REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

****

PRHC PROPERTY MANAGERS, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 7442

Members:

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

Promulgated:

OCT 23 2008 ; 2:30pm

x - x

DECISION

CASANOVA, *J.*:

THE CASE

This instant case seeks for the refund or issuance of a tax credit certificate in the total amount of P2,095,916.00 allegedly representing petitioner's unutilized creditable tax withheld for the taxable year 2003.

THE FACTS

Petitioner PRHC Property Managers, Inc. is a corporation duly organized and existing under and by virtue of the laws of the Philippines with principal offices and business address at E-2003B East Tower, PSE Centre, Exchange Road, Ortigas Center, Pasig City.[1] It is engaged in the business of managing, operating, administering, maintaining, servicing, buying, leasing or selling real and/or personal properties either for itself or others.[2]

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[1] Paragraph 2, Joint Stipulation of Facts, Rollo, pp. 63-64.
[2] Paragraph 3, Ibid, Rollo, p. 64.

On the other hand, respondent is the duly appointed Commissioner of Internal Revenue, vested by law in general to implement and enforce the provisions of the National Internal Revenue Code (NIRC) and other tax laws, and in particular, decide claims for refund of internal revenue taxes.[3]

On April 15, 2004, petitioner filed with the Bureau of Internal Revenue (BIR) its Annual Income Tax Return (BIR Form 1702) for the taxable year 2003 reflecting a corporate income tax due of P462,095.00 and creditable tax withheld of P7,775,728.00, thereby resulting in an excess creditable tax withheld of P7,465,046.00.[4]

On May 17, 2004, petitioner filed with the Revenue District Office No. 43 Assistance Division of the Bureau of Internal Revenue its letter dated April 15, 2004, requesting for issuance of a tax credit certificate for the excess creditable tax withheld for the taxable year 2003 in the amount of P7,465,046.00.[5]

On September 5, 2005, petitioner filed an amended request for refund of its unutilized creditable taxes for the year 2003 in the amount of P2,095,916.00. This letter superseded petitioner's letter dated April 15, 2004.[6]

The Revenue District Office No. 43 has not acted on petitioner's request for refund of its unutilized creditable taxes withheld at source for the year 2003 before the expiration of the two (2) year period for the filing of a claim for tax credit or refund provided under Section 204 (C) of the NIRC, as amended.[7]

Due to the failure of respondent to act on petitioner's claim for tax refund on its unutilized creditable tax withheld in the amount of P2,095,916.00, petitioner filed the instant Petition for Review on April 12, 2006 pursuant to Section 204 (C) of the NIRC, as amended.

Based on the Income Tax Return for the taxable year ending December 31, 2003, petitioner's taxable income for its operations amounted to P1,444,046.00 and its income tax due for the same period amounted to P462,095.00 which is equivalent to thirty-two percent

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[3] Paragraph 1, Ibid., Rollo, p. 63.
[4] Paragraph 4, Ibid., Rollo, p. 64.
[5] Paragraph 5, Ibid.
[6] Paragraph 6, Ibid.
[7] Paragraph 7, Ibid, Rollo, pp. 64-65.

(32%) of its gross income for the taxable year 2003. Furthermore, petitioner indicated therein that it will apply for a refund of its said unutilized creditable taxes withheld at source for the taxable year 2003 in the amount of P2,095,916.00.[8]

Respondent, in his Answer filed on May 16, 2006, interposed the following Special and Affirmative Defenses, to wit:

> "3. Claims for refund are strictly construed against the taxpayer as the same partakes the nature of a tax exemption;
>
> 4. The taxpayer has the burden to show that the taxes were erroneously or illegally paid. Failure on the part of the [p]etitioner to prove the same is fatal to its cause of action;
>
> 5. The [p]etitioner must prove that the amount of creditable withholding tax being claimed as refund was not utilized;
>
> 6. The [p]etitioner should prove its legal basis for claiming the amount being refunded."

To support its claim, petitioner presented documentary and testimonial evidence, while respondent waived his right to present evidence. On January 16, 2008, the case was submitted for decision taking into consideration the Memorandum of petitioner filed on December 6, 2007 sans respondent's memorandum.

STATEMENT OF ISSUES

As jointly stipulated by the parties, the issues the Court is tasked to resolve are:

1. Whether or not petitioner has unutilized creditable withholding taxes for the year 2003 in the amount of P2,095,916.00;
2. Whether or not the income upon which the taxes were withheld for the taxable year 2003 were included in the income tax return of petitioner for the year 2003;
3. Whether or not petitioner's overpaid creditable withholding tax in the amount of P2,095,916.00 is substantiated by documentary evidence; and
4. Whether or not petitioner is entitled to the issuance of a tax credit certificate representing its unutilized creditable withholding tax for the taxable year 2003.

[8] Paragraphs 9 and 10, Ibid., Rollo, p. 65.

THE COURT'S RULING

Section 76 of the National Internal Revenue Code (NIRC) of 1997 provides as follows:

> "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 the 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 maybe 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 therefore."

Based on the afore-quoted provisions, a corporation entitled to a tax credit or refund of the excess estimated quarterly income taxes paid has two options: (1) to carry over the excess credit or (2) to apply for the issuance of a tax credit certificate or to claim a cash refund. If the option to carry-over the excess credit is exercised, the same shall be irrevocable for that taxable period.

In exercising this option, petitioner, being a corporation must signify in its annual corporate adjustment return (by marking the option box provided in the BIR form) its intention to carry over the excess credit or to claim a refund. To facilitate tax collection, these remedies are in the alternative and the choice of one precludes the other (***SYSTRA PHILIPPINES, INC. vs. COMMISSIONER OF INTERNAL REVENUE, G.R. No. 176290, September 21, 2007***).

A scrutiny of petitioner's income tax return for the taxable year 2003 *(Exhibit "A")* shows that it had an income tax due at the regular rate of 32% in the amount of

P462,095.00 which was partially offset against the unexpired excess of prior year's MCIT over Normal Income Tax Rate in the amount of P151,413.00. The remaining income tax due of P310,682.00 was charged against the prior year's excess credits in the amount of P5,679,812.00. Thus, the excess tax credits of P7,465,046.00 as of December 31, 2003 is composed of the balance of the prior year's excess credits of P5,369,130.00 and creditable taxes withheld for the four quarters of 2003 in the amount of P2,095,916.00, as shown below:

Total	Gross Income	P 5,505,473.00
Less:	Deductions	4,061,427.00
Taxable Income		P 1,444,046.00
Income Tax Due (32%)		P 462,095.00
Less:	Unexpired Excess of Prior Year's MCIT over Normal Income Tax Rate	151,413.00
Income Tax Still Due		P 310,682.00
Less:	Tax Credits	
	Prior Year's Excess Credits	5,679,812.00
Balance of Prior Year's Excess Credits		P 5,369,130.00
Add:	Creditable Taxes Withheld - four qtrs of 2003	2,095,916.00
Excess Tax Credits		**P 7,465,046.00**

The present claim covers only the excess creditable taxes withheld in 2003 in the amount of P2,095,916.00. Inasmuch as petitioner indicated its intention to have the excess amount of P2,095,916.00 refunded by marking the appropriate box in the return (*Exhibit "A-4"*), the same may be a proper subject of a claim for refund pursuant to Section 76 of the 1997 NIRC, as amended.

Nonetheless, as cited by this Court in a number of similar cases, petitioner's entitlement to a claim of excess creditable withholding taxes is dependent on its compliance with the following requirements:

1. That the claim for refund was filed within the two-year prescriptive period provided under Section 204(C) in relation to Section 229 of the NIRC of 1997;
2. That the fact of withholding is established by a copy of a 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 were included in the return of the recipient (***Revenue Regulations No. 2-98, as amended; Citibank, N.A. vs. Court of Appeals and CIR, 280 SCRA 459; ACCRA Investments Corporation vs. Court of Appeals, 204 SCRA 957***).

A perusal of the records of the case reveals that petitioner have complied with the first requirement. The two-year prescriptive period for the filing of a claim for refund of excess income tax paid/withheld commences from the date of filing of the final adjustment return (***ACCRA Investments Corporation vs. Court of Appeals, supra).*** The claimed excess creditable withholding taxes pertain to taxable year 2003 for which petitioner filed its income tax return on April 15, 2004 (*Exhibit "A-5"*). Counting from this date, petitioner had until April 17, 2006 (April 15, 2006 being a Saturday) within which to file its claim both in the administrative and judicial levels. Clearly, petitioner's administrative claim filed originally with the BIR on May 17, 2004 *(Exhibit "J-1")* and the Petition for Review filed before this Court on April 12, 2006, fall within the two-year prescriptive period.

Anent the second requisite, petitioner in order to prove the fact of withholding of its claimed creditable withholding taxes for taxable year 2003 in the amount of P2,095,916.00, presented Certificates of Creditable Tax Withheld at Source (*Exhibits "B-2" to "B-23", "D-1" to "D-18", "F-2" to" F-24" and "H-2" to "H-21"*) issued by its various clients.

However, not all of the certificates of creditable withholding taxes fall within the period of claim. The amount of P29,076.14 pertain to the taxable year 2002, which is outside the period of claim, hence, must be denied by the Court:

Exhibit	Period Covered	Withholding Agent/Payor	Income Payment	Income Tax Withheld
D-8	07/01/02 to 09/30/02	Leeleng Realty , Inc.	P 19,500.00	P 975.00
D-15	10/01/02 to 12/31/02	PSEI	19,547.50	390.95
H-7	04/30/02 to 06/30/02	Cityland Wack Wack Royal	304,812.00	27,710.19
				P 29,076.14

Also, the certificate marked as Exhibit D-18 reflecting creditable withholding taxes of P25,263.35, whose original was not presented before the Court for comparison shall be disallowed because petitioner failed to establish its authenticity.

Thus, out of the claimed creditable withholding taxes of P2,095,916.00, only the amount of P2,090,931.75 is supported by valid withholding tax certificates, detailed as follows:

Exhibit	Period Covered	Withholding Agent/Payor	Income Payment	Income Tax Withheld
	Amounts Paid to Certain Brokers & Agents			
F-17	04/01/03 to 06/30/03	PB Com	P 149,090.90	P 14,909.08
F-2	04/01/03 to 06/30/03	A Brown Company, Inc.	17,409.10	1,740.91
F-20	04/01/03 to 06/30/03	PRHC	116,764.05	11,676.41
H-10	07/01/03 to 09/30/03	Golden Maple Holdings	70,500.00	7,050.00
H-4	07/01/03 to 09/30/03	Benter Management	15,000.00	750.00
B-7	11/01/03 to 11/30/03	Gilmore Townhomes Condo.	31,492.50	3,149.25
B-8	10/1/03 to 12/31/03	Hartsdale Dev't. Corp.	60,915.00	6,091.50
B-17	10/1/03 to 12/31/03	Philippine Bank of Com.	4,545.44	454.54
B-18	10/1/03 to 12/31/03	Philippine Heart Assoc., Inc.	68,000.00	6,800.00
		sub-total	**P 533,716.99**	**P 52,621.69**
	Income Payments to Prime Contractors/Sub-contractors			
D-12	01/01/03 to 03/31/03	Osong Development Ent.	P 10,500.00	P 1,050.00
D-14	01/01/03 to 03/31/03	PSEI	137,340.38	2,746.81
F-21	04/01/03 to 06/30/03	PRHC	2,700.00	54.00
F-22	04/01/03 to 06/30/03	PSEI	140,522.19	2,810.43
F-6	6/24/2003	Bank of Phil Isalnds	13,636.36	272.73
F-10	01/01/03 to 03/31/03	Greenhills Properties	11,997.75	240.15
F-11	04/01/03 to 06/30/03	Greenhills Properties	4,496.27	89.55
B-14	10/1/03 to 12/31/03	One Wilson Place Condo.	87,000.00	1,581.81
B-20	10/1/03 to 12/31/03	PSEI	142,513.11	2,850.27
		sub-total	**P 550,706.06**	**P 11,695.75**
	Professional/Management Fees			
F-10	01/01/03 to 03/31/03	Greenhills Properties	P 219,615.00	P 21,961.50
F-11	04/01/03 to 06/30/03	Greenhills Properties	219,615.00	21,961.50
F-15	04/01/03 to 06/30/03	ODC International	209,187.24	20,918.72
H-12	07/01/03 to 09/30/03	Greenhills Properties	219,615.00	21,961.50
H-16	07/01/03 to 09/30/03	ODC International	201,610.72	20,161.07
H-18	07/01/03 to 09/30/03	Osong Development Ent.	7,000.00	700.00
B-19	10/1/03 to 12/31/03	PRHC	78,672.00	7,867.20
D-1	01/01/03 to 03/31/03	Avalon Condominium Corp.	105,054.45	10,505.46
D-10	01/01/03 to 03/31/03	Nobel Plaza Condo. Corp.	96,240.36	9,624.03
D-11	01/01/03 to 03/31/03	ODC International	105,609.69	10,560.97
D-13	01/01/03 to 03/31/03	Pearl Plaza, Inc.	61,636.35	6,163.65
D-16	01/01/03 to 03/31/03	PSEC Condo. Corp.	600,000.00	60,000.00
D-17	01/01/03 to 03/31/03	The Makati Tuscany	374,890.92	37,489.08
D-2	01/01/03 to 03/31/03	BA-Lepanto Condo Corp.	491,257.00	49,125.70
D-4	01/01/03 to 03/31/03	Casa Miguel Condo. Corp.	9,982.50	998.25
D-5	01/01/03 to 03/01/03	Cityland Wack Wack Royal	277,101.81	27,710.19
D-7	01/01/03 to 03/31/03	Gilmore Townhomes Condo.	78,045.00	7,095.00
D-9	01/01/03 to 03/31/03	LTA Condo. Corp.	340,949.49	34,094.94
F-10	01/01/03 to 03/31/03	Greenhills Properties	35,072.00	3,061.70
F-11	04/01/03 to 06/30/03	Greenhills Properties	39,000.00	3,900.00
F-12	04/01/03 to 06/30/03	IEB Premium Properties Corp.	478,358.60	47,835.87

F-13	04/01/03 to 06/30/03	LTA Condo. Corp.	340,949.49	34,094.94
F-14	04/01/03 to 06/30/03	Nobel Plaza Condo. Corp.	102,656.40	10,265.63
F-16	04/01/03 to 06/30/03	Osong Development Ent.	10,500.00	1,050.00
F-18	04/01/03 to 06/30/03	Pearl Plaza, Inc.	64,718.19	6,471.81
F-19	04/01/03 to 06/30/03	PRHC	141,900.00	14,190.00
F-23	04/01/03 to 06/30/03	PSEC Condo. Corp.	3,509,090.88	350,909.12
F-24	04/01/03 to 06/30/03	The Makati Tuscany	374,890.92	37,489.08
F-3	04/01/03 to 06/30/03	Avalon Condominium Corp.	105,054.45	10,505.46
F-4	04/01/03 to 06/30/03	BA-Lepanto Condo Corp.	530,084.50	53,008.45
F-5	04/01/03 to 06/30/03	Casa Miguel Condo. Corp.	10,648.00	1,064.81
F-7	04/01/03 to 06/30/03	Cityland Wack Wack Royal	290,956.92	29,095.68
F-9	04/31/03 to 06/30/03	Gilmore Townhomes Condo.	78,045.00	7,095.00
H-11	07/01/03 to 09/30/03	Gilmore Townhomes Condo.	81,947.25	7,449.75
H-13	07/01/03 to 09/30/03	IEB Premium Properties Corp.	506,244.23	50,624.42
H-14	07/01/03 to 09/30/03	LTA Condo. Corp.	340,949.49	34,094.94
H-15	07/01/03 to 09/30/03	Nobel Plaza Condo. Corp.	101,052.39	10,105.23
H-19	07/01/03 to 09/30/03	Pearl Plaza, Inc.	64,718.19	6,471.81
H-2	07/01/03 to 09/30/03	Avalon Condominium Corp.	104,705.47	10,855.76
H-20	07/01/03 to 09/30/03	PRHC	79,353.70	7,935.37
H-21	07/01/03 to 09/30/03	PSEI	2,781,818.16	278,181.84
H-3	07/01/03 to 09/30/03	BA-Lepanto Condo Corp.	476,673.00	47,667.30
H-5	07/01/03 to 09/30/03	Casa Miguel Condo. Corp.	10,980.75	1,098.09
H-9	07/01/03 to 09/30/03	The Makati Tuscany	374,890.92	37,489.08
B-10	10/1/03 to 12/31/03	LTA Condo. Corp.	340,949.49	34,094.94
B-11	07/31/03 to 09/30/03	Meltip Realty Corp.	33,500.00	3,350.00
B-12	10/1/03 to 12/31/03	Nobel Plaza Condo. Corp.	101,052.39	10,105.23
B-13	10/1/03 to 12/31/03	ODC International	165,981.77	16,598.19
B-15	10/1/03 to 12/31/03	Osong Development Ent.	10,500.00	1,050.00
B-16	10/1/03 to 12/31/03	Pearl Plaza, Inc.	64,718.19	6,471.81
B-2	10/1/03 to 12/31/03	Avalon Condominium Corp.	108,556.27	10,855.64
B-21	10/1/03 to 12/31/03	PSEC Condo. Corp.	1,690,909.08	169,090.92
B-22	10/1/03 to 12/31/03	The Makati Tuscany	387,387.28	38,738.72
B-3	10/1/03 to 12/31/03	BA-Lepanto Condo Corp.	449,908.40	44,990.84
B-6	10/31/03 to 12/31/03	Gilmore Townhomes Condo.	81,947.25	7,449.75
B-7	10/1/03 to 12/31/03	Greenhills Properties	219,615.00	21,961.50
B-9	10/1/03 to 12/31/03	IEB Premium Properties Corp.	465,191.74	46,519.17
		sub-total	**P18,851,558.29**	**P 1,882,186.61**
	Rentals - Real Property			
D-6	01/01/03 to 03/31/03	Epsys Inc.	P 431,181.84	P 21,559.08
F-8	04/01/03 to 06/30/03	Epsys Inc.	431,181.84	21,559.08
H-6	07/01/03 to 09/30/03	Cityland Wack Wack Royal	320,052.60	29,095.68
H-8	07/01/03 to 09/30/03	Epsys Inc.	431,181.84	21,559.09
B-4	10/1/03 to 12/31/03	Cityland Wack Wack Royal	320,052.60	29,095.68
B-5	10/1/03 to 12/31/03	Epsys Inc.	431,181.84	21,559.09
		sub-total	**P 2,364,832.56**	**P 144,427.70**
		Total	**P22,300,813.90**	**P 2,090,931.75**

Anent the third requisite, petitioner, in its 2003 income tax return *(Exhibit "A-6")*, reflected the following amounts of sales of services and non-operating/other income:

	Gross Income Per ITR
Sale of Services	P 19,761,447.00
Non-Operating & Other Income	
Rental	P 1,796,591.00
Gain on Sale of Assets	561,082.00
Others	136,492.00
Total	P 2,494,165.00

The certificates show that the creditable withholding taxes of P2,090,931.75 were withheld on income payments in the total amount of P22,300,813.90, broken down as follows:

	Per Certificates	
	Income Payments	**Income Tax Withheld**
Sale of Services		
Amounts Paid to Certain Brokers & Agents	P 533,716.99	P 52,621.69
Income Payments to Prime Contractors/Sub-Contractors	550,706.06	11,695.75
Professional/Management Fees	18,851,558.29	1,882,186.61
sub-total	**P19,935,981.34**	**P1,946,504.05**
Rentals - Real Property	P 2,364,832.56	P 144,427.70
sub-total	**P 2,364,832.56**	**P 144,427.70**
Total	**P22,300,813.90**	**P2,090,931.75**

Apparently, petitioner's revenues from sales of services in the amount of P19,761,447.00 as reflected in its 2003 income tax return is lower by P174,534.34 than the amount of P19,935,981.34 stated in the certificates of withholding tax.

Also since petitioner failed to explain the amount of discrepancy in its sales of services in the amount of P174,534.34, the corresponding withholding taxes in the amount of P17,041.14 shall be disallowed from its claim, computed as follows:

Gross income from sales of services per certificates		
Amounts paid to certain brokers & agents		P 533,716.95
Income payments to prime Contractors/sub-contractors		550,706.06
Professional/Management fees		18,851,558.29
Total		P19,935,981.34
Less: Gross income from sales of services per ITR		19,761,447.00
Discrepancy in gross income from sales of services		P 174,534.34
Percentage of discrepancy to total income per certificates		0. 875474%
Multiply by: Creditable taxes withheld per certificates		
Amounts paid to certain brokers & agents	P 52,621.69	
Income payments to prime Contractors/sub-contractors	11,695.75	
Professional/Management fees	1,882,186.61	1,946,504.05
Disallowed creditable withholding taxes		**P 17,041.14**

Likewise, the rental income of P1,796,591.00 declared per petitioner's 2003 income tax return is lower by P568,241.56 when compared with the rental income of P2,364,832.56 shown per certificates.

For petitioner's failure to prove that it declared the rental income of P568,241.56, the related creditable withholding taxes of P28,412.08 shall be denied, computed as follows:

Rental income per certificates	P 2,364,832.56
Less: Rental income per income tax return	1,796,591.00
Discrepancy in rental income	P 568,241.56
Multiply by 5% withholding tax rate	0.05
Disallowed creditable withholding taxes	**P 28,412.08**

In sum, petitioner complied with the third requisite but only to the extent of P2,045,478.53, out of the total claimed creditable withholding taxes of P2,090,931.75 which has valid certificates, computed as follows:

Claimed creditable taxes withheld with valid certificates	P 2,090,931.75
Less: a. Creditable taxes withheld pertaining to the discrepancy in Sales of services per income tax return and per certificates	17,041.14
b. Creditable taxes withheld pertaining to the discrepancy in Rental income per income tax return and per certificates	28,412.08
Claimed creditable taxes withheld pertaining to petitioner's declared income per income tax return	**P 2,045,478.53**

Therefore, petitioner have sufficiently established its entitlement for a refund of its unutilized creditable taxes withheld for taxable year 2003 but in the reduced amount of P2,045,478.53.

WHEREFORE, in light of the foregoing, the instant petition is **PARTIALLY GRANTED.** Respondent is **ORDERED to REFUND** or in the alternative, **ISSUE A TAX CREDIT CERTIFICATE** in favor of the petitioner in the amount of P2,045,478.53 representing its unutilized creditable withholding tax for the taxable period 2003.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

(On Leave)
LOVELL R. BAUTISTA
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
Chairman, First Division