

**REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY**

SPECIAL FIRST DIVISION

**BENGUET MANAGEMENT
CORPORATION,**

Petitioner,

- versus -

CTA CASE NO. 7761

Members:

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

**COMMISSIONER OF INTERNAL
REVENUE,**

Respondent.

Promulgated:

AUG 10 2010 ; 10:04 AM

X-----X

DECISION

BAUTISTA, J.:

The instant Petition for Review seeks the issuance of tax credit certificate in the amount of P9,856,789.00, allegedly representing petitioner's excess and unutilized creditable withholding taxes for the year 2005.

Benguet Management Corporation (Petitioner) is a domestic corporation organized under Philippine laws, with executive office located at the 3rd Floor Universal Re Building, Paseo de Roxas, Makati City.¹

¹ Par. 1, Summary of Facts Admitted, Stipulation of Facts and Issues (SFI), docket, p. 110

Respondent, on the other hand, is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR) empowered to perform the duties of said office, including, among others, the power to decide, approve, and grant refunds or tax credits of erroneously or excessively paid taxes. He holds office at the BIR National Office Building, BIR Road, Diliman, Quezon City.

On November 29, 1994, petitioner and Keppel Bank Philippines, Inc. (hereinafter referred to as "Keppel"), formerly Keppel Monte Bank and Monte de Piedad and Savings Bank, in its capacity as the representative of a syndicate of creditor banks, executed a Loan Agreement² and a Mortgage Trust Indenture³, covering a syndicated loan obtained by petitioner from the creditor banks participating in the Mortgage Trust Indenture in the principal amount of P190,000,000.00. Pursuant to the said Loan Agreement and Mortgage Trust Indenture, petitioner executed a first mortgage in favor of the creditor banks on its real estate properties, covered by Torrens titles in its name, located in the provinces of Laguna and Zambales.⁴

On September 28, 2001, for failure of petitioner to pay in full the installments due on the Loan Agreement and Mortgage Trust Indenture, Keppel filed an Application for Extra-Judicial Foreclosure of Real Estate Mortgage⁵ before the Office of the Clerk of Court of the Regional Trial Court (RTC) of Iba, Zambales.⁶

² Exhibit "B"

³ Exhibit "C"

⁴ Pars. 2 and 3, Summary of Facts Admitted, SFI, docket, p. 111

⁵ Exhibits "D" and "D-1"

⁶ Par. 4, Summary of Facts Admitted, SFI, docket, p. 111



On October 29, 2001, Keppel filed a similar application for extrajudicial foreclosure before the RTC of San Pablo City to foreclose the mortgaged Laguna properties.⁷

On March 19, 2002, over the objection of petitioner, the Laguna properties were extrajudicially foreclosed, and on March 22, 2002, the Sheriff's Certificate of Foreclosure Sale was annotated in the individual certificates of title of the Laguna properties.⁸

On June 4, 2002, Keppel, on behalf of the creditor banks, paid the creditable withholding tax in the amount of P9,741,259.77 through the Bank of the Philippine Islands (BPI), San Pablo City. The payment of this creditable withholding tax is evidenced by the Withholding Tax Remittance Return⁹ (BIR Form No. 1606) that was filed with BPI, as BIR authorized agent bank, and by the Certificate of Creditable Tax Withheld at Source¹⁰ (BIR Form No. 2307) issued by Keppel.

Petitioner, however, contested the validity of the extrajudicial foreclosure of its properties. Thus, to enjoin the extrajudicial foreclosure of its properties, petitioner filed cases before various courts, to wit: (a) "Request Not To Give Due Course to the Application for Extrajudicial Foreclosure" before the RTC of San Pablo City; (b) Civil Case No. RTC-1852-1 before the RTC of Iba, Zambales; (c) CA G.R. SP No. 69503 before the Court of Appeals;

⁷ Exhibit "E"; par. 5, Summary of Facts Admitted, SFI, docket, p. 111

⁸ Par. 6, Summary of Facts Admitted, SFI, docket, p. 111

⁹ Exhibit "HH"

¹⁰ Exhibit "II"



(d) G.R. No. 153571 before the Supreme Court; and (e) Consulta No. 3493 before the Land Registration Authority.¹¹

In a decision rendered by the Supreme Court in **Benguet Management Corporation vs. Court of Appeals, et al.**¹², involving the Petition for Certiorari filed by petitioner assailing the Resolution of the Court of Appeals in CA-G.R. SP No. 69503 dated April 5, 2002, which denied petitioner's application for issuance of a Temporary Restraining Order (TRO), the Supreme Court reversed the assailed Resolutions of the Court of Appeals and granted the TRO. The dispositive portion of the High Court's decision reads:

"WHEREFORE, in view of all the foregoing, the petition is **PARTLY GRANTED**. The Resolutions of the Court of Appeals dated April 5, 2002 and May 28, 2002, in CA-G.R. SP No. 69503, insofar as they denied BMC's application for temporary restraining order, are **REVERSED** and **SET ASIDE**. The *status quo* order issued by the Court on June 26, 2002 shall stand until further order of the Court, and the instant case is **REMANDED** to the Court of Appeals for determination of the case on its merits. Petitioner BMC is ordered to inform the appellate court of the present status of Civil Case No. RTC-1852-I, then pending with the Regional Trial Court of Iba, Zambales, Branch 70, and if it had been decided and the decision is on appeal in the Court of Appeals, the latter may consider its consolidation with CA-G.R. SP No. 69503 if warranted."

In order to put an end to long and tedious litigations, Keppel and petitioner decided to negotiate on terms and conditions that would lead to a full settlement of petitioner's loan obligation under the afore-mentioned Loan Agreement and Mortgage Trust Indenture.¹³ After reaching an agreement,

¹¹ Par. 10, Petition for Review, docket, pp. 2-3

¹² G.R. No. 153571, September 18, 2003

¹³ Par. 8, Summary of Facts Admitted, SFI, docket, p. 112



the parties executed a Memorandum of Agreement (MOA)¹⁴ on November 12, 2004, paragraph 3 of which provides as follows:¹⁵

"3. The FIRST PARTY hereby acknowledges that the occurrence of the following two (2) events shall constitute **the full and final settlement of the SECOND PARTY's loan obligation to the Creditor Banks under the Loan Agreement and Mortgage Trust Indenture of 29 November 1994** including but not limited to penalties, interest and/or deficiency claim: (a) as to the Laguna properties, the transfer of title in the name of the FIRST PARTY, in its capacity as Trustee for the Creditor Banks, of these properties of the SECOND PARTY mortgaged under the Mortgage Trust Indenture of 29 November 1994 and (b) as to the Zambales properties, the execution by Benguet Management Corporation of the Irrevocable Special Power of Attorney Coupled with Interest hereto attached as **Annex 'E'** authorizing the FIRST PARTY on behalf of the SECOND PARTY to, among others, (i) contest, negotiate and/or agree to the valuation of the Zambales properties subject to compulsory acquisition under CARP, (ii) voluntary offer to sell the Zambales properties to the Secretary of Agrarian Reform under CARP, (iii) negotiate and sell the Zambales properties to private third parties, (iv) collect any and all proceeds arising from voluntary sale or compulsory acquisition of the Zambales properties under CARP or from private third parties, and (v) apply these proceeds as payment of the obligation of the SECOND PARTY to the Creditor Banks under the Loan Agreement and Mortgage Trust Indenture dated 29 November 1994. **The occurrence of these two events, particularly the execution of the attached Irrevocable Special Power of Attorney Coupled with Interest and the transfer of Torrens title of the Laguna properties in the name of the FIRST PARTY shall constitute the full and final settlement of the loan obligation of the SECOND PARTY to the Creditor Banks and the FIRST PARTY for and in behalf of the Creditor Banks, without need of executing other documents or performing other actions, hereby waives, discharges and releases the SECOND PARTY from any and all other claims, demand or causes of action the FIRST PARTY and Creditor Banks may have against the SECOND PARTY under the Loan Agreement and Mortgage Trust Indenture dated 29 November 1994.**

¹⁴ Exhibit "U"

¹⁵ Exhibit "U-2"



Provided, the promissory notes and first lien of the Creditor Banks shall continue to exist for the limited purpose of allowing the FIRST PARTY to dispose of the Zambales properties, in whole or in part, through sale or under CARP and/or acquire the same through foreclosure or dacion en pago as provided by sections 2, 3, and 4 of this Memorandum of Agreement. In any case, the FIRST PARTY hereby waives any right to claim for deficiency against the SECOND PARTY. Upon the sale of the Zambales properties and/or transfer of title in the name of the FIRST PARTY of the Zambales properties through foreclosure or dacion en pago, the FIRST PARTY shall cancel and return to the SECOND PARTY all promissory notes executed by the SECOND PARTY in favor of the FIRST PARTY under the Loan Agreement and secured by the Mortgage Trust Indenture of 29 November 1994." (*Emphasis supplied*)

Pursuant to the above-quoted paragraph 3 of the MOA, petitioner executed the Irrevocable Special Power of Attorney Coupled with Interest on November 12, 2004.¹⁶ However, the titles over the Laguna properties were completely transferred to Keppel, in its capacity as trustee of the creditor banks, only in 2005, as shown in the titles. This marked the full and final settlement of petitioner's loan obligation to the creditor banks under the Loan Agreement and Mortgage Trust Indenture of November 29, 1994.¹⁷

On April 17, 2006, petitioner filed its Annual Income Tax Return (ITR) for the year ended December 31, 2005¹⁸ with the Revenue District Office (RDO) No. 55, San Pablo City. The said ITR showed a net loss of P74,011,843.00, a Minimum Corporate Income Tax (MCIT) of P596,180.00, and an income tax overpayment of P10,582,814.00. Due to this alleged tax overpayment, petitioner marked the box "To be refunded" to indicate its choice to seek refund.

¹⁶ Exhibit "U-2-a"

¹⁷ Par. 14, Petition for Review, docket, p. 5

¹⁸ Exhibit "C"

In view of the transfer of its Laguna properties to Keppel, in the latter's capacity as trustee of the creditor banks, which had been completed only in the year 2005, petitioner reflected this transaction in Schedule 4 (Schedule of Other Taxable Income) of its 2005 ITR as follows:¹⁹

Nature of Income	Creditable Tax Withheld	Taxable Amount
Gain on Dacion/Debt settlement	P9,741,260.00	P13,056,443.00

The said 2005 ITR also reflected other taxable income received by petitioner during the year 2005 that were subjected to creditable withholding tax, such as "Gain on sale of real estate" with a taxable amount of P7,186,784.00 and creditable tax withheld of P662,352.00; and income from "Sale of Services" with a taxable amount of P25,135,997.00 and creditable tax withheld of P141,934.00.²⁰

On April 16, 2007, petitioner filed its Annual Income Tax Return for the year ended December 31, 2006²¹ with the RDO No. 55, San Pablo City.²² The said 2006 ITR showed a net loss of P5,160,701.00, and MCIT of P62,097.00. Even though petitioner marked the box "To be refunded" in its 2005 ITR for the tax overpayment of P10,582,814.00 for that year, it reflected this 2005 overpayment as "Prior years excess credits" in its 2006 ITR, and applied P62,097.00 thereof as credit against the 2006 MCIT; leaving a tax overpayment in the amount of P10,520,717.00. Petitioner again marked "x" the box "To be refunded" in the ITR.

¹⁹ Exhibit "CC-2"; par. 11, Summary of Facts Admitted, SFI, docket, p. 113

²⁰ Exhibit "CC-1"; par. 12, Summary of Facts Admitted, SFI, docket, p. 114

²¹ Exhibit "EE"

²² It was inadvertently marked as Amended Return

On April 1, 2008, petitioner filed its amended 2005 ITR²³ with the RDO No. 55, San Pablo City, reflecting a net loss of P30,044,549.00 and MCIT of P627,432.00. The gain on dacion/debt settlement was adjusted to P12,034,810.00; while the gain on sale of real estate was adjusted to P5,366,805.00, with creditable income tax withheld increased to P677,352.00. The income tax overpayment was adjusted to P9,933,114.00.

On April 1, 2008, petitioner filed its amended 2006 ITR with the RDO No. 55, San Pablo City, showing a net loss of P5,272,956.00 and MCIT of P76,325.00. This amended 2006 ITR²⁴ also reflected a tax overpayment previously shown in the amended 2005 ITR in the amount of P9,933,114.00 as "Prior year's excess credits", and applied P76,325.00 thereof as credit against the 2006 MCIT; leaving a balance of tax overpayment in the amount of P9,856,789.00. Petitioner marked the box "To be issued a Tax Credit Certificate" for this tax overpayment of P9,856,789.00.

Petitioner no longer indicated this tax overpayment of P9,856,789.00 in its Annual Income Tax Return for 2007.²⁵

On April 4, 2008, petitioner filed with the RDO No. 55, San Pablo City, an application for issuance of tax credit certificate for the amount of P9,856,789.00, representing petitioner's purported excess creditable withholding tax for the years 2005 and 2006.²⁶



²³ Exhibit "DD"

²⁴ Exhibit "FF"

²⁵ Exhibit "GG"

²⁶ Exhibit "LL"

Due to respondent's inaction on its claim, petitioner filed the instant Petition for Review before this Court on April 14, 2008.

Respondent, in his Answer²⁷ filed on June 18, 2008, raised the following Special and Affirmative Defenses:

- "5. Petitioner's claim for tax refund is subject to administrative investigation and/or examination by the respondent;
6. Petitioner failed to demonstrate that the tax subject of the case at bar was erroneously or illegally collected;
7. To support its claim, it is imperative and incumbent upon the petitioner to show that it has complied with the following requirements prescribed under *Section 2.58.3 of Revenue Regulations No. 2-98*, otherwise known as the *Withholding Tax Regulations*:
 - a) That the claim for refund was filed within the two-year prescriptive period prescribed under *Section 204(C)*, in relation to *Section 229 of the NIRC of 1997, as amended*;
 - 2) That the fact of withholding is established by a copy of a statement duly issued by the payor (withholding agent) to the payee (*BIR Form No. 1743-A*), 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 the gross income. (*italics ours*)
8. The instant petition also failed to state a cause of action for it violated the provisions of Section 76 of the NIRC of 1997, as amended;
9. In an action for refund, the burden of proof is on the taxpayer to establish its right to refund and failure to sustain the burden is fatal to the claim for tax refund/credit. This is so because exemptions from taxation are highly disfavored in law and he who claims

²⁷ Docket, pp. 46-51



exemption must be able to justify his claim by the clearest grant of organic or statutory law. An exemption from common burden cannot be permitted to exist upon vague implications;

10. Claims for refund are construed strictly against the claimant for the same partakes the nature of exemption from taxation and liberally in favor of the taxing authority."

During trial, petitioner presented documentary and testimonial evidence; while respondent, through counsel, manifested in open court on June 9, 2009 that he is waiving his right to present evidence.

On August 10, 2009, the Court declared the case submitted for decision after the parties filed their respective Memorandum.

The parties submitted the following issues²⁸ for this Court's resolution:

- "1. Whether or not Petitioner's claim for tax credit/refund was filed within the two-year prescriptive period in accordance with Section 204(C) in relation to Section 229 of the 1997 NIRC.
2. Whether or not Petitioner is entitled to a tax credit/refund for its alleged excess and unutilized creditable withholding income taxes for the year 2005 in the total amount of P9,856,789."

The above issues can be summarized as follows:

"Whether or not petitioner is entitled to the issuance of tax credit certificate for its alleged excess and unutilized creditable withholding income taxes for the year 2005 in the amount of P9,856,789.00."



²⁸ Statement of the Issue, SFI, docket, pp. 114-115

Pertinent to the resolution of the issue are Sections 76, 204(C), and 229 of the National Internal Revenue Code (NIRC) of 1997, which are all quoted hereunder for ready reference, to wit:

"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*)

"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.* xxx"
(*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*)

Petitioner contends that it filed its claim within the two-year prescriptive period since it filed its administrative claim on April 4, 2008 and its judicial claim on April 14, 2008. After all, the two-year period is to be counted from April 17, 2006, the date when it filed its final adjustment return for taxable year 2005.

Respondent, on the other hand, avers that petitioner's claim for refund was filed out of time since the reckoning period should be in March 2002, the date when Keppel Bank withheld and remitted petitioner's unutilized creditable withholding taxes in the amount of P9,741,259.77 to respondent.



The Court agrees with petitioner.

At this point, it is important to note that although the foreclosure took place in March 2002, the subject properties were not transferred to Keppel Bank in 2002 because of the Temporary Restraining Order and the Status Quo Order issued by the Supreme Court enjoining Keppel Bank, all the creditor banks, and the Register of Deeds of Calamba, Laguna from consolidating in the names of the creditor banks the titles of the mortgaged properties; and more specifically, restraining the creditor banks and the Register of Deeds from canceling the Transfer Certificates of Title (TCTs) in the name of petitioner and from issuing TCTs in favor of the creditor banks. It was only in the year 2005, as stated above, when the Laguna properties were transferred to Keppel Bank; thus, petitioner reported this transaction in its 2005 ITR.

In the cases of **Commissioner of Internal Revenue vs. TMX Sales, Inc., et al.**²⁹, **Citibank, N.A. vs. Court of Appeals, et al.**³⁰, and **ACCRA Investments Corporation vs. The Honorable Court of Appeals, et al.**³¹, the Supreme Court held that in claims for refund of excess creditable withholding taxes, the two (2)-year prescriptive period should be counted from the filing of the final adjustment return, because it is only during that date that the exact tax liability or refundability of the tax can be determined.



²⁹ G.R. No. 83736, January 15, 1992

³⁰ G.R. No. 107434, October 10, 1997

³¹ G.R. No. 96322, December 20, 1991

In the computation of the two-year prescriptive period, a "year" is understood to be of 365 days as provided under Article 13 of the Civil Code, to wit:

"ART. 13. When the laws speak of years, months, days or nights, **it shall be understood that years are of three hundred sixty-five days each**; months, of thirty days; days, of twenty-four hours; and nights from sunset to sunrise.

If months are designated by their name, they shall be computed by the number of days which they respectively have.

In computing a period, the first day shall be excluded, and the last day included."

The instant claim covers calendar year 2005 for which petitioner originally filed its ITR on April 17, 2006.³² Counting from this date, petitioner had 730 days or two years from April 17, 2006 or until April 17, 2008, within which to file its claim for refund or issuance of tax credit certificate, both in the administrative and judicial levels. Here, petitioner's administrative and judicial claims were filed on April 4, 2008 and April 14, 2008, respectively. Clearly, both claims were timely filed before the lapse of the two-year prescriptive period.

However, despite the fact that petitioner timely filed its claim for issuance of tax credit certificate, this Court still has to deny the claim on the basis of Section 76 of the NIRC of 1997.

Based on the afore-quoted provision of Section 76, the corporate taxpayer's excess tax credits or overpaid income tax in a given taxable year may be refunded (either in the form of cash or tax credit certificate) or

³² Exhibit "CC"



applied against its income tax liabilities of the succeeding taxable years. Nevertheless, once the option to carry-over has been made, such option becomes irrevocable for that taxable period and no application for cash refund or issuance of tax credit certificate shall be allowed.

In the case of **Commissioner of Internal Revenue vs. Perf Realty Corporation**³³, the High Tribunal held that Section 76 offers two options, namely: (1) filing for tax refund and (2) availing of tax credit. The two options are alternative and the choice of one precludes the other.

In its original ITR for 2005, petitioner reflected an income tax overpayment of P10,582,814.00 and marked "x" the option "To be refunded".³⁴ In its amended ITR for 2005, petitioner adjusted its income tax overpayment to P9,933,114.00 and marked "x" the option "To be carried over as tax credit next year/quarter".³⁵ However, in its ITR for 2006, petitioner reflected the 2005 tax overpayment of P10,582,814.00 as "Prior years excess credits" and applied P62,097.00 thereof as credit against its 2006 Minimum Corporate Income Tax, leaving a tax overpayment of P10,520,717.00, which petitioner indicated as "To be refunded."³⁶

It is therefore evident from the returns filed by petitioner that it violated Section 76 of the NIRC of 1997, since after petitioner have chosen the tax refund option, it later on exercised the option of carry-over insofar as its claim of P10,520,717.00, which was reflected in the original 2005 ITR. By

³³ G.R. No. 163345, July 4, 2008

³⁴ Exhibit "CC"

³⁵ Exhibit "DD"

³⁶ Exhibit "EE"



exercising such option, petitioner is now barred from claiming refund, since as provided under the afore-mentioned Section 76, once the option to carry-over and apply the excess quarterly income tax against income tax due for taxable quarters of the succeeding taxable years has been made, such option shall be considered irrevocable for that taxable period and application for cash refund or issuance of tax credit certificate shall no longer be allowed. Petitioner's only recourse is to carry-over the claimed amount of P9,856,789.00 to the succeeding taxable years until the same is fully utilized.

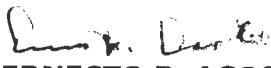
WHEREFORE, premises considered, the instant Petition for Review is hereby **DENIED**.

SO ORDERED.



LOVELL R. BAUTISTA
Associate Justice

WE CONCUR.



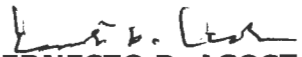
ERNESTO D. ACOSTA
Presiding Justice



CAESAR A. CASANOVA
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 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's Division.


ERNESTO D. ACOSTA
Presiding Justice
Chairperson, First Division