

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL FIRST DIVISION

Mirant (Navotas II) Corporation,
Petitioner,

C.T.A. CASE NO. 7618

Members:

- versus -

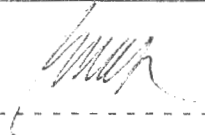
ACOSTA, Chairperson
BAUTISTA, , and
CASANOVA, JJ.

Commissioner of Internal
Revenue,

Respondent.

Promulgated:

JUL 12 2010, 11:29am



x-----x

DECISION

CASANOVA, J.:

The Petition for Review seeks the refund or issuance of a tax credit certificate representing alleged overpaid income taxes or excess creditable withholding taxes for the calendar year ended December 31, 2005, in the amount of Two Million One Hundred Sixty Eight Thousand Seven Hundred Thirty One Pesos and 85/100 (P2,168,731.85).

The following are the undisputed facts as recited in the parties' Joint Stipulation of Facts and Issues¹, to wit:

"1. Petitioner is a domestic corporation duly registered with the Securities and Exchange Commission. Its office is located at 5th Floor,

¹ Docket, pp. 149-151.

CTC Building, 2232 Roxas Boulevard, Pasay City. For purposes of these proceedings, however, it may be served with pleadings, notices and processes through the undersigned law firm at its address indicated below.

2. Respondent Commissioner of Internal Revenue is the chief of the Bureau of Internal Revenue ("BIR"), which is charged with the assessment and collection of all internal revenue taxes, fees and charges, and the enforcement of all forfeitures, penalties and fines connected with such taxes, fees and charges. Respondent may be served with summons and other court processes at the BIR National Office Building, Diliman, Quezon City.

3. **CONDITIONALLY ADMITTED**: Petitioner is a duly registered taxpayer with the BIR.

4. Petitioner was originally registered with the Securities and Exchange Commission under the name Hopewell Tileman (Philippines) Corporation. Petitioner's name was changed to Southern Energy Navotas II Power, Inc. on March 23, 1999. On April 26, 2001, petitioner further changed its name to Mirant (Navotas II) Corporation.

5. Petitioner is primarily engaged in the business of power generation and the subsequent sale thereof to the National Power Corporation ("NPC").

6. **CONDITIONALLY ADMITTED**: Petitioner filed its quarterly income tax returns for the first, second and third quarters for the year 2005 on May 30, 2005, August 26, 2005 and November 29, 2005, respectively.

7. **CONDITIONALLY ADMITTED**: NPC issued the following certificates of creditable tax withheld at source in favor of petitioner for the year 2005:

Period	Amount (Php)
02/01/05 – 02/28/05	1,045,078.66
04/01/05 – 04/30/05	1,039,498.93
05/01/05 – 05/31/05	519,725.62
06/01/05 – 06/30/05	530,789.70

07/01/05 – 07/31/05	537,380.46
Total	3,672,473.37

8. **CONDITIONALLY ADMITTED**: On April 10, 2006, petitioner filed its annual income tax return for the year 2005.

9. On February 5, 2007, petitioner filed a claim for refund of its excess income tax payment or creditable withholding taxes paid in the year 2005 with the BIR's Revenue District Office No. 51.

10. Petitioner's claim for refund with the BIR's Revenue District Office No. 51 has not yet been acted upon."

Hence, petitioner filed the present Petition for Review² on April 18, 2007.

In his Answer³ filed on June 26, 2007, respondent cites the following Special and Affirmative Defenses, viz.:

"4. He reiterates and pleads the preceding paragraphs of this answer as part of his Special and Affirmative Defenses;

5. Petitioner's claim for refund is subject to administrative investigation/examination by the respondent;

6. The amount of P2,168,731.85 being claimed by petitioner as alleged overpaid income taxes or excess creditable withholding taxes for calendar year ended December 31, 2005 was not properly documented.

7. Petitioner must showed that it had complied with the provisions of Section 204 (C) and 229 of the Tax Code on the prescriptive period for claiming tax refund /credit.

8. Furthermore, in an action for refund the burden of proof is on the taxpayer to establish its right to refund and failure to sustain the burden is fatal to the claim for refund/credit. This is so because exemptions from taxation are highly disfavored in law and he who claims exemption must be able to justify his claim by the clearest grant of

² Docket, p. 1- 5.

³ Docket, pp. 96-98.

organic or statutory law. An exemption from common burden cannot be permitted to exist upon vague implications (*Asiatic Petroleum Co. {P.I} v. Llanes*, 49 Phil 466 cited in *Collector of Internal Revenue v. Manila Jockey Club, Inc.* 98 Phil 670);

8. Claims for refund are construed strictly against the claimant for the same partake the nature of exemption from taxation.”

Trial ensued and petitioner presented its testimonial and documentary evidence. Respondent’s counsel presented a certain Mr. Ernesto Nakpil as its witness during the hearing on March 10, 2009⁴. However, during the continuation of respondent’s presentation of evidence and cross-examination of respondent’s witness on May 26, 2009⁵, respondent’s counsel manifested that he is waiving his right to present evidence. Counsel for the petitioner moved that the testimony of Mr. Nakpil be stricken from the records of this case. The Court granted the said motion. Both parties were given a period of thirty (30) days from May 26, 2009 or until June 25, 2009 within which to file their respective Memorandum. In compliance with the said order, petitioner-Mirant (Navotas II) Corporation filed its Memorandum⁶ on June 23, 2009. On June 24, 2009, respondent filed a “Motion for Extension of Time to File Memorandum”⁷ which the Court granted in an Order⁸ dated June 25, 2009. Respondent complied with the said Order and filed his Memorandum on July 27, 2007⁹. In a Resolution¹⁰ promulgated on July 30, 2009, the instant case was submitted for decision.

The following are the parties’ statement of issues for this Court’s resolution: 

⁴ Minutes of the Hearing, Docket, p. 570.

⁵ Minutes of the Hearing, Docket, p. 577.

⁶ Docket, pp. 578-598.

⁷ Docket, p. 600.

⁸ Docket, p. 604.

⁹ Memorandum for the Respondent, Docket, pp. 605-611.

¹⁰ Docket, p. 613.

1. "Whether or not petitioner's claim for refund was filed within the two-year prescriptive period provided under Section 204 (C) in relation to Section 229 of the National Internal Revenue Code.
2. Whether or not petitioner had excess creditable income taxes withheld for the year 2005.
3. Whether or not the income upon which the creditable income taxes withheld by NPC were included and reported as part of petitioner's gross income in its annual income tax return for the year 2005.
4. Whether or not the amount representing petitioner's unutilized withholding tax credits for the year 2005 was utilized or applied against petitioner's income tax liability for the year 2006.
5. Whether or not petitioner is entitled to a refund in the amount of P2,168,731.85, representing excess creditable income taxes withheld for the year 2005."¹¹

Pertinent to the resolution of this case is Section 76 of the National Internal Revenue Code (NIRC) of 1997, as amended, hereunder quoted for reference:

"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.

¹¹ "Issues To Be Tried and Resolved", JSFL Docket, pp. 150-151.

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 therefore."

Accordingly, a corporation entitled to a tax credit or refund of the excess estimated quarterly income taxes paid has two options: first, to carry over the excess credit; or second, to apply for the issuance of a tax credit certificate or to claim a cash refund.

In the same vein, in exercising its option, the corporation must signify in its annual corporate adjustment return (by marking the option box provided in the BIR Form) its intention either 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.¹²

Records show that petitioner marked the option "To be refunded" insofar as the income tax overpayment shown in its Annual Income Tax Return for calendar year 2005 filed on April 10, 2006¹³, as well as its amendments thereto filed on September 14, 2006¹⁴.

To prove that it did not carry-over the claimed creditable withholding taxes of P2,168,731.85 to the succeeding first, second and third quarters of 

¹² Philippine Bank of Communications vs. CIR, 361 Phil 916 (1999)

¹³ Annex "D", Petition for Review.

¹⁴ Exhibit "V".

calendar year 2006, petitioner presented its Annual Income Tax Return for CY 2006¹⁵. However, the same is not enough to prove that petitioner did not apply said unutilized creditable withholding taxes against the income tax due for the calendar year 2006. Albeit there was no amount indicated in its "Prior Year's Excess Credits" as reflected therein¹⁶, the presentation of the quarterly income tax returns are vital without which it cannot be ascertained whether petitioner did not carry over the excess/unutilized creditable withholding taxes for calendar year 2005 to the subsequent quarters of calendar year 2006. This doubt could have been avoided had petitioner presented the quarterly income tax returns for calendar year 2006.

As aptly ruled by this Court in the case of *"Millenium Business Services, Inc. vs. The Commissioner of Internal Revenue"*^{d7}, and We quote:

"While petitioner's administrative claim on April 7, 2006 and its Petition for Review on April 12, 2006 were both filed within the two year prescriptive period; the fact of withholding of P1,341,623.00 is established by a copy of certificates of creditable tax withheld at source issued by withholding agents; and petitioner's income from service of P13,478,144.67 upon which the creditable taxes of P1,341,623.00 is withheld were included in the return, petitioner, however, has failed to prove that it did not carry over its claimed excess creditable withholding taxes to the succeeding quarters of taxable year 2004. Records of this case disclosed that petitioner failed to present as evidence its 2004 quarterly income tax returns.

Although, petitioner presented its 2004 Annual Income Tax Return wherein it shows that it did not carry over as tax credit its claimed unutilized creditable withholding taxes of P1,341,623.00 to the succeeding taxable year 2004, however, this evidence is not enough to conclude that petitioner did not apply the said unutilized creditable 

¹⁵ Exhibit "S", Docket, pp. 454-459.

¹⁶ Exhibit "S-I", Docket, p. 454.

¹⁷ Amended Decision, CTA Case No. 7441, February 11, 2009.

withholding taxes against the income tax due for the first three quarters of 2004. Petitioner should have presented its 2004 quarterly income tax returns. The said quarterly income tax returns could help the Court determine whether petitioner effectively opted to carry over the 2003 excess creditable withholding taxes to the subsequent taxable year. If petitioner applied the said unutilized creditable withholding taxes against the income tax due for the first three quarters of taxable year 2004, it therefore effectively exercised the option to carry over the 2003 unutilized creditable withholding taxes to the succeeding taxable year 2004; thus, its claim for refund should be denied pursuant to Sec. 76 of the 1997 Tax Code, which provides:

'xxx xxx xxx'

In the case of *Benguet Management Corporation vs. Commissioner of Internal Revenue*¹⁸, the Court En Banc agreed with the findings of the Court a quo that petitioner therein indeed carried over its declared overpayment for 2001 to the subsequent quarters as proved by its quarterly income tax returns of 2002, viz:

'However, petitioner carried over the declared overpayment for 2001 in the amount of P6,249,534.00 to the succeeding quarters of taxable year 2002 as prior year's excess credits (Annexes C to E, Petition for Review, pp.10-12). As petitioner's own evidence would show (original/tentative annual ITR for CY 12/2001, Exhibit "A"), the total declared overpayment of P6,249,534.00 for the calendar year 2001, was carried over by the petitioner to the first quarter of 2002, filed on June 11, 2002 (Quarterly Income Tax Return for the 1st Quarter of 2002, Annex C, Petition for Review). When petitioner filed its second quarterly return for the year 2002, it likewise carried over the amount of P6,249,534.00 as prior year's excess credits (Quarterly Income Tax Return for the 2nd Quarter of 2002, Annex D, Petition for Review). For the third quarter of 2002, petitioner still carried over the same amount of P6,249,534.00 as prior year's excess credits (Quarterly Income Tax Return for 3rd Quarter of 2002, Annex E, Petition for Review). The total amount of P5,700,272.00 subject of this claim, formed part of the P6,249,534.00 overpayment for calendar year 2001 (exhibit A-1).'

¹⁸ CTA EB Case No. 200, April 4, 2007 affirming the decision of Benguet Management Corporation vs. Commissioner Of Internal Revenue, CTA Case No. 6890, January 9, 2006.

"When petitioner filed its corporate income tax return for the calendar year 2002 on April 14, 2003, it still carried over the amount of P6,249,534.00 as prior year's excess credits (Exhibit F, Records, pp. 91-93). The fact that petitioner amended its 2002 tax return on October 9, 2003 (Exhibit G, Records, pp. 94-96) does not alter the fact that petitioner in fact carried the amount of P6,249,534.00 which the claimed amount of P5,700,272.00 formed a part of, to the succeeding first, second and third quarters of 2002. And in its 2002 original corporate income tax return, petitioner again carried over the same amount of prior year's excess credits. (Emphasis supplied)

In fact, Section 2.58,3 of Revenue Regulations No. 2-98 implementing Republic Act No. 8424 even provides:

'Section 2-58-3. Claim for Tax Credit or Refund. –

(A) The amount of creditable tax withheld shall be allowed as a tax credit against the income tax liability of the payee in the quarter of the taxable year in which income was earned or received.

(B) Claims for tax credit or refund or 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.

(C) Excess Credits – An individual or corporate taxpayer's excess expanded withholding tax credits for the taxable quarter/year shall automatically be allowed as a credit against his income tax due for the taxable quarters/years immediately succeeding the taxable quarters/years in which the excess credit arose, provide he submits with his income tax return, a copy of the first page of his income tax return, a copy of the first page of his income tax return for the previous taxable period showing the amount of his excess withholding tax credits, and on which return he has not opted for a cash refund or tax credit certificate.

1. If in lieu of the automatic application of his excess credit, the taxpayer wants a cash refund or a tax credit certificate for use in payment of his 

other national internal revenue tax liabilities, he shall make a written request therefore, within two years after the payment of the tax (Ref. Secs. 204 (c) and 229 of the Code), provided however, that if the taxpayer has indicated in his request, the taxpayer's income tax return showing the excess expanded withholding tax credits shall be examined. The excess expanded withholding tax so determined, shall be refunded/credited to the taxpayer.

2. Sample computation of application for excess credits-ordinary

Tax Period	1997	1998-QTR1	1998-QTR2	1998-QTR3
Tax Due	1,000	200	200	500
Less: Tax Withheld	(1,500)	(500)	(300)	0
Net Tax Payable/ Creditable	(500)	(300)	(100)	500

In the above illustration, there is an excess credit in 1997 that can be applied to the subsequent quarter. And if the option to apply the excess credit is initiated in the first quarter of 1998, the taxpayer cannot avail of the refund/tax credit certificate of the excess credit of P500 in 1997." (Emphasis supplied)

Thus, the presentation of the quarterly income tax returns is very important. Without which, it cannot be ascertained whether petitioner did not carry over the 2003 excess/unutilized creditable withholding taxes to the subsequent quarters of 2004. Petitioner may have carried over its 2003 unutilized creditable withholding taxes to its quarterly income tax returns for 2004, and it may have amended said returns whereby such unutilized creditable withholding taxes are no longer reflected therein; thus, it follows that its 2004 Annual ITR will likewise not show any amount of prior year's excess credit. This doubt could have been avoided had petitioner presented the quarterly income tax returns for 2004."

To stress, tax refunds are in the nature of tax exemptions. The same are regarded as in derogation of sovereign authority and shall be construed 

strictissimi juris against the person claiming such exemption. The taxpayer has the burden of proving that it is entitled to the claim for refund¹⁹.

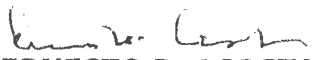
WHEREFORE, premises considered, the Petition for Review is hereby **DENIED** for insufficiency of evidence.

SO ORDERED.



CAESAR A. CASANOVA
Associate Justice

WE CONCUR:



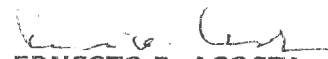
ERNESTO D. ACOSTA
Presiding Justice



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.



ERNESTO D. ACOSTA
Chairman, First Division

¹⁹ BPI-Family Savings Bank v. Court of Appeals, 330 SCRA 507 (2000).