REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	CTA EB No. 1255 (CTA CASE No. 8626)
- versus -	Members: DEL ROSARIO, PJ CASTAÑEDA, JR. BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, COTANGCO-MANALASTAS, and RINGPIS-LIBAN, JJ.
DOOSAN HEAVY INDUSTRIES & CONSTRUCTION CO. LTD. (PHILIPPINE BRANCH), Respondent.	Promulgated: MAY 27 2016 3:0 pm

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DECISION

***Fabon-Victorino, J.*:**

Before the Court is the Petition for Review dated January 5, 2015 filed by the Commissioner of Internal Revenue (CIR), assailing the Decision dated September 17, 2014, granting respondent Doosan Heavy Industries & Construction Co. Ltd.'s claim for refund of excess and unutilized creditable withholding taxes (CWT) for the year 2010 in the amount of P9,325,323.00, and the Resolution dated December 1, 2014, denying her Motion for Reconsideration, both rendered by the Court in Division.

The following facts of the case are undisputed.

Petitioner is the Commissioner of Internal Revenue (CIR), with authority to act and approve claims for refund or tax credit as provided by law. She holds office at the BIR National Office Building, BIR Road, Diliman, Quezon City.

Respondent, on the other hand, is a Korean company which established a Branch in the Philippines, with principal office at KEPCO Power Plant, Colon, City of Naga, Cebu. It was issued a license by the Securities and Exchange Commission (SEC) on April 4, 2008 to transact business in the country. Its commercial operation commenced in April of 2008.

On April 13, 2011, respondent filed with the BIR its Annual Income Tax Return (ITR) for the year 2010 which showed a net loss of P477,968,764.00 and an overpayment of income tax amounting to P9,325,323.00. In the said Annual ITR, respondent marked the option to be issued a tax credit certificate (TCC).

On January 29, 2013, respondent filed with the Bureau of Internal Revenue (BIR) a claim for issuance of TCC in the amount of P9,325,323.00, representing its excess and unutilized CWT for the year 2010.

On April 4, 2013, respondent filed a Petition for Review before the Court in Division.

After trial, the Court in Division rendered the assailed Decision dated September 17, 2014, the dispositive portion of which reads as follows:

> "WHEREFORE, premises considered, the instant Petition for Review is hereby GRANTED. Accordingly, (petitioner) Commissioner of Internal Revenue is hereby ordered to refund or to issue a tax credit certificate in favor of (respondent) DOOSAN HEAVY INDUSTRIES & CONSTRUCTION CO. LTD. (PHILIPPINE BRANCH) in the amount of NINE MILLION THREE HUNDRED TWENTY FIVE THOUSAND THREE HUNDRED TWENTY THREE PESOS (P9,325,323.00), representing its excess and unutilized creditable withholding taxes for the year ending December 31, 2010.

SO ORDERED."

The assailed Decision dated September 17, 2014 was affirmed by the Court in Division when it denied for lack of merit petitioner's Motion for Reconsideration in the Resolution dated December 1, 2014.

Firm with her position, petitioner filed this appeal before the Court *En Banc* to assail the adverse ruling of the Court in Division.

Petitioner primarily invokes non-exhaustion of administrative remedies on the part of respondent justifying the denial of its claim for refund. Allegedly, respondent failed to submit all the required documents for audit enumerated in Revenue Memorandum Order (RMO) No. 53-98. Respondent likewise did not comply with the provisions of Revenue Regulations (RR) No. 2-2006 which requires, among others, the submission of the "Summary Alphalist of Withholding Agents of Income Payments Subjected to Withholding Tax (SAWT) and Monthly Alphalist of Payees (MAP). Since it was only before the Court that respondent submitted its evidence, respondent, in effect, failed to exhaust administrative remedies. Consequently, no claim for refund was deemed filed at the administrative level.

Moreover, petitioner was deprived of the opportunity to determine the merit of the claim for refund at her level since respondent filed its administrative claim on January 29, 2013 and barely three months thereafter or on April 4, 2013, filed its Petition for Review with the Court. This, according to petitioner, is synonymous to failure to exhaust administrative remedies.

For failure to exhaust administrative remedies, the Court cannot take cognizance of respondent's claim as matters not raised in the administrative level cannot be raised for the first time on appeal. Further, tax refunds are construed strictly against the taxpayer and in favor of the taxing power.

By way of comment, respondent points out that there is nothing in law or jurisprudence that requires a taxpayer to comply with the requirements under RMO No. 53-98 and RR No. 2-2006 for the claim for refund of excess and unutilized CWT to prosper.

Further, petitioner did not require respondent to submit additional documents and simply allowed the two-year prescriptive period mandated in Sections 204 and 229 of the NIRC to lapse without taking any action on the claim for refund, prompting respondent to seek judicial intervention. This disposition negates petitioner's stance that the documents identified in RMO No. 53-98 and RR No. 2-2006 are mandatory.

Jurisprudence has it that there are only three (3) requirements for a claim for refund of CWT to prosper, namely, that the claim is filed within 2 years from the payment of the tax, that it is shown on the return of the recipient that the income payment received was declared as part of the gross income, and that the fact of withholding is established by a copy of the statement duly issued by the payor to the payee showing the amount paid and the amount of the tax withheld therefrom.

Moreover, once jurisdiction is acquired by the Court, the Rules of Court and the Revised Rules of the Court of Tax Appeals shall apply and govern the proceedings in the case which shall be litigated *de novo.* Hence, it is before the Court that respondent must prove the merit of its claim.

As to petitioner's claim that she was not accorded sufficient time to determine the merit of the administrative claim for refund, respondent points out that Sections 204 and 229 of the NIRC are clear that the claim for refund must be filed within the two-year prescriptive period. Respondent merely tried to preserve its right to appeal by filing its judicial claim for refund within the two-year prescriptive period and only after it filed its administrative claim with petitioner.

And contrary to petitioner's protestation, respondent complied with RMO No. 53-98 and RR No. 2-2006. Attached to respondent's written claim received by BIR RDO No. 83, were the documents required under RMO No. 53-98. Respondent as well submitted various Summary Alphalist of Withholding Taxes (SAWT) in the returns submitted to the

BIR. They were presented in evidence in the Court and marked as Exhibits P-1-10, P-3-5, P-4-5, and P-5-6-1.

THE RULING OF THE COURT

The issue of submission of documents in the administrative claim for refund is certainly not new. Time and again this Court has ruled that the Court of Tax Appeals is not precluded from accepting respondent's evidence assuming these were not presented at the administrative level. Cases filed in the Court of Tax Appeals are litigated *de novo*. Thus, the taxpayer-claimant must prove every minute aspect of its case by presenting, formally offering and submitting to the Court all evidence in support of its claim.[1]

Only those pieces of evidence formally offered and admitted by the Court shall be the basis of its decision. Documents presented or not presented in the administrative level shall have no bearing in the rendition of the decision by the Court.

In the instant case, the Court found respondent's evidence sufficient as to justify the grant of the refund sought. In fact, petitioner never refuted the sufficiency of the evidence presented before the Court during trial by respondent.

Let it also be stressed that the appeal before the Court was due to petitioner's inaction on respondent's claim for refund. It has been held that when what is on appeal is the inaction of the CIR, there is in effect no decision for review. As a result, the Court may give credence to all the evidence presented by the taxpayer, including those not presented at the administrative level. The Supreme Court explains the matter in this wise:

> "In the present case, however, Total Gas filed its judicial claim due to the inaction of the BIR. Considering that the administrative claim was never acted upon; there was no decision for the CTA to review on appeal per se. Consequently, the CTA may give credence to all evidence

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[1] Commissioner of Internal Revenue vs. Philippine National Bank, G.R. No. 180290, September 29, 2014

> presented by Total Gas, including those that may not have been submitted to the CIR as the case is being essentially decided in the first instance. The Total Gas must prove every minute aspect of its case by presenting and formally offering its evidence to the CTA, which must necessarily include whatever is required for the successful prosecution of an administrative claim."[2]

While the cited case pertains to a claim for refund of excess and unutilized input VAT, there is no reason not to apply the same to this case.

Moreover, in the same case, it was specifically held that even assuming that a taxpayer failed to submit complete documents as enumerated in RMO No. 53-98, such is not fatal to a claim for refund or tax credit. The Final Arbiter elaborated further, thus:

> "As can be gleaned from the above, RMO No. 53-98 is addressed to internal revenue officers and employees, for purposes of equity and uniformity, to guide them as to what documents they may require taxpayers to present **upon audit of their tax liabilities.** Nothing stated in the issuance would show that it was intended to be a benchmark in determining whether the documents submitted by a taxpayer are *actually* complete to support a claim for tax credit or refund of excess unutilized excess VAT.
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> x x x x x x x x x
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> As explained earlier and underlined in *Team Sual* above, taxpayers cannot simply be faulted for failing to submit the complete documents enumerated in RMO No. 53-98, absent notice from a revenue officer or employee that other documents are required. Granting that the BIR found that the documents submitted by Total Gas were inadequate, it should have notified the latter of the inadequacy by sending it a request to produce the necessary documents in order to

[2] Pilipinas Total Gas, Inc. vs. Commissioner of Internal Revenue, G.R. No. 207112, December 8, 2015

> make a just and expeditious resolution of the claim.
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> Indeed, a taxpayer's failure with the requirements listed under RMO No. 53-98 is not fatal to its claim for tax credit or refund of excess unutilized excess VAT. This holds especially true when the application for tax credit or refund of excess unutilized excess (sic) VAT has arrived at the judicial level. After all, in the judicial level or when the case is elevated to the Court, the Rules of Court governs. Simply put, the question of whether the evidence submitted by a party is sufficient to warrant the granting of its prayer lies within the sound discretion and judgment of the Court."[3]

Evident from the foregoing tenet that RMO No. 53-98 merely states what documents the BIR may require from taxpayers when making an audit of any tax liability. It was never meant to be the benchmark in determining whether the documents submitted by a taxpayer are actually complete to support a claim for tax credit or refund.

Obviously, the BIR utilizes RMO No. 53-98 to defeat respondent's claim for refund or credit. It cannot be denied that it could be at times impossible for the taxpayer to submit all the documents listed in RMO No. 53-98. Some may even be inapplicable depending on the type of tax subject of the claim for refund or credit. What is clear is that RMO No. 53-98 is for audit purposes, and it merely enumerates the documents that may be required by the BIR for such purpose. In any event, there must be a request or directive from the BIR to the taxpayer for the submission of additional documents in support of the claim. The same principle applies to the provisions of RR No. 2-2006.

As to the short span of time between the filing of the claim at the administrative level and the appeal with the CTA, Sections 204 and 229 of the NIRC, as amended, are instructive, thus:

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[3] Pilipinas Total Gas, Inc. vs. Commissioner of Internal Revenue, G.R. No. 207112, December 8, 2015

SEC. 204. **Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.** – The Commissioner may –

x x x x x x x x x

(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.

x x x x x x x x x

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 without authority, 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: x x x.

Sections 204 and 229 of the NIRC pertain to the refund of erroneously or illegally collected taxes. Section 204 applies to administrative claims for refund, while Section 229 to judicial claims for refund. In both instances, the taxpayer's claim must be filed within two (2) years from the date of payment of the tax or penalty. However, Section 229 of the NIRC further states the condition that a judicial claim for refund may not be maintained until a claim for refund or credit has been duly filed with the Commissioner.[4] Further, the prescriptive period provided is mandatory regardless of any supervening cause that may arise after payment.[5]

Therefore, the filing of the claim with petitioner is a pre-requisite to the filing of the Petition for Review with the Court. It is likewise mandatory that the Petition for Review be filed with the Court within two (2) years from the payment of the tax being refunded. Owing to the mandatory nature of the 2-year prescriptive period, respondent cannot be faulted for filing its Petition for Review in order to preserve its right to appeal to this Court. The only important consideration is that petitioner is given the opportunity to evaluate the merits of the claim.

Significantly, and as earlier observed by the Court, respondent was able to establish its entitlement to the refund sought having satisfied all the requisites for its grant. These requisites have been explained as follows:

> "There are three essential conditions for the grant of a claim for refund of creditable withholding income tax, to wit: (1) the claim is filed with the Commissioner of Internal Revenue within the two-year period from the date of payment of the tax; (2) it is shown on the return of the recipient that the income payment received was declared as part of the gross income; and (3) the fact of withholding is established by a copy of a statement duly issued by the payor to the payee showing the amount paid and the amount of the tax withheld therefrom.

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[4] CBK Power Company Limited vs. Commissioner of Internal Revenue, G.R. Nos. 193383-84, January 14, 2015 and Commissioner of Internal Revenue, vs. CBK Power Company Limited, G.R. Nos. 193407-08

[5] Commissioner of Internal Revenue vs. Manila Electric Company (MERALCO), G.R. No. 181459, June 9, 2014

The *first* condition is pursuant to Sections 204(C) and 229 of the NIRC of 1997 x x x. The *second* and *third* conditions are anchored on Section 2.58.3(B) of Revenue Regulations No. 2-98, which states:

> *Sec. 2.58.3. Claim for Tax Credit or Refund*
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> x x x x
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> (B) Claims for tax credit or refund of any creditable income tax which was deducted and withheld on income payments shall be given due course **only when it is shown that the income payment has been declared as part of the gross income and the fact of withholding is established by a copy of the withholding tax statement duly issued by the payor to the payee showing the amount paid and the amount of tax withheld therefrom.**

In addition to the abovementioned requisites, the NIRC of 1997, as amended, likewise provides for the strict observance of the concept of the *irrevocability rule*, the focal provision of which is Section 76 thereof."[6]

From the evidence presented, it is clear that both the administrative and judicial claims for refund were seasonably filed on January 29, 2013 and April 4, 2013, respectively. The rule is that the two-year prescriptive period is reckoned from the filing of the final adjusted return.[7] Respondent filed its original Annual ITR for the year 2010 on April 13, 2011. Thus, it had until April 13, 2013 to file both its administrative and judicial claims.

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[6] Commissioner of Internal Revenue vs. Team [Philippines] Operations Corporation [formerly Mirant (Phils) Operations Corporation, G.R. No. 179260, April 2, 2014

[7] Commissioner of Internal Revenue vs. Primetown Property, G.R. No. 162155, August 28, 2007

On the second requisite, the Certificates of Creditable Tax Withheld at Source show that the creditable taxes in the amount of P9,325,323.00 were withheld on income payments received by respondent for the year 2010 amounting to P466,266,184.72. Given that respondent reported its income based on percentage of completion method, its 2010 Annual ITR reflected a gross sales of P1,444,788,657.00 which is higher by P978,522,472.28 when compared with the income payments per certificates of P466,266,184.72.

The Independent Certified Public Accountant (ICPA) Report clearly indicates that the discrepancy of P978,522,472.39 was duly accounted for. The amount of P889,092,851.00 pertained to the cumulative balance of Unearned Contract Revenue at December 31, 2009 which was recognized as part of the income realized in Calendar Year (CY) 2010 amounting to P1,444,788,657.00. The remaining amount of P89,430,061.00 pertained to the uncollected receivables of respondent from KEPCO SPC Power Corporation. In fine, respondent was able to show that the income payments from which the CWT in the amount of P9,325,323.00 were withheld, were declared in respondent's Annual ITR for the year 2010 in compliance with the second requisite.

Respondent likewise complied with the third requisite for entitlement to refund through the Certificates of Creditable Tax Withheld at Source duly issued by its withholding agents KEPCO SPC Power Corporation for the year 2010 reflecting CWT in the total amount of P9,325,323.00.

More importantly, respondent marked the option "To be issued a Tax Credit Certificate" in its original Annual ITR for the year 2010, in compliance with the *irrevocability rule* as provided in Section 76 of the NIRC. And since it did not carry-over the excess CWT of P9,325,323.00 in its Quarterly Income Tax Returns and Annual ITR for the succeeding taxable year 2011, the amount of P9,325,323.00 may be refunded.

The all too familiar complaint is that the government acts with dispatch when it comes to tax collection, but pays little, if any, attention to tax claims for refund or exemption. It is high time our tax collectors to prove the cynics wrong.[8]

WHEREFORE, the Petition for Review dated January 5, 2015 filed by the Commissioner of Internal Revenue, is hereby **DENIED**, for lack of merit.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

We Concur:

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

(On Leave)
CIELITO N. MINDARO-GRULLA
Associate Justice

ON LEAVE
AMELIA R. COTANGCO-MANALASTAS
Associate Justice

(On Leave)
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

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[8] Commissioner of Internal Revenue vs. Mirant Pagbilao Corporation, G.R. No. 172129, September 12, 2008

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the above Decision has been reached in consultation with the members of the Court *En Banc* before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice