REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

LISP-II LOCATORS' ASSOCIATION INCORPORATED,
Petitioner,

- versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent,

C.T.A. Case No. 7906

Members:

Bautista, *Chairperson*
Palanca-Enriquez,
Cotangco-Manalastas, *JJ.*

Promulgated:

SEP 22 2011
PBFernand 8:30 a.m.

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D E C I S I O N

COTANGCO-MANALASTAS, J.:

This is an appeal from the inaction of the Commissioner of Internal Revenue on petitioner's claim for refund or issuance of tax credit certificate in the amount of P218,425.20, allegedly representing an excess/unutilized creditable withholding tax for calendar year ending December 31, 2006.

THE FACTS

Petitioner LISP-II Locators' Association, Inc. is a non-stock and non-profit association duly organized and existing under Philippine laws.[1] It was created to "advance and promote the commercial, economic, educational and social interests and well-being of the members of LISP-II Industrial Park ('Science Park') in the Municipality of Calamba, Province of Laguna, Philippines, and the general welfare and prosperity of the Community; to take part in deliberations, considerations, and decision, government or otherwise, affecting the economic life of the members and the community and having relations, direct or indirect, to trade, commerce and industry."[2]

On the other hand, respondent is the Commissioner of the Bureau of Internal Revenue (BIR) empowered to perform the duties of her office including, among others, the duty to act on and approve claims for refund or tax credits as provided by law. She holds office at the BIR National Office Building, Diliman, Quezon City.

On April 13, 2007, petitioner filed its Annual Income Tax Return (ITR)[3] for calendar year 2006, reflecting no income tax liability allegedly because its income was exempt from tax.[4]

It is petitioner's allegation that after an internal audit, from late 2008 to early 2009, it learned that there were BIR Forms 2307 that were not used and/or reflected in the 2006 ITR. It noted that one of its member-locators erroneously withheld taxes from its revenues exempt from income tax.[5]

[1] Exhibits "A" and "B".
[2] Exhibit "B-2".
[3] Exhibit "F".
[4] Memorandum for the Petitioner, docket, p. 236.
[5] Memorandum for the Petitioner, docket, pp. 236-237.

Contending that it is exempt from income tax under Section 30(F) of the Tax Code, as amended, and that it is not subject to withholding taxes as provided under Section 2.57.5 of Revenue Regulations (RR) No. 2-98, petitioner filed on March 4, 2009 an administrative claim for refund of the tax erroneously withheld and remitted on its behalf to the Bureau of Internal Revenue for calendar year 2006 in the total amount of P218,425.20, citing as its legal bases Sections 76, 204, and 229 of the Tax Code, as amended, and Section 2.58.3(B) of RR No. 2-98, as amended.[6]

Claiming inaction on respondent's part and that the prescriptive period to seek judicial remedy was about to lapse, petitioner filed the instant Petition for Review on April 13, 2009.

In response to the summons[7] issued on April 14, 2009, respondent filed an Answer[8] on May 28, 2009, praying for the dismissal of the Petition for Review for lack of merit. In support thereof, respondent interposed the following Special and Affirmative Defenses:

> "4. Respondent adopts the abovementioned admissions and denials as part of his Special and Affirmative Defenses.
>
> 5. It is incumbent upon petitioner to prove that the alleged claim for refund was filed within the two-year period provided under Section 229 of the NIRC of 1997.
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> 6. Section 229 of the NIRC of 1997 reads in part:
>
> *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

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[6] Exhibit "TT".
[7] Docket, p. 76.
[8] Docket, pp. 84-88.

> credit has been duly filed with the Commissioner x x x.'

7. A valid claim for refund should consist of the following:

> a. There must be a written claim for refund filed by the taxpayer with the Commissioner of Internal Revenue. This is a mandatory requirement. Without this requirement, the CIR is without any authority to refund.
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> b. The claim for refund must be a categorical demand for reimbursement.
>
> c. The claim for refund must be filed within two years from date of payment of the tax or penalty regardless of any supervening cause. In claims for refund, the thirty-day period of appeal should be within the two-year prescriptive period.

8. Assuming *por arguendo* that BIR Ruling No. 18-01 was issued favoring petitioner, it is incumbent upon the claimant to prove that the facts as presented therein remain true as it was at the time of the issuance. Every BIR Ruling concludes with the following *caveat*:

> 'This ruling is being issued on the basis of the foregoing facts as represented. However, if upon investigation, it will be disclosed that the facts are different, then this ruling shall be considered null and void.'

Hence, a BIR Ruling by itself is insufficient for a meritorious claim for refund.

9. In the case of *Far East bank & Trust Company vs. Commissioner of Internal Revenue* the Supreme Court held:

> 'A tax refund is in the nature of a tax exemption which must be construed *strictissimi juris* against the taxpayer. To stress, the taxpayer must present convincing evidence to substantiate a claim for refund.'

10. Petitioner must prove that it is indeed entitled to a claim for refund under existing laws, rules and jurisprudence."

Afterwards, pre-trial ensued which culminated with the approval of the parties' "Joint Stipulation of Facts"[9] on September 17, 2009.[10] During the trial of the case, petitioner presented and offered its evidence; while respondent decided to forego the presentation of her evidence. Thereafter, this case was deemed submitted for decision on July 5, 2011, taking into consideration the "Memorandum for the Petitioner" and respondent's "Memorandum" both filed on June 30, 2011.[11]

THE ISSUES

The parties jointly submitted the following issues[12] for this Court's resolution:

> 1. Whether the Honorable Court has jurisdiction over the instant claim for refund.
>
> 2. Whether petitioner is entitled to a claim for refund in the amount of P218,425.20 allegedly representing excess/unutilized withholding taxes for calendar year ending 31 December 2006."

DISCUSSION/RULING

One of the bases of petitioner's claim is Section 76 of the National Internal Revenue Code (NIRC) of 1997, as amended, which provides:

> "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 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**

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[9] Docket, pp. 116-117.
[10] Docket, p. 119.
[11] Docket, p. 255.
[12] Docket, pp. 116-117.

> **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." *(Emphasis supplied)*

A careful reading of the afore-quoted provision of the NIRC reveals that it is applicable only to a corporation liable to tax under Section 27 of the NIRC. Also, in case the corporation is entitled to a tax credit or refund, the provision suggests that the excess amount is shown on the final adjustment return.

Here, petitioner is claiming that it is a corporation exempt from tax under Section 30 of the NIRC and that all of its income for 2006 is exempt. Moreover, there was no excess amount shown on the 2006 ITR as there was no income tax liability for the year and that the alleged erroneously withheld creditable tax was not declared therein. Therefore, Section 76 of the NIRC is not applicable to petitioner's case.

The purported erroneously withheld creditable tax may instead be refunded under Sections 204(C) and 229 of the NIRC, as amended, which provide:

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

> "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, 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."

It is settled in this jurisdiction that Sections 204(C) and 229 (previously Sections 306 and 309) were intended to govern all kinds of refund of internal revenue taxes - those taxes imposed and collected pursuant to the NIRC.[13] Section 204(C) applies to administrative claims filed with the Commissioner of Internal Revenue; while Section 229 refers to judicial actions for the recovery of tax erroneously or illegally collected. However, both the claim for refund with the BIR and the subsequent appeal to the Court of Tax Appeals must be filed within the two-year period from the *date of payment of the tax.*

Considering that the present claim pertains to creditable income tax alleged to have been erroneously withheld, the reckoning of the two-year period prescribed under Sections 204(C) and 229 of the NIRC of 1997 must be read in conjunction with Section 2.58 of Revenue Regulations No. 2-98, as amended by Section 5 of RR No. 17-2003, to wit:

[13] *Commissioner of Internal Revenue vs. Central Azucarera Don Pedro*, 49 SCRA 474; *Commissioner of Internal Revenue vs. Insular Lumber Co.*, 21 SCRA 1237.

"Sec. 2.58. RETURNS AND PAYMENT OF TAXES WITHHELD AT SOURCE.

(A) *Monthly return and payment of taxes withheld at source.* —

(1) xxx

(2) WHEN TO FILE —

(a) For both large and non-large taxpayers, **the withholding tax return**, whether creditable or final (including final withholding taxes on interest from any currency bank deposit and yield or any other monetary benefit from deposit substitutes and from trust funds and similar arrangements) **shall be filed and payments should be made, within ten (10) days after the end of each month, except for taxes withheld for the month of December of each year, which shall be filed on or before January 15 of the following year**; xxx

(b) With respect, however, to taxpayers, whether large or non-large, who availed of the electronic filing and payment system (EFPS), the deadline for electronically filing the applicable withholding tax returns and paying the taxes due thereon via the EFPS shall be **five (5) days later than the deadlines set above**, unless the EFPS regulations provide for different deadline dates and except for the final capital gains tax on the sale, barter or exchange of real property where the law fixes a definite deadline for the payment thereof." (*Emphasis supplied*)

Based on the foregoing Regulations, the reckoning of the two-year prescriptive period would be from the date of monthly remittance of the claimed creditable withholding taxes for January to December 2006. The last month covered by the subject claim is December 2006, which under the afore-quoted RR No. 2-98, as amended, must be paid on or before January 15, 2007 (or not later than January 20, 2007 in case of availment of the EFPS). Consequently, petitioner had until January 15, 2009 (or January 20, 2009 when it availed of the EFPS) within which to file its claim for refund for the month of December 2006 both in the administrative and judicial levels. Since the administrative claim for refund for the months of January to December 2006 was filed on March 4, 2009 and the subsequent appeal before this

Court was filed on April 13, 2009, petitioner's entire claim for the months of January to December 2006 in the total amount of P218,425.20 had already prescribed.

WHEREFORE, the instant Petition for Review is hereby **DISMISSED** due to prescription.

SO ORDERED.

AMELIA R. COTANGCO- MANALASTAS
Associate Justice

WE CONCUR:

LOVELL R. BAUTISTA
Associate Justice

OLGA PALANCA-ENRIQUEZ
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

CERTIFICATION

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

ERNESTO D. ACOSTA
Presiding Justice