

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SECOND DIVISION

TUTUBAN PROPERTIES, INC.,
Petitioner,

C.T.A. CASE NO. 7634

Members:

- versus -

CASTAÑEDA, JR., *Chairperson*
UY, *and*
PALANCA-ENRIQUEZ, JJ.

COMMISSIONER OF INTERNAL
REVENUE,
Respondent.

Promulgated:

JAN 08 2010

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✓ 4:05 p.m.

DECISION

CASTAÑEDA, JR., J.:

The instant Petition for Review is a claim for refund or issuance of tax credit certificate in the amount of NINE HUNDRED EIGHTY-FOUR THOUSAND THREE HUNDRED SEVENTY-FIVE PESOS (P984,375.00), allegedly representing expanded withholding taxes erroneously and doubly remitted in relation to petitioner's rental payments to Philippine National Railways (PNR) for the first quarter of calendar year 2005.

Tutuban Properties, Inc. (Petitioner) is a corporation duly organized and existing under and by virtue of the laws of the Philippines, with principal office address at Tutuban Center, Claro M. Recto Avenue corner Dagupan *JK*

St., Tondo, Manila. It is registered with the Bureau of Internal Revenue (BIR), with Taxpayer's Identification Number (TIN) 029-001-178-585.¹

Respondent is the duly appointed Commissioner of the BIR vested with the power to decide, approve, and grant refunds or tax credits of overpaid internal revenue taxes as provided by law. He holds office at the Office of the Commissioner, BIR National Office Building, BIR Road, Diliman, Quezon City.

Under a Lease Agreement² executed on August 16, 1993, petitioner shall pay the Philippine National Railways an annual fee for the rental of the Tutuban Terminal Compound, in C.M. Recto Avenue, Manila; and a share on gross sales, including rental income derived by petitioner from the lease to third parties of commercial/office/parking spaces within its own building improvements.

For the period covering January to April 2005, petitioner electronically filed with the Bureau of Internal Revenue its Monthly Remittance Returns of Creditable Income Taxes Withheld (Expanded)³ that show the following:

PERIOD	NATURE OF PAYMENT	ATC	TAX BASE	TAX RATE	TAX REQUIRED TO BE WITHHELD
January 2005	WT - RENTALS (CORP.)	WC 100	7,739,249.80	5%	386,962.49
February 2005	WT - RENTALS (CORP.)	WC 100	7,586,816.00	5%	379,340.80
March 2005	WT - RENTALS (CORP.)	WC 100	6,870,396.00	5%	343,519.80
April 2005	WT - RENTALS (CORP.)	WC 100	27,362,738.20	5%	1,368,136.91

On April 18, 2007, petitioner filed with the BIR a written request for refund or issuance of tax credit certificate in the amount of P984,375.00 allegedly representing the over-remitted Expanded Withholding Taxes (EWT) on its rental payments to PNR for the period covering January 2005 to March *gc*

¹ Par. 2, Joint Stipulation of Facts and Issues (JSFI), docket, p. 93.

² Exhibit "L".

³ Exhibits "C" to "F".

2005.⁴ As respondent has not acted on petitioner's written request, petitioