REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

****

ANSCOR INSURANCE BROKERS, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 7192

Members:

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

Promulgated:

JUL 27 2007; 9:30 Am

x - x

DECISION

BAUTISTA, *J.*:

Before Us is a Petition for Review seeking refund or issuance of a tax credit certificate in the total amount of P946,381.00 allegedly representing petitioner's excess/unutilized creditable withholding taxes (CWT) for calendar year 2002.

Petitioner, Anscor Insurance Brokers, Inc., is a domestic corporation duly organized and existing under Philippine laws, with principal office at 7th Floor, Pacific Star Building, Gil Puyat cor. Makati Avenues, Makati City. Petitioner is engaged in the business of insurance brokerage, and as such, receives commission income from various insurance companies. It is registered with the Bureau of Internal Revenue (BIR) in accordance with Section 236 of the 1997 National Internal Revenue Code, as amended (1997 NIRC), with BIR Certificate of Registration bearing RDO Control No. 9RC0000136938 and Tax Identification Number (TIN) 049-000-106-858.[1]

Respondent is the duly appointed Commissioner of Internal Revenue 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 with principal office located at the BIR National Office Building, BIR Road, Diliman, Quezon City.[2]

On April 10, 2003, petitioner filed its Annual Corporate Income Tax Return (Form 1702)[3] for calendar year 2002, which reported a net loss of P43,902,556.00 and Minimum Corporate Income Tax (MCIT) liability of P296,902.00, equivalent to 2% of its total gross income of P14,845,085.00. Said ITR also reflected the amount of P681,626.00[4] as the creditable tax withheld for the First Three Quarters and the amount of P264,755.00[5] for the Fourth Quarter, or a total creditable tax withheld of P946,381.00. The various Certificate of Creditable Tax Withheld at Source issued by different payors indicate that the sum so withheld represents income payments made to certain brokers and agents.

Petitioner's total tax credits/payments for calendar year (CY) 2002 as reflected in its 2002 Annual ITR is in the amount of P3,298,328.00.[6] This includes the prior year's excess credits amounting to P2,351,947.00.[7] The withholding tax credits for the year, amounting to P3,298,328.00 was then applied against

[1] Paragraphs 1, 3 and, 4, Joint Stipulation of Facts and Issues, Records, page 55
[2] Par. 2, Joint Stipulation of Facts and Issues, Records, page 55
[3] Exhibit "A"
[4] Exhibit "A-5", line 26C
[5] Exhibit "A-6", line 26D
[6] Exhibit "A", line 26G
[7] Exhibit "A-4", line 26A

petitioner's MCIT due for said taxable year of P296,902.00[8] which resulted in an excess or unutilized withholding tax credits for 2002 in the sum of P3,001,426.00[9]. For the overpayment made, petitioner, in its 2002 Annual ITR, indicated its intention to claim a refund of its excess/unutilized CWT by marking the box "To be Refunded".

Of the overpayment of P3,001,426.00, petitioner then carried over as prior years excess credit the amount of P2,055,046[10] to the succeeding taxable year 2003 as shown in petitioner's 2003 Annual ITR[11] leaving an excess or unutilized withholding tax credits of P946,380.00.

On March 29, 2005, petitioner filed BIR Form No. 1914 (Application for Tax Credits/Refunds)[12] and a formal letter reiterating its claim for refund of its excess/unutilized CWT for 2002 in the amount of P946,381.00 with the BIR Revenue District Office (RDO) No. 49.[13]

In order to toll the running of the prescriptive period provided under Section 204(C) and 229 of the National Internal Revenue Code (NIRC), as amended, petitioner filed this instant Petition for Review on April 5, 2005.

Respondent, in his Answer, filed via registered mail on June 9, 2005, averred the following Special and Affirmative Defenses:

> "4. Petitioner failed to demonstrate that the tax subject of the case at bar was erroneously or illegally collected.
>
> 5. Taxes paid and collected are presumed to have been made in accordance with law and regulations, hence, not refundable.

---

[8] Exhibit "A", line 23
[9] Exhibit "A-7"
[10] Exhibit "B-3"
[11] Exhibit "B"
[12] Annex "B", Petition for Review
[13] The authenticity and due execution of petitioner's administrative claim for refund was stipulated upon by the parties on December 12, 2005

6. In an action for tax refund/credit, the burden of proof is on the taxpayer to establish its right to refund and failure to adduce sufficient proof is fatal to the action for tax refund/credit.

7. It is incumbent upon the petitioner to show that it has complied with the provisions of Section 204 in relation to Section 229 of the Tax Code, as amended.

8. Claims for refund are construed strictly against the claimant for the same partakes the nature of exemption from taxation (Commissioner of Internal Revenue vs. Ledesma, G.R. No. L-13509, January 30, 1970, 31 SCRA 95) and as such, they are looked upon with disfavor (Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 121)."[14]

During trial, petitioner presented testimonial and documentary evidence in support of its claim, while respondent submitted the case for decision based on the pleadings. The Court directed the parties to file their respective Memoranda within thirty (30) days from February 20, 2007. Upon receipt of petitioner's Memorandum *sans* respondents Memorandum, the instant Petition was submitted for decision on May 11, 2007.

The parties have jointly stipulated on the following issues[15] for resolution of this Court, to wit:

"1. Whether or not petitioner has an unutilized/excess creditable withholding tax in the amount of P946,381.00 at the end of CY 2002;

2. Whether or not petitioner's unutilized or excess withholding taxes amounting to P946,381.00 as of the end of CY 2002 are duly substantiated by documentary evidence;

3. Whether or not the income from which the subject creditable taxes were withheld were reported as part of petitioner's income in its ITR for CY 2002; and

[14] Records, pages 21-22
[15] Joint Stipulation of Facts and Issues, Records, pages 57-58

4. Whether or not petitioner's unutilized creditable withholding taxes for the CY 2002 were applied against its income tax liability in the succeeding taxable year/s."

In sum, the crux of the issues is whether or not petitioner is entitled to refund or tax credit of its alleged unutilized creditable withholding taxes for calendar year 2002 on the strength of the evidence presented.

For a taxpayer to be entitled to a claim for refund or issuance of a tax credit certificate of excess/unapplied creditable withholding tax at source, it must satisfy the following requirements:

1. That the claim for refund was filed within the two-year prescriptive period pursuant to Section 230 of the Tax Code, as amended (now Section 229 of the 1997 NIRC, as amended);

2. That the fact of withholding is established by a copy of 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 the income upon which the taxes were withheld was included as part of the gross income declared in the income tax return of the recipient.[16]

Section 229 of the 1997 NIRC, as amended, provides that the claim for refund both in the administrative and judicial levels must be filed within two (2) years from the date of payment of the tax. Section 229 reads as:

> "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.

[16] Citibank N.A. vs. Court of Appeals and Commissioner of Internal Revenue, 280 SCRA 459; Section 2.58, Revenue Regulations No. 2-98, as amended

> 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."

The Petition for Review filed on April 5, 2005 was well within the time prescribed by the afore-quoted provision of law. The two-year period commenced on April 10, 2003, which was the date when petitioner filed its 2002 Annual ITR.[17] Clearly, the first requirement has been satisfied.

Anent the second requirement, records showed that petitioner declared in its 2002 Annual ITR withholding tax credits in the amount of P3,298,328.00 inclusive of the amount of P946,381.00, representing petitioner's CWT for all four quarters of calendar year 2002 and prior year's excess tax credits in the amount of P2,351,947.00. Out of the total withholding tax credits of P3,298,328.00, petitioner utilized the amount of P296,902.00 to answer for its MCIT liability for taxable year 2002, leaving an excess withholding tax credits of P3,001,426.00 consisting of CWT for 2002 in the amount of P946,381.00 and the remainder of the prior year's excess tax credits of P2,055,045.00. Consequently, the prior year's excess tax credits will have to be reduced first to answer for any current tax liabilities before the current year's withheld amounts can be applied. Thus, the amount of P2,055,045.00 was then carried over as prior year's excess tax credit to the succeeding taxable year 2003 as shown in petitioner's 2003 Annual ITR.[18]

---

[17] Commissioner of Internal Revenue vs. Philippine American Life Insurance Co., the Court of Tax Appeals, G.R. No. 837736, January 15, 1992; ACCRA Investment Corporation vs. The Honorable Court of Appeals, Commissioner of Internal Revenue and the Court of Tax Appeals, G.R. No. 96322, December 20, 1991
[18] P2,055,046 in Exhibit "B"

As to the remaining excess and unutilized CWT as of 2002 in the amount of P946,381.00, petitioner submitted various Certificates of Creditable Tax Withholding at Source, for the year ended December 31, 2002, issued by various payors showing the amount paid and the income tax withheld from that amount, to establish the fact of withholding. The details of which are as follows:

Exhibit	Payor	Tax Base	Rate	Amount
C, C-1, C-2, C-3	Philam Insurance Company	P 667,663.20	10%	P 66,766.32
D	Asia Traders Insurance Corp.	11,399.60	10%	1,139.96
E	Asia United Insurance	698.70	10%	69.87
F, F-1	Berkley Int'l. Life Insurance Co.	35,775.10	10%	3,577.51
G, G-1	Blue Cross Insurance Co.	31,418.60	10%	3,141.86
H	Commonwealth Insurance Co.	793.90	10%	79.39
I	Insurance Co. of North America	37,426.90	10%	3,742.69
J, J-1, J-2, J-3	Federal Phoenix Assurance Co.	305,073.10	10%	30,507.31
K	First Guarantee Life Assurance	7,128.00	10%	712.80
L	First Lepanto-Taisho	2,804.50	10%	280.45
M, M-1	Generali Philippines	77,997.60	10%	7,799.76
N	Insular Life Health Care	412.80	10%	41.28
O, O-1	Insular & HIH General Insurance	11,309.30	10%	1,130.93
P	Insurance of the Philippine Island	637.80	10%	63.78
Q, Q-1	MAA General Insurance	77,601.40	10%	7,760.14
R	Malayan Insurance Company	2,200,516.60	10%	220,051.66
S	Mercantile Insurance Company	7,495.00	10%	749.50
T	Malayan Zurich Insurance Co.	2,675.20	10%	267.52
U, U-1	NicPhil Insurance Inc.,	42,535.10	10%	4,253.51
V	CGU International Insurance	2,283,724.50	10%	228,372.45
W	Oriental Assurance Corporation	63,545.10	10%	6,354.51
X, X-1, X-2	Phil. British Assurance	40,571.70	10%	4,057.17
Y, Y-1, Y-2, Y-3	Phil. Charter Insurance	167,866.80	10%	16,786.68
Z, Z-1, Z-2, Z-3	Equitable PCI Life Insurance Corp	64,004.00	10%	6,400.40
AA	ATR Professional Life Assce Corp	347,884.10	10%	34,788.41
BB, BB-1, BB-2, BB-3	Pioneer Insurance & Surety Corp.	798,617.10	10%	79,861.71
CC, CC-1, CC-2	Pioneer Allianz	49,541.80	10%	4,954.18
DD	Philippine AXA Life Insurance Corp.	13,534.90	10%	1,353.49
EE, EE-1, EE-2	Philippine Phoenix Surety Insurance	14,864.40	10%	1,486.44
FF, FF-1, FF-2, FF-3	Mapfre Asian Insurance Corp.	547,161.70	10%	54,716.17
GG, GG-1, GG-2, GG-3	Prudential Guarantee & Insurance	99,474.40	10%	9,947.44
HH	Seaboard-Eastern Insurance Co.,	95,804.60	10%	9,580.46
II, II-1, II-2	United Coconut Planters Life	1,266,240.40	10%	126,624.04
JJ	Paramount Life & Gen. Insurance	89,612.30	10%	8,961.23
TOTAL		**P9,463,810.20**	10%	**P946,381.02**

From the said documents, the Court finds that the withheld amounts which pertain to the ten percent (10%) of the commissions or of the amounts paid to brokers and agents were duly remitted to the BIR and that the same are considered creditable withholding taxes under Section 57(B) of the Tax Code, thus, satisfying the second requisite.

As regards the third requirement, petitioner presented before this Court its Accountant, Ms. Ma. Mia M. Cabotage to testify that the income from which these creditable taxes were withheld were reported as part of petitioner's gross revenues in its 2002 Annual ITR, to show that it declared in its return the income related to the creditable withholding taxes of P946,381.00. In her Sworn Statement marked as Exhibit "KK", she explained that Item No. 14C of petitioner's 2002 Annual ITR (Exhibit "A") shows that the company had gross revenues of P9,707,308.00. The Schedule of Creditable Tax Withheld for 2002[19], on the other hand, shows that the commission income which were made subject to 10% CWT, if added, would amount to P9,463,810.20, thereby giving rise to CWT of P946,381.02. Considering that the amount of gross revenues reported in petitioner's 2002 Annual ITR is greater than the total amount of commission income made subject to CWT, it is clear that all of the commissions that were made subject to 10% expanded withholding taxes were reported as part of petitioner's gross revenues in its 2002 Annual ITR. A scrutiny of petitioner's 2002 Annual ITR showed that there was no falsity in the preparation of the same.

In the case of **Citibank, N.A. vs. Court of Appeals and the Commissioner of Internal Revenue,**[20] the Supreme Court relied on the accuracy of the ITR of the taxpayer and emphasized therein that:

> "In general, there is no disagreement that a claimant has the burden of proof to establish the factual basis of his or her claim for tax credit or refund. Tax refunds, like exemptions, are construed strictly against the taxpayer. The mechanics of a tax refund is provided in Rev. Reg. No. 13-78:

[19] Exhibit "A-10"
[20] G.R. No. 107434, October 10, 1997

> Section 8. *Claims for tax credit or refund.* – Claims for tax credit or refund of income deducted and withheld on income payments shall be given due course only when it is shown on the return that the income payment received was declared as part of the gross income and the fact of withholding is established by a copy of the statement, duly issued by the payor to the payee (BIR Form No. 1743-A) showing the amount paid and the amount of tax withheld therefrom."

All these prove that the income of petitioner upon which the taxes were withheld was included in its return; hence, complying with the third requirement.

We now proceed to the determination of whether or not petitioner has unutilized creditable withholding tax in the amount of P946,381.00 as of December 31, 2002, arising from its commissions, which is a proper subject of a claim for refund or issuance of tax credit certificate pursuant to Section 76 of the Tax Code, as amended.

Section 76 of the 1997 National Internal Revenue Code, as amended, provides:

> "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 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."

Section 76 offers two (2) options to a taxable corporation, namely: (1) to carry-over the excess credit; or (b) to be credited or refunded with the excess amount paid (either in the form of cash or credit certificate). These two options under Section 76 are alternative in nature. The choice of one precludes the other.[21]

In its 2002 Annual ITR for calendar year ending December 31, 2002, petitioner indicated therein its intention to be refunded of its unutilized creditable withholding tax. This fact is evidenced by an "x" mark in the box corresponding to the choice "To be refunded"[22] in its 2002 Annual ITR. In its ITR for the succeeding year 2003, petitioner applied P2,055,046.00[23] of its prior year's excess credit to its existing income tax liability, leaving an unutilized excess CWT of P946,380.00.

In order to prove that no amount of the subject claim was utilized to pay for its 2002 MCIT liability of P296,902.00, petitioner presented various Certificates of Creditable Tax Withheld at Source for 2001 which were summarized in petitioner's *Schedule of Creditable Withholding Tax Certificates for 2001.*[24] Although the certificates showed creditable withholding taxes totaling P296,903.06, the Court cannot ascertain whether or not the said documents represent petitioner's unutilized excess creditable withholding taxes for taxable year 2001. As can be seen in its 2001 ITR,[25] petitioner had an excess tax credit of P2,351,947.00, arrived at by deducting the income tax liability of P1,158,181.00 from the accumulated tax credits of P3,510,128.00 representing the sum of its prior year's excess credits of P2,690,206.00 and creditable taxes withheld for 2001 in the amount of P819,922.00. Petitioner should have presented withholding tax certificates supporting the total tax credits of P3,510,128.00 reported in its 2001 ITR, for the Court to verify with certainty that the creditable withholding taxes reflected in the 2001 withholding tax certificates used by petitioner to pay off its 2002 MCIT liability of P296,902.00 pertained to the excess tax credits of P2,351,947.00 as of December 31, 2001. For failure to

---

[21] Philam Asset Management, Inc. vs. Commissioner of Internal Revenue, G.R. Nos. 156637 and 162004, December 14, 2005
[22] Exhibit "A-8"
[23] Exhibit "B-3"
[24] Exhibit "LL"
[25] Exhibit "DDD"

substantiate that it had sufficient prior year's excess credits against which the 2002 MCIT liability of P296,902.00 maybe offset or credited, the same shall be deducted from petitioner's claim of P946,380.00. Hence, petitioner shall be entitled to refund or issuance of a tax credit certificate only in the reduced amount of P649,478.00, computed as follows:

Minimum Corporate Income Tax Due	P 296,902.00
Less: Substantiated Creditable Taxes Withheld	946,380.00
Refundable Excess Creditable Taxes Withheld	**P 649,478.00**

IN VIEW OF THE FOREGOING, the subject Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, respondent is **ORDERED TO REFUND** or in the alternative, **ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the amount of **SIX HUNDRED FORTY NINE THOUSAND FOUR HUNDRED SEVENTY EIGHT PESOS (P649,478.00)** representing petitioner's excess/unutilized creditable withholding tax for calendar year 2002.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

(On Leave)
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