. 7603)

Present:

Acosta, *P.J.*,
Castañeda, Jr.,
Bautista,
Uy,
Casanova,
Palanca-Enriquez,
Fabon-Victorino,
Mindaro-Grulla, and
Cotangco-Manalastas, *JJ.*

Promulgated:

SEP 12 2012

x- x

AMENDED DECISION

COTANGCO-MANALASTAS, J.:

For resolution is the Motion for Reconsideration[1] filed by respondent on May 10, 2012, with petitioner's Comment[2] filed on July 2, 2012. The Assailed Decision dated April 13, 2012, disposed of the case, as follows:

> "WHEREFORE, premises considered, the instant Petition for Review is hereby GRANTED. The Decision of the Former Second Division dated April 28, 2010 and the Resolution dated September 17, 2010 are hereby REVERSED and SET ASIDE. The claim for refund/tax credit of respondent's unutilized creditable income taxes withheld for the years 2004 and 2005 are hereby DENIED for insufficiency of evidence."[3]

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[1] *Rollo*, C.T.A. EB Case No. 694, pp. 102-115.
[2] *Rollo*, pp. 133-139.
[3] *Rollo*, p. 89.

As grounds for its motion, respondent raises the following issues:

I. Jurisprudence is to the effect that the Court may still consider the respondent's quarterly income tax returns for 2005 and 2006 even if the same are presented only after trial.

II. In a refund of excess creditable withholding taxes, the Supreme Court has consistently ruled that the submission of quarterly returns for the subsequent years is unnecessary.

III. Respondent sufficiently proved its entitlement to refund or issuance of a tax credit certificate in the amount of P25,571,495.99, representing excess and unutilized creditable taxes withheld for taxable years 2004 and 2005.[4]

Respondent submitted the original computer printouts of its quarterly income tax returns for the year 2005 and 2006 as Annexes "A" to "F" of its motion for reconsideration.

In its comment, petitioner argues that she was not given sufficient time and information to evaluate respondent's administrative claim for refund, nor was she given sufficient facts to evaluate the administrative claim. Furthermore, petitioner argues that respondent failed to present the quarterly income tax returns.

In the instant case, all that was left for respondent to prove its entitlement to income tax refund/credit was to show that it had not carried over any of the unutilized creditable withholding taxes in the subsequent quarters. Thus, for failure to submit its quarterly income tax returns for calendar years 2005 and 2006, this Court could not fully ascertain whether actual carry-over was made by the respondent. As such, respondent's claim for tax refund/credit was denied.

Respondent, in its Motion for Reconsideration, now submits the computer printouts of its quarterly income tax returns for the years 2005 and 2006, which were initially filed through the BIR's EFPS.

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[4] *Rollo*, pp. 103-104.

In the case of *Commissioner of Internal Revenue vs. Perf Realty Corporation*[5], the Supreme Court considered and gave effect to the income tax return merely attached to a motion for reconsideration, ruling that the same formed part of the records of the case and could not simply be ignored.

Applying the foregoing to the instant case, respondent's quarterly income tax returns[6], upon examination, clearly reveal that no actual carry-over of the unutilized creditable withholding taxes was made.

Considering that the Former Second Division has already made a finding that respondent has complied with the requisites for a claim for tax refund/credit and ordered that the same be granted, and considering further that it has been shown that no actual carry-over of the creditable withholding tax was made, there is, therefore, no legal obstacle for the grant of said tax refund.

WHEREFORE, premises considered, the instant Motion for Reconsideration is hereby GRANTED. The assailed Decision, dated April 13, 2012, is hereby REVERSED and SET ASIDE. The Decision of the Former Second Division, dated April 28, 2010, and the Resolution, dated September 17, 2010, ordering the refund or issuance of a tax credit certificate in the amount of P25,571,495.49, are hereby AFFIRMED.

SO ORDERED.

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

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[5] G.R. No. 163345, July 4, 2008.
[6] *Rollo*, pp. 117-128.

WE CONCUR:

Ernesto D. Acosta
ERNESTO D. ACOSTA
Presiding Justice

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice