REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

Third Division

PHILAM PROPERTIES CORPORATION,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 8635

Members:

Bautista, *Chairperson*
Fabon-Victorino, *and*
Ringpis-Liban, JJ.

Promulgated:

JUL 13 2015

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DECISION

BAUTISTA, J:

THE CASE

This Petition for Review filed on April 12, 2013, pursuant to Section 7(a)(1)[1] of Republic Act ("RA") No. 1125, as amended by RA No. 9282 and RA No. 9503, seeks for the Court to render judgment ordering respondent to refund petitioner the total amount of Fifteen Million Two Hundred Twenty Two Thousand Eight Hundred and Sixty-One Pesos (Php15,222,861.00) representing excess/unutilized creditable withholding taxes for the year ended December 31, 2010.[2]

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[1] Sec. 7. Jurisdiction. - The CTA shall exercise:

a. Exclusive appellate jurisdiction to review by appeal, as herein provided:

1. Decisions of 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 or other laws administered by the Bureau of Internal Revenue;

2. Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relations 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 provides a specific period of action, in which case the inaction shall be deemed a denial; xxx"

[2] *Records, CTA Case No. 8635*, p. 9.

THE PARTIES[3]

Petitioner Philam Properties Corporation is a corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with principal office located at 17th Floor, Net Lima Building, 5th Avenue corner 26th Streets, Bonifacio Global City, Taguig.

Respondent Commissioner of Internal Revenue was duly appointed and empowered to perform the duties of her office, including among others, the duty to act upon 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, Agham Road, Diliman, Quezon City.

THE FACTS

On April 15, 2011, petitioner filed with the BIR its Annual Income Tax Return[4] ("ITR") for the year ended December 12, 2010, which indicates that it chose the option to be issued a Tax Credit Certificate ("TCC").

On March 4, 2013, petitioner filed with the BIR its Application for Issuances of Tax Credits/Refunds (BIR Form No. 1914), pursuant to Sections 76 and 204 of the 1997 National Internal Revenue Code ("NIRC") in the total amount of Php15,222,861.00 representing overpaid corporate income taxes in the form of TCCs covering the period from January 1, 2010 to December 31, 2010.[5]

As the two (2)-year period prescribed under Section 229 of the 1997 NIRC was about to expire, without respondents action on the administrative claim, petitioner filed the present Petition for Review with the Court on April 12, 2013.[6]

On August 12, 2013, respondent filed her Answer by registered mail, interposing the following Special and Affirmative Defenses:[7]

[3] *Id., Joint Stipulation of Facts and Issues ("JSFI")*, p. 332.
[4] *Records*, p. 385.
[5] *Id.*, p. 480.
[6] *Id.*, pp. 6-34, with annexes.
[7] *Id.*, pp. 57-60.

"**SPECIAL AND AFFIRMATIVE DEFENSES**

3. Respondent reiterates and repleads the preceding paragraphs of the answer as part of her Special and Affirmative Defenses;

4. Petitioner's claim for refund is still subject to investigation by the Bureau of Internal Revenue;

5. Petitioner failed to demonstrate that the tax, which is the subject of this case, was erroneously or illegally collected;

6. It is explicitly stated under Section 76 of the [1997 NIRC], as amended, that once a taxpayer chooses the option to carry-over, it shall be irrevocable for that taxable period and no application for a tax refund or tax credit certificate shall then be allowed **(Philam Asset Management, Inc. vs. Commissioner of Internal Revenue, G.R. Nos. 156637/162004, December 14, 2005)**. Petitioner, therefore, must [prove] that it did not carry-over its 2010 alleged unutilized creditable withholding taxes to the succeeding taxable quarters/years, otherwise, petitioner is precluded from claiming a cash refund or for issuance of tax credit certificate its excess tax credit for taxable year 2010.

7. Taxes paid and collected are presumed to be made in accordance with the laws and regulations, hence, not refundable;

8. In an action for tax credit or refund, the burden is upon the taxpayer to prove that he is entitled thereto, and failure to discharge the said burden is fatal to the claim **(Emmanuel & Zenaida Aguilar v. Commissioner, CA-GR No. Sp. 16432, March 30, 1990 cited in Aban, Law of Basic Taxation in the Philippines, 1st Edition, p. 206)**;

9. It is incumbent upon petitioner to show that it has complied with the provisions of Section 76 in relation to [Sections] 204 and 229 of the 1997 [NIRC], as amended, including Revenue Regulations No. 2-98, as amended.

