REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

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FILINVEST DEVELOPMENT CORPORATION,
Petitioner,

C.T.A. CASE NO. 6055

Members:

- versus -

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

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
MAY 30 2006

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DECISION

BAUTISTA, L., J.:

This is a case remanded to Us by the Court of Appeals for further trial and reception of evidence.

The facts of the case may be briefly summarized as follows:

Petitioner is a corporation duly organized and existing under the laws of the Philippines with principal office located at 173 P. Gomez St., San Juan, Metro Manila.

On April 15, 1998, petitioner filed its 1997 Corporate Annual Income Tax Return reflecting a net loss from operations in the sum of P83,308,762.00 but with a refundable income tax payment in the amount of P11,373,434.00 resulting from the payments of creditable income taxes withheld on management services and lease of real properties. Petitioner indicated in its 1997 income tax return its intention to carry over as an automatic tax credit the total amount refundable of P11,373,434.00.

On April 15, 1999, petitioner filed its 1998 Corporate Annual Income Tax Return reflecting an income tax due in the amount of P385,687.00 but with an income tax refundable of P11,907,902.00. In said return, petitioner opted to refund its alleged 1997 excess income tax payment in the amount of P11,373,434.00 and the balance in the sum of P534,468.00, representing the 1998 unutilized creditable taxes withheld, to be carried over as tax credit to the succeeding taxable year.

On April 30, 1999, petitioner amended its 1998 final adjustment return. The original overpaid income tax as of December 31, 1998, in the amount of P11,907,902.00 was reduced to P9,384,253.00 due to the decrease in the amount of prior year's excess credits from P11,373,434.00 to P8,849,785.00. According to petitioner, after a review of its creditable withholding taxes, it was found out that the cash amount of P2,523,549.00 under Section E of its 1997 Annual Income Tax Return was an error for it was not actually paid to the BIR. Consequently the amount to be refunded for the year 1997 was also lowered to P8,849,785.00.

On May 4, 1999, petitioner filed with RDO No. 42 of the BIR a letter request for the cash refund of its excess creditable withholding taxes for the taxable year 1997 in the sum of P8,849,785.00 in accordance with Section 69 (now Sec. 76) of the Tax Code, as amended.

As there was no action on the part of the respondent, petitioner filed the instant Petition for Review on April 7, 2000 in order to toll the running of the two-year prescriptive period under Section 230 of the Tax Code, as amended.

On May 16, 2002, this Court rendered a Decision partially granting petitioner's claim, to wit:

"WHEREFORE, in the view of the foregoing, the instant petition for review is hereby PARTIALLY GRANTED. Respondent is ORDERED to REFUND or in the alternative, ISSUE a TAX CREDIT CERTIFICATE in favor of petitioner in the amount of P4,734,416.37, representing overpaid income taxes for the year 1997.

SO ORDERED."

Dissatisfied with this Court's findings, petitioner filed an Omnibus Motion for Reconsideration and New Trial on June 26, 2002 on the grounds that:

a. *Petitioner's 1996 ITR, where it reported the amount of P18,696,887.40 representing the fees due from Filinvest Alabang, Inc. for management services rendered in 1996 by petitioner, was duly presented in evidence during the trial as Exhibit "JJ"; and*

b. *Petitioner's 1995 ITR, where it reported the amount of P58,456,707.00 representing the fees due from Davao Sugar Central Co., Inc. for management services rendered in 1996 by petitioner, is attached hereto for the consideration of this Honorable Court, pursuant to the ruling of the Supreme Court in BPI-Family Savings Bank, Inc. vs. CA, et al, G.R. No. 122480, April 12, 2000.*

This Court denied petitioner's Omnibus Motion in a Resolution dated August 29, 2002, based on the following findings:

a. *In its motion, petitioner admitted that it had failed to declare all of its income pertaining to the creditable taxes withheld in its 1997 Income Tax Return. Such admission is conclusive on the part of the petitioner that it had failed to comply the second requisite in claiming for the refund of its creditable withholding taxes, as enunciated in the case of Citibank, N.A. vs. Court of Appeals and Commissioner of Internal Revenue, 280 SCRA 459;*

b. *This Court had no way of determining whether the income petitioner received from Davao Sugar Central in the amount of P58,456,707.00 formed part of the 1996 declared gross income. There was no schedule showing the composition of the same;*

c. *Petitioner's reliance on the case of BPI is misplaced. The deficiency found in this case falls within the basic requirements in claiming for the refund of creditable withholding taxes as enunciated in the case of Citibank, N.A. vs. Court of Appeals and Commissioner of Internal Revenue, supra; and*

d. *Petitioner's counsel should have exercised ordinary prudence in the preparation of his evidence during trial which might have averted the denial of his case.*

Feeling aggrieved by this Court's Decision and Resolution, petitioner filed a Petition for Review with the Court of Appeals on October 11, 2002, with regard to the denied amount of P3,813,163.32,[1] assigning therein the following errors:

a. *The CTA gravely erred in holding that Filinvest must prove that "the income upon which the creditable withholding taxes at source were withheld were all included in its 1997 income tax return". The CTA erroneously failed to consider that Filinvest reports income on an accrual basis and disregard other competent evidence proving compliance with all requirements for refund; and*

b. *The CTA gravely erred in denying Filinvest's motion for new trial on a technicality.*

While its petition with the Court of Appeals was pending, petitioner filed a Motion for Execution with this Court on November 4, 2002. It submitted that since no appeal from the May 16, 2002 Decision and August 29, 2002 Resolution of this Court had been taken by both the respondent and itself, the period to appeal had already expired and the Decision promulgated on May 16, 2002 partially granting the amount of P4,734,416.37 in favor of petitioner already become final and executory. In this regard, petitioner moved for an issuance of a writ of execution ordering the respondent to refund, or in the alternative, issue a tax credit certificate in the amount of P4,734,416.37, representing petitioner's granted claim of overpaid income taxes for the calendar year ended December 31, 1997.

On March 3, 2003, a Supplemental Argument in Support of the Motion for Execution was likewise filed by the petitioner alleging, among others, that the execution of the said final and executory decision partially granting the amount of P4,734,416.37 is a matter of right and the issuance of the pertinent writ of execution becomes a ministerial act. Moreover, granting that its appeal to the Court of Appeals with respect to the denied amount of P3,813,163.32 would open the whole case for review and affect the granted amount of P4,734,416.37, it would not stay the execution of the amount of P4,734,416.37 unless the Court of Appeals enjoins or restrains the same pursuant to Section 12, Rule 43 of

[1] Docketed as C.A. G.R. No. 72998 (CTA Case No. 6055)

the Rules of Court.

In a Resolution dated June 16, 2003, this Court denied petitioner's Motion for Execution. To quote:

"In the case at bar, the Decision dated May 16, 2002, now on appeal before the Court of Appeals, involves just one judgment where the dispositive portion merely enumerates which amount is proper to be refunded and which is not. The case does not comprehend several causes of action that would justify the court to render several judgments. This is a clear situation where one cannot be independently discussed or evaluated independently of the other. The petitioner cannot rely on his play of semantics in trying to persuade the court to agree to its demands. Accordingly, the appealed decision, particularly, with respect to the amount of P3,813,163.32 not granted by this court would open the whole case for review and affect the granted amount of P4,734,416.37. In other words, our judgment did not become final and executory considering the pending appeal before the Court of Appeals. A judgment becomes final after the lapse of the reglementary period of appeal if no appeal is perfected or, an appeal therefrom having been taken, the judgment in the appellate tribunal becomes final. It is this final judgment which can be correctly categorized as a "final and executory" judgment in respect to which execution shall issue as a matter of right in accordance with Rule 36 Section 2 of the Revised Rules of Court.

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Considering the failure of the petitioner to state any good reason for its motion for execution pending appeal, we could not grant the motion. On the contrary, we could not find any good reason why petitioner which is questioning the correctness of our decision alleging error on our part would at the same time want to benefit from the same decision by claiming immediately the amount granted by this court. As earlier stated, there is only one decision here involving one cause of action, which decision for good reason should only be executed as one, accepting both the adverse and favorable position of the decision. If the prevailing party opted to appeal by questioning the decision of this court, it would then be unreasonable to allow it [the] immediately benefit from the same decision it has questioned."

On May 31, 2004, the Court of Appeals rendered a Decision remanding the case back to this Court for the further reception of petitioner's evidence, *viz*:

"Weighing all these considerations, We find it more in accord with prudence and equity that this case be brought back to the CTA for further reception of evidence, e.g., audited financial statements with accompanying notes specifically showing the composition of the revenue items included in the 1995 and 1996 returns. Further, consistent with the pronouncement of the Supreme Court in BPI-Family Savings Bank, Inc. vs. Court of Appeals, et.

> *al.*[2] *where it was stressed that the rationale of the rules of procedure is to secure a just determination of every action and that they are tools designed to facilitate the attainment of justice, We rule to grant petitioner's Motion for New Trial seeking the presentation of its 1995 income tax return."*

Thus, the assailed CTA Decision and Resolution were vacated and set aside and the case was remanded to this Court for further trial and reception of evidence.

In the hearing of August 2, 2004, petitioner was given another opportunity to present the necessary documents in support of its denied claim. It presented and provisionally marked its Annual Income Tax Return for 1995 and identified to by its witness.[3] In the subsequent hearing of September 15, 2004, counsel for the petitioner rested his case and requested for thirty (30) days to formally offer petitioner's evidence which was granted by this Court.[4] However, petitioner failed to file its formal offer of evidence within the period granted. Thus, the case was set for hearing for the reception of respondent's evidence.[5] In view of the repeated absences of respondent's counsel, respondent was considered to have waived his right to present evidence.[6] And considering that both parties failed to file their respective memoranda within the prescribed period granted by this Court, this case was deemed submitted for decision on December 21, 2005.[7]

The lone issue to be resolved in this case is whether or not petitioner has satisfactorily shown the necessary documents to fully apprise this Court as regards its claim that the management fees upon which the excess creditable withholding taxes are based, in the amount of P3,813,163.32, were indeed included in its 1995 and 1996 returns.

In arriving at the assailed Decision of May 16, 2002, this Court found that petitioner failed to prove that the management fees and rental income in the amounts of P160,817,022.60 and P17,026,461.00, respectively, were all declared in its 1997 Income Tax

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[2] G.R. No. 122480, April 12, 2000
[3] Records, page 918
[4] *Ibid*, page 947
[5] *Id.*, page 950
[6] *Id.*, pages 959 & 960
[7] *Id.*, page 968

Return.[8] This Court gave less weight on petitioner's ratiocination that its income relative to the taxes withheld were all included in its 1997 return as shown on the audit procedures adopted by the independent auditing firm commissioned by this Court to examine the voluminous documents presented by petitioner. This Court emphasized the fact that the procedure adopted by the independent auditing firm is an audit procedure and not the result of the audit procedure *per se.*

In this regard, this Court enumerated the basic requirements, as enunciated in the case of ***Citibank, N.A. vs. Court of Appeals and Commissioner of Internal Revenue***,[9] in claiming for the refund of excess creditable withholding taxes, to wit:

a. that it filed a claim for refund within the two (2) year period as prescribed under Section 229 (now 230) of the National Internal Revenue Code;

b. that the income upon which the taxes were withheld were included in the return of the recipient; and

c. the fact of withholding is established by a copy of statement (BIR Form 1743.1) duly issued by the payor (withholding agent) to the payee, showing the amount paid and the amount of tax withheld therefrom.

A careful perusal of the records in this case showed that petitioner complied with the first and third requirements. However, although petitioner was able to establish the amount of claim, that is P8,892,158.18, as unutilized creditable withholding taxes for the year 1997, it nevertheless failed to prove that the management fees and rental income in the amounts of P160,817,022.60 and P17,026,461.00, respectively, were all declared in the 1997 income tax return. Thus, its claim for refund was only partially granted.

This Decision was then the subject of an Omnibus Motion for Reconsideration and New Trial. However, said motion was denied by this Court for lack of merit.[10]

Petitioner then filed a Petition for Review with the Court of Appeals, questioning the correctness of this Court's Decision of May 16, 2002 and Resolution of August 29, 2002. A

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[8] Page 7 of Decision, Records, page 567
[9] 280 SCRA 459
[10] Records, pages 595-599

Decision was rendered by the Court of Appeals vacating and setting aside the subject Decision and Resolution, and remanding the case back to this Court to give a second chance to petitioner for the further presentation of its evidence, e.g. audited financial statements with accompanying notes specifically showing the composition of petitioner's revenue items included in its 1995 and 1996 returns, in support of its claim for the denied amount of P3,813,163.32.

During the hearing held for the further reception of petitioner's evidence on August 2, 2004, petitioner presented for markings its 1995 Income Tax Return as Exhibit KK, and Section 2 of the same document as Exhibit KK-1. These documents were provisionally marked due to petitioner's failure to present the original copies for comparison. Up to the time the case was submitted for decision on December 21, 2005, petitioner did not present the originals thereof for comparison. In fact, petitioner did not formally offer in evidence these documents. Nor did it present the documents that the Court of Appeals allowed it to do for the second time to this Court to support the denied claim of P3,813,163.32.

It bears emphasis that when this Court denied partially petitioner's claim, it was because of the fact that petitioner failed to show that the subject management fees and rent income were all declared in the 1997 income tax return. Petitioner attached to the Omnibus Motion for Reconsideration and New Trial its 1995 Income Tax Return. Likewise, it averred that the 1996 Income Tax Return had been presented before this Court as Exhibit JJ. These arguments were not accepted by this Court. To quote this Court's Resolution:[11]

> *"In its motion, petitioner even conceded that, indeed, it failed to declare all of the income pertaining to the creditable taxes withheld in its 1997 income tax return. Such admission rendered conclusive on its part that it has failed to fully comply with the second requisite in claiming for the refund of its creditable withholding taxes. Furthermore, petitioner cannot expect the court to evaluate its 1996 income tax return (Exhibit JJ) which it offered merely to prove that it was duly filed, that petitioner suffered a loss during the year and that the tax credits of P4,178,134.00 was not actually applied to the following taxable year, and not for the purpose of ascertaining whether the income relative to the 1997*

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[11] Pages 2 & 3, Records, pages 596 & 597

> *taxes withheld were declare therein. The same holds true with respect to petitioner's 1995 income tax return which petitioner did not even formally offer but merely attached to its motion for reconsideration.*
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> *Second, granting the court permits the evaluation of the 1996 income tax return, the allegation of petitioner that the income payment received from Davao Sugar Central in the sum of P58,456,707.00 was declared as part of the gross income declared therein in unverifiable. The Court has no way of determining whether such income payment forms part of the 1996 declared gross income. There was no schedule showing the composition of the 1996 gross income declared therein."*

Verily, the same document presented by petitioner for marking had already been presented, though not formally offered before, for this Court's consideration. However, petitioner failed to fully apprise this Court as to the veracity of its claim that it is entitled to the full amount of P8,849,785.00 and just the granted amount of P4,734,416.37.

In sum, even though this case has been elevated to the Court of Appeals and the Court of Appeals has remanded the same to this Court for further trial, still, petitioner ineffectually proved its case. Because even assuming that the 1995 Income Tax Return marked as Exhibit KK and KK-1 was formally offered in evidence, the same document fails to prove anything. The said document merely provided for a summarized data without any other supporting documents specifically showing a detailed composition or list of the revenue items for the calendar year 1995. Indeed, there were no additional or new evidence presented by petitioner to warrant the grant of the entire claimed amount of P8,849,785.00 despite the second chance that it has been given.

IN VIEW OF ALL THE FOREGOING, the Petition for Review is ***PARTIALLY GRANTED***. Accordingly, respondent is **ORDERED TO REFUND** or in the alternative, **ISSUE A TAX CREDIT CERTIFICATE** in favor of the petitioner in the amount of P4,734,416.37 representing overpaid income taxes for the year 1997.

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