REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

HAVI FOOD SERVICES PHILS., INC.
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE
Respondent.

CTA EB CASE No. 800
(CTA Case No. 7735)

Members:
ACOSTA, *P.J.*,
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA,
PALANCA-ENRIQUEZ
FABON-VICTORINO,
MINDARO-GRULLA, and
COTANGCO-MANALASTAS, *JJ.*

Promulgated:

JUN 2 8 2012 11:30 a.m.

X- X

DECISION

CASANOVA, J. :

This is an appeal to the Court of Tax Appeals (CTA) *En Banc* filed by petitioner Havi Food Services Phils., Inc. by way of a verified Petition for Review[1], seeking the reversal of the Decision[2] (*Assailed Decision*) promulgated on February 28, 2011 and Resolution[3] *(Assailed Resolution)* promulgated on June 2, 2011, both by the Third Division of this Court in CTA Case No. 7735 denying petitioner's claim for refund or issuance of tax credit

[1] CTA En Banc Rollo, pp. 1-18.
[2] Annex A, Petition for Review, *Ibid.*, pp. 19-37.
[3] Annex C, Petition for Review, *Ibid.*, pp. 46-50.

certificate in the amount of P5,238,461.00, allegedly representing its unutilized excess creditable income taxes withheld for taxable years 2005 and 2006.

The facts of the case, as found by the CTA Third Division and, as stated in its Decision[4] of the case, are briefly narrated as follows:

> "Havi Food Services Phils. Inc. (petitioner) is a domestic corporation duly organized and existing under the laws of the Philippines, with principal office located at Sumulong Highway, Marikina, Metro Manila.
>
> Respondent is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR) with authority to act as such, including, among others, the power to decide, approve, and grant refunds or tax credit of overpaid internal revenue taxes as provided by law. He holds office at the BIR National Office Building, BIR Road, Diliman, Quezon City.
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> On March 28, 2006 and March 29, 2007, petitioner filed its Annual Income Tax Returns for taxable years 2005 and 2006, respectively.
>
> Thereafter, petitioner filed two (2) formal written applications for refund with the BIR Revenue District Office No. 045- Marikina City on February 20, 2008 and August 31, 2007 in the amount of 5,238,461.00, representing its unutilized excess creditable income taxes withheld for 2005 and 2006.
>
> Respondent failed to render his decision on the subject application for income tax refund. Hence, petitioner filed the instant Petition for Review on March 10, 2008.
>
> Respondent filed his Answer on May 13, 2008 and raised the following Special and Affirmative Defenses:
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>> 5. The claim for refund is still under examination by the respondent's Bureau;
>>
>> 6. The burden of proof is upon the petitioner to prove that it is entitled to the claim for refund;

[4] CTA En Banc Rollo, pp. 20-22.

> 7. The grant of a claim for refund *(sic)* tantamount to an exemption from taxation which is construed strictly against the claimant and in favor of the taxing authority;
>
> 8. The taxes sought to be refunded were paid in accordance with law; the burden of proof to the contrary is upon the petitioner-claimant to show with clear and unambiguous provision of law supporting the same.
>
> On May 14, 2008, a Notice of Pre-Trial Conference was issued by this Court setting the case for pre-trial conference on May 23, 2008 and requiring both parties to be present at the pre-trial and to file with the Court and serve on the adverse party their pre-trial briefs. Petitioner and respondent simultaneously filed their respective pre-trial brief on May 21, 2008.
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> On June 11, 2008, the parties filed their Joint Stipulation of Facts and Issues before this Court, which was approved in a Resolution dated June 17, 2008. In the same resolution, the pre-trial was considered terminated.
>
> During trial, petitioner presented and formally offered its documentary and testimonial evidence; while respondent manifested that he is submitting the case for decision since there was no terminated examination.
>
> Consequently, respondent was granted a period of thirty (30) days from September 29, 2009 within which to file his Memorandum; while petitioner was given a period of fifteen (15) days from receipt of the Resolution dated October 1, 2009 within which to file its Memorandum.
>
> The case was considered submitted for decision on March 22, 2010, in view of the report dated March 18, 2010 of the Records Division that no memoranda have been filed by both parties."

On February 28, 2011, the CTA Third Division promulgated the Assailed Decision, denying petitioner's claim for refund or issuance of tax credit certificate as it failed to comply with the third requisite for a refund claim when it failed to prove that it declared the income upon which the substantiated creditable withholding tax of P4,995,370.31 for the taxable year 2006 was withheld. The Assailed Decision states:

> "In recapitulation, since petitioner failed to comply with the third requisite of the refund claim as provided by law and jurisprudence, this Court is left with no recourse but to deny the instant claim for refund.
>
> **WHEREFORE**, the instant Petition for Review is hereby **DENIED** for lack of merit.
>
> SO ORDERED."

Petitioner filed its Motion for Reconsideration[5] on March 18, 2011 and in a Resolution[6] dated June 2, 2011, the CTA Third Division denied petitioner's Motion for Reconsideration for lack of merit.

Hence, petitioner filed the instant Petition for Review raising the following issue:[7]

> WHETHER OR NOT THE THIRD DIVISION ERRED IN ITS DECISION WHEN IT DECLARED THAT PETITIONER IS NOT ENTITLED TO ITS APPLICATION FOR INCOME TAX REFUND SINCE IT WAS NOT ABLE TO ACCOUNT THE DISCREPANCY OF P27,547,704.50 BETWEEN THE GROSS REVENUES REPORTED IN THE INCOME TAX RETURN VIS-À-VIS THE TOTAL AMOUNT SHOWN PER BIR FORMS NO. 2307.

On November 9, 2011, this Court issued a Resolution[8] ordering respondent to file her Comment within ten (10) days from receipt thereof. Respondent failed to file her Comment.[9]

In a Resolution[10] dated January 10, 2012, this Court ordered both parties to submit their respective memorandum within thirty (30) days from receipt thereof. Petitioner asked for, and was granted the extension of time to

[5] Petition for Review, Annex B, *Ibid.*, pp. 38-45.
[6] CTA En Banc Rollo, pp. 47-50.
[7] *Id.*, p. 4.
[8] *Id.*, pp. 72-73.
[9] Records Verification Form, *Id.*, p. 74.
[10] *Id.*, pp. 76-77.

submit its Memorandum. On March 5, 2012, petitioner filed its Memorandum[11] while respondent failed to file her Memorandum[12].

On March 29, 2012, the case at bench was deemed submitted for decision.

After a careful and thorough evaluation and consideration of the records of the case, including both parties' arguments in their respective pleading, this Court finds no merit in the instant petition.

This Court found a discrepancy in the gross income reported, as the total gross income per petitioner's BIR Forms No. 2307 is greater by P27,547,704.50 than the total gross income per petitioner's 2006 Annual Income Tax Return. Thus petitioner has gross income which has not been included in the annual income tax return, thereby failing to comply with the third requisite in the claim for unutilized excess creditable withholding tax.

Petitioner argues that the discrepancy in gross revenues of P27,547,704.50 for the year 2006 should not result in the outright denial of the instant claim for refund in as much as the Court declared that there were properly substantiated creditable withholding taxes in the amount of P4,995,370.31. Petitioner further argues that it will be more equitable for the Court to apply ratio and proportion in partial grant of income tax refund considering that the total revenues as shown in the 2006 income tax return was P201,584,012.00 while the Court determined total revenues per BIR Forms No. 2307 to be P229,131,716.50. In addition, petitioner submits that the Independent CPA (ICPA) has adequately traced and verified that the revenues in its books of accounts were reported in the income tax returns.

[11] *Id.*, pp. 82-99.
[12] Records Verification Form, *Id.*, p. 100.

We do not agree. By failing to include all its gross income in its annual income tax return, petitioner clearly failed to comply with the third requisite in the refund claim, which is the inclusion of the income upon which the taxes were withheld in the return of the recipient. We do not subscribe to petitioner's submission that an equitable approach to the controversy in the case at bench is to apply ratio and proportion and partially grant its judicial claim for refund. Applying such action to the present case will be tantamount to allowing petitioner to circumvent the rules and granting the refund claim despite the lack of compliance with the requisites provided under the rules. Settled is the fact that petitioner, in failing to include all its gross income in its annual return, clearly failed to satisfy one of the requisites in a claim for refund. Thus, We have no recourse but to deny the present claim.

The alleged excess creditable withholding tax paid by petitioner to respondent did not give rise to an obligation on the part of the Bureau of Internal Revenue to return the creditable withholding tax paid by petitioner.

Petitioner likewise submits that as it is among the findings of CTA Third Division that petitioner has proven the fact of withholding in the amount of P4,995,370.31, the principle of *solutio indebiti* under Art. 2154 of the Civil Code[13] be applied in the case at bench, in as much the BIR received something when there was no right to demand it, and thus the obligation to return arises. It is the position of petitioner that it is not proper for the government to unjustly enrich itself at the expense of the taxpayer.

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13 **SECTION 2**. - *Solutio Indebiti*

Art. 2154. If something is received when there is no right to demand it, and it was unduly delivered through mistake, the obligation to return it arises.

Solutio Indebiti is based on time-honored doctrine that no person shall unjustly enrich himself at the expense of another. It goes without saying that the Government is not exempted from the application of this doctrine.[14]

The Supreme Court, in the cases of *Roberto Genova vs. Levita De Castro*[15] *and Roberto Genova vs. Levita De Castro and the Court of Appeals*[16], laid down the requisites for *solutio indebiti*, to wit:

> "xxx There is solutio indebiti where: (1) payment is made when there exists no binding relation between the payor, who has no duty to pay, and the person who received the payment; and (2) the payment is made through mistake, and not through liberality or some other cause. The quasi-contract of solutio indebiti is based on the ancient principle that no one shall enrich himself unjustly at the expense of another."

This Court finds no application of the principle of *solutio indebiti* in the case at bench. The creditable withholding taxes were duly withheld from petitioner in relation to the income that it earned for the subject taxable years. Petitioner failed to show that it satisfied the requisites for a valid claim for refund or issuance of tax credit certificate on its alleged unutilized excess creditable withholding tax payments. Thus, We are constrained to deny petitioner's refund claim.

As petitioner's payment of P4,995,370.31 did not amount to any unjust enrichment on the part of respondent, this Court finds no merit in petitioner's argument that respondent now has the duty to return to it the abovementioned amount.

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[14]The Commissioner of Internal Revenue vs. Acesite (Philippines) Hotel Corporation, G.R. No. 147295, February 16, 2007, *citing* Commissioner of Internal Revenue v. Fireman's Fund Insurance Company G.R. No. L-30644, March 9, 1987 *citing* Ramie Textile, Inc. v. Ismael Mathay, Sr., G.R. No. L-32364, April 30, 1979.
[15] G.R. No. 132076, July 22, 2003.
[16] G.R. No. 140989, July 22, 2003.

It is a well-settled rule that tax refunds are in the nature of tax exemptions, hence, are construed strictissimi juris against the taxpayer.

Lastly, petitioner claims that the CIR failed to perform its administrative duty to examine and verify the correctness of the tax returns in support of petitioner's claim for refund. Consequently, the declarations made by petitioner in its 2005 and 2006 annual income tax returns are binding on the respondent.

We find no merit in petitioner's argument. We affirm the CTA Third Division ruling in its Resolution[17] dated June 2, 2011:

> " xxx. It must be emphasized that a claimant has the burden of proof to establish the factual basis of his or her claim for tax credit or refund. It is settled that tax refunds are in the nature of tax exemptions. Laws granting exemptions are construed *strictissimi juris* against the taxpayer and liberally in favor of the taxing authority. Where the taxpayer claims a refund, the CTA as a court of record is required to conduct a formal trial (trial de novo) to prove every minute aspect of the claim. Here, petitioner failed to prove that its income subject to creditable withholding tax was included in its annual return. For such failure, its claim for refund of unutilized excess creditable withholding taxes must be denied."

In view of the foregoing, this Court affirms the ruling of the CTA Third Division denying petitioner's claim for refund or issuance of tax credit certificate in relation to its unutilized excess creditable income taxes withheld for taxable years 2005 and 2006. It is incumbent upon the taxpayer to satisfactorily prove its claim for refund. The law and the rules clearly defined the requisites for the refund of unutilized creditable income taxes withheld. It is of utmost importance that the income from which the alleged creditable taxes were withheld from be included in the gross income declared by the taxpayer claiming for the refund of the unutilized portion of the said taxes.

[17] Division Docket, pp. 346-349.

Petitioner was remiss in its duty to prove that the said income was declared. Thus, this Court has no other recourse but to deny its claim for refund or issuance of tax credit certificate.

In sum, the *CTA En Banc* finds no cogent justification to disturb the findings and conclusion spelled out in the Assailed Decision dated February 28, 2011 and in the Assailed Resolution dated June 2, 2011, both promulgated by the CTA Third Division. What the instant petition seeks is for the Court *En Banc* to view and appreciate the arguments/discussions raised by the petitioner in its own perspective of things, which unfortunately had already been considered and passed upon by the Court.

WHEREFORE, premises considered, the Assailed Decision dated February 28, 2011 and the Assailed Resolution dated June 2, 2011, both promulgated by the CTA Third Division are hereby **AFFIRMED *in toto*** and the instant Petition for Review is hereby **DISMISSED** for lack of merit.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
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.

ERNESTO D. ACOSTA
Presiding Justice