10. Claims for refund are construed strictly against the claimant, the same partake the nature of exemption from taxation **(Commissioner of Internal Revenue vs. Ledesma, 31 SCRA 95)** and as such, they are looked upon with disfavor. **(Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 121)**."

On December 10, 2013, the parties filed their Joint Stipulation of Facts and Issues ("JSFI")[8], which was approved by the Court on January 3, 2014 when it promulgated its Pre-trial Order[9] to this effect.

Trial ensued, then, on May 8, 2014, petitioner filed its Formal Offer of Exhibits[10], which was resolved by the Court on May 28, 2014.[11]

On June 19, 2014, in open court, respondent manifested that she will no longer present any evidence and submitted the case for decision based on the pleadings. Thus, the parties were given a period of twenty (20) days to file their respective memoranda.[12]

On July 8, 2014, petitioner filed its Memorandum,[13] while respondent filed her Manifestation (In Lieu of Submission of Memorandum) through registered mail on July 9, 2014.[14] Thus, on July 31, 2014, the Court promulgated a Resolution submitting the case for decision.[15]

Hence, this Decision.

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[8] *Id.*, pp. 332-336.
[9] *Id.*, pp. 341-346.
[10] *Id.*, pp. 361-569, with attachments.
[11] *Id.*, pp. 573-574.
[12] *Id.*, p. 575.
[13] *Id.*, pp. 577-589.
[14] *Id.*, pp. 593-595.
[15] *Id.*, p. 598.

THE ISSUES

Based on the JSFI[16] filed by the parties, the issues to be resolved in the present case are as follows:

1. WHETHER OR NOT PETITIONER IS ENTITLED TO THE ALLEGED UNUTILIZED/EXCESS CREDITABLE WITHHOLDING TAXES IN THE AMOUNT OF PHP15,222,861.00 FOR CALENDAR YEAR ENDED DECEMBER 31, 2010;

2. WHETHER OR NOT THE SAID ALLEGED UNUTILIZED/EXCESS CREDITABLE WITHHOLDING TAXES FOR TAXABLE YEAR ENDED DECEMBER 31, 2010 WERE CARRIED OVER AND APPLIED AS TAX CREDIT TO THE SUCCEEDING TAXABLE YEAR(S);

3. WHETHER OR NOT THE INCOME FROM WHICH THE TAXES WERE WITHHELD WAS INCLUDED AS PART OF THE GROSS INCOME IN PETITIONER'S CY2010 CORPORATE INCOME TAX RETURN; AND

4. WHETHER OR NOT PETITIONER'S CLAIM FOR REFUND/TAX ALLEGEDLY REPRESENTING UNUTILIZED/EXCESS CREDITABLE WITHHOLDING TAX FOR CALENDAR YEAR ENDED DECEMBER 31, 2010 IN THE AMOUNT OF PHP15,222,861.00 IS SUBSTANTIATED BY DOCUMENTARY EVIDENCE.

Petitioner's arguments

Petitioner avers that it is entitled to a TCC representing the unutilized/excess tax credits of Php15,222,861.00 since it filed its claims within the two (2)-year prescriptive period; it recorded the income subject to withholding tax as part of gross income; the withholding taxes were evidenced by Certificates of Tax Withheld at

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[16] *Id.*, p. 333.

Source; and the claimed amount was not carried over as tax credit to the succeeding taxable quarters/years.

Respondent's counter-arguments

Respondent maintains that petitioner's claim is still subject to the investigation by the BIR; that petitioner failed to demonstrate that the tax was erroneously or illegally collected; that taxes paid and collected are presumed to be proper and non-refundable; and that petitioner has the burden to prove its entitlement to a tax credit or a refund.

THE RULING OF THE COURT

The Court finds no merit in the Petition for Review.

The creditable withholding tax in the amount of Php15,222,861.00 was not carried over and applied as tax credit to the succeeding taxable years.

Petitioner's claim for the issuance of a TCC representing unutilized/excess tax credits finds legal support in Section 76, in relation to Sections 204(C) and 229 of the 1997 NIRC, as amended, which states:

> "SECTION 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."

Based on the afore-cited provision, in case of overpayment of income taxes, a corporation has two options: *(1)* it may file a claim for refund (either in the form of cash or issuance of a TCC); or *(2)* it may carry over the same to the succeeding taxable quarters/years until it is fully utilized.

Records show that petitioner manually filed with the BIR its 2010 Annual ITR on April 14, 2011, reflecting therein an income tax overpayment of Php45,764.887.20,[17] it also filed the same return through the BIR' s Electronic Filing and Payment System ("EFPS") on April 15, 2011.[18]

Further, petitioner has consistently marked the option "To be issued a Tax Credit Certificate" on the manual and electronic filings of its Annual ITR.[19]

A perusal of petitioner's ITR for taxable year 2010 reveals how the income tax overpayment of Php45,764,877.20 was arrived at, as follows:

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[17] *Id.*, pp. 396-398.
[18] *Id.*, pp. 385-395.
[19] *Id.*, pp. 385-398.

Tax Due (Normal Corporate Income Tax)		13,685,209.80
Less: Unexpired Excess of Prior Year's (2009) MCIT over Normal Income Tax Rate		(1,003,592.00)
Balance		12,681,617.80
Less: Tax Credits/Payments		
Prior Year's (2009) Excess Credits other than MCIT	(43,223,634.00)	
Creditable Tax Withheld for the Year (2010)	(15,222,861.00)	(58,446,495.00)
Tax Payable/(Overpayment)		**(45,764,877.20)**

The subject claim consists of creditable taxes withheld for the year 2010 only, as declared in petitioner's Annual ITR, to wit:

Creditable Tax Withheld for the First Three Quarters (2010)	10,809,504.00
Creditable Tax Withheld Per BIR Form No. 2307 for the Fourth Quarter (2010)	4,413,357.00
Creditable Tax Withheld for the Year (2010)	**15,222,861.00**

Considering that the 2010 claim for the issuance of a TCC is only for the amount of Php15,222,861.00, the "Prior Year's Excess Credits other than MCIT" which can be claimed for the next taxable year/quarter (2011) is limited to the amount of Php30,542,016.20, computed below:

Tax Overpayment (2010)	45,764,877.20
Less: Amount claimed to be issued a TCC (2010)	(15,222,861.00)
Prior Year's Excess Credits other than MCIT claimable in 2011	**30,542,016.20**

An examination of its subsequent Quarterly and Annual Returns for the year 2011[20] shows that only the amount of Php30,542,015.83 was carried over to the subsequent taxable periods:

Tax Due (Normal Corporate Income Tax)		14,165,000.32
Less: Unexpired Excess of Prior Year's MCIT over Normal Income Tax Rate		0.00
Balance		14,165,000.32
Less: Tax Credits/Payments		
Prior Year's (2010) Excess Credits other than MCIT	(30,542,015.83)	
Creditable Tax Withheld for the Year (2011)	(14,724,125.40)	(45,266,141.23)
Tax Payable/(Overpayment)		**(31,101,140.91)**

[20] *Id.*, pp. 454-462, 474-479.

Thus, the claimed creditable withholding taxes for year 2010 in the amount of Php15,222,861.00 was clearly not carried over and applied against any income tax liability.

Petitioner failed to prove that the income from which the taxes were withheld was included in its 2010 Annual Income Tax Return's gross income.

Petitioner is not entitled to the unutilized/excess creditable withholding tax in the amount of Php15,222,861.00 for taxable year 2010.

The pertinent provision regarding claims for refund or issuance of TCCs is Section 229 of the 1997 NIRC, as amended, *viz.*:

> "SECTION 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."

In the case of *United International Pictures AB v. Commissioner of Internal Revenue*[21] ("United International"), the Supreme Court ("SC") ruled that in claiming for the refund of excess creditable withholding tax, the taxpayer must show compliance with the following basic requirements, to wit:

> 1. The claim for refund was filed within two (2) years, as prescribed under Section 229 of the 1997 NIRC;
>
> 2. The income upon which the taxes were withheld were included in the return of the recipient, as provided in Section 10, RR No. 06-85; and
>
> 3. The fact of withholding is established by a copy of a 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, covered by Section 10, RR No. 06-85.

Anent the first condition, the two (2)-year prescriptive period for filing a claim for refund of excess income tax paid/withheld commences from the date of filing of the relevant final adjustment return.[22]

In the present case, the claim for excess creditable withholding taxes covers the taxable year 2010, for which petitioner filed its Annual ITR on April 15, 2011. Counting therefrom, petitioner had until April 15, 2013 within which to file its administrative and judicial claims.

Clearly, petitioner's administrative claim filed on March 4, 2013 through an "Application for Tax Credits/Refund" (BIR Form No. 1914)[23], with the attached "Application for Issuances of Tax Credit Certificates for Taxable Year 2010"[24]; and the present Petition for Review filed before this Court on April 12, 2013, were both filed within the two (2)-year prescriptive period.

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[21] G.R. No. 168331, October 11, 2012, 684 SCRA 23.
[22] *ACCRA Investments Corporation v. Court of Appeals*, G.R. No. 96322, December 20, 1991, 204 SCRA 957.
[23] *Records*, p. 480.
[24] *Id.*, pp. 481-483.

Anent the second condition, the Court-commissioned Independent Certified Public Accountant ("ICPA"), Navarro Amper & Co., through its Tax Partner, Atty. Fredieric B. Landicho, noted the following findings in its Report dated November 18, 2013:

Table A.1

Total Income Reported in 2010 ITR	**P**	**119,567,041.00**
Add (Deduct) Discrepancies		
Income/collections not subject to withholding taxes		(7,736,531.81)
Income accrued in 2010		7,340,752.15
Unsupported CWTs (for collection)		(3,424,748.82)
2010 Income Uncollected as of Dec. 31, 2010		(3,191,046.54)
Collection of prior years' income with CWT in 2010		5,773,298.27
2010 CWTs claimed twice		9,867,625.27
With 2010 CWTs recorded as other income in 2010		42,000.00
Other items		36,518.29
Total Income Reported in 2010 CWT	**P**	**119,394,047.81**

Table A.2

			CWT	Exhibit
a)	CWTs where Certificates of CWT provided were not original	P	1,830.00	P-21.1 to P-21.4
b)	CWTs where Certificates of CWT provided were claimed twice		51,278.27	P-22.1 to P-22.13
c)	CWTs supported with original CWTs and OR with the related Income recorded in 2010 Books		12,095,607.56	P-23.1 to P-23.616
d)	CWTs supported with original CWTs and OR with the related Income recorded in 2009 Books		388,409.32	P-24.1 to P-24.18
e)	CWTs supported with Original CWTs with no ORs and the related income not recorded in 2010 Books		4,005.00	P-25.1 to P-25.4
f)	CWT partly valid and partly with exception, broken down as follows:			
	*Recorded in 2010 Books with related OR dated 2010		1,159,884.50	
	*Recorded in 2010 Books with OR not yet provided		80,707.66	
	*Not recorded in 2010 Books with OR not yet provided		21,692.25	P-26.1 to P-26.85
	*Not recorded in 2010 Books with OR Dated 2010		417.96	
	*Recorded in 2009 Books with OR dated 2010		495,641.73	
	*Recorded in 2010 Books with OR dated 2009		780.75	
	*Recorded in 2010 Books with OR dated 2011		585,925.55	
h)	Not supported with CWT Certificates		336,680.04	
TOTAL CREDITABLE WITHHOLDING TAXES		**P**	**15,222,860.59**	

However, upon careful examination of all exhibits and documents presented, the recorded sales or receipts and other income *per* General Ledger for the period of the claim do not reconcile with the amount of sales or receipts or other income *per* Annual ITR and the Related Income of the computed Creditable Withholding Taxes for the period of the claim, as shown in the tables below:

Table B.1[25]

Account no.	Per GL Account Title	2010
400.01001.00	Project Management Fee Income	3,018,395.46
400.01002.00	Property Management Fee Income	26,427,814.75
400.01003.00	Tenancy Administration Fee	19,113,168.72
400.01004.00	Marketing Fee Income	34,233,301.61
400.01006.00	Secondment Fees	2,133,363.98
400.02001.00	Office Rental Income	22,200,423.96
400.02002.00	Parking Rental Income	1,477,232.29
400.02005.00	Storage Rent Income	750,588.14
400.02006.00	Auxiliary Area Rent Income	3,586,267.96
400.02007.00	Ad Spaces Rental Income	1,023,315.68
400.02008.00	Recovery of Condominium Dues	7,736,531.81
400.02010.00	Rental Income	81,891.73
400.02011.00	Other Rent Income - Security Deposit	226,619.32
400.03001.00	Interest Income on S/A	49,427.25
400.03002.00	Interest Income on S/A $	999.66
400.03004.00	Interest Income - ST Investments	2,752,210.19
400.03006.00	Interest on Employees' Loans	253,879.11
400.03007.00	Other Interest Income	229,093.58
		125,294,525.20
OTHER INCOME:		
400.04001.00	Sale of TCI Shares	5,926,250.00
400.04003.00	Dividend Income	5,119,357.05
400.04005.00	Realized FOREX Gain	14,294.83
400.04006.00	Unrealized FOREX Gain	26,508.45
400.04007.00	Other Income	11,103,849.42
		22,190,259.75
TOTAL		**147,484,784.95**

Table B.2

Per Annual Income Tax Return		2010
		Exhibit P-33
Sales/Revenues/Receipts/Fees	P	119,567,041.00
Non-Operation & Taxable Other Income		2,743,357.00
Total Income for 2010	P	122,310,398.00

[25] *Exhibit* "P-28".

Table B.3

Per BIR Form 2307 (Exhibits P-23.1 to P-23.616)			
Nature of Income	ATC	Income Payment	CWT
Rentals- real/personal properties, poles, satellites & transmission facilities, billboards - Corporate	WC 100	22,891,099.85	1,144,555.13
Professionals/ talent fees paid to juridical persons - If the current year's gross income exceeds P 720,000	WC 011	71,496,468.93	10,724,470.33
Management and technical consultants paid to juridical person - If the currents year's gross income exceeds P720,000	WC 051	1,503,547.39	225,532.11
Other recipients of talent fees - If the current year's gross income exceeds P 720,000	WI 081	7,000.00	1,050.00
TOTAL		95,898,116.17	12,095,607.57

In sum, gross income *per* CWT is Php95,898,116.17 and *per* ITR is Php122,310,398.00. Hence, there is a difference of Php26,412,281.83. A similar issue has already been ruled upon by the SC in the *United International*[26] case, wherein the taxpayer's claim for tax refund was denied for failure of the amount of income payments in the ITR to correspond and tally to the amount indicated in the certificate withholding, since there was no possible and efficacious way to verify the precise identity of the income payments in the ITR.

Similarly, in the present case, the Court was unable to determine the items which make up the gross income *per* ITR since petitioner failed to present sufficient proof of its components and the ICPA report did not provide any additional information thereof.

Considering that petitioner failed to prove that the income payments subjected to withholding tax were declared as part of the gross income, the second requisite for the claim for refund or issuance of a TCC was not met. Hence, there is no need to determine whether the third condition is present.

This Court has consistently ruled that actions for tax refund, as in the instant case, are in the nature of a claim for exemption. The law is not only construed in *strictissimi juris* against the taxpayer, the pieces

[26] *Supra* note 21.

of evidence presented entitling a taxpayer to an exemption are also strictly scrutinized and must be duly proven.[27]

WHEREFORE, in view of the foregoing, the Petition for Review, filed by petitioner Philam Properties Corporation, claiming for a refund or issuance of a TCC of its excess/unutilized creditable withholding taxes amounting to Fifteen Million Two Hundred Twenty-Two Thousand Eight Hundred Sixty One Pesos (Php15,222,861.00) for the period starting from January 1 to December 31, 2010, is hereby **DENIED** for insufficiency of evidence.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

ESPERANZA R. FABON-VICTORINO
Associate Justice

Ma. Belen

MA. BELEN M. RINGPIS-LIBAN
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

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[27] *Philippine National Bank v. Commissioner of Internal Revenue*, CTA EB Case No. 859, February 4, 2014 *citing Atlas Consolidated Mining and Development Corporation v. Commissioner of Internal Revenue*, G.R. No. 159490, February 18, 2008, 456 SCRA 150.

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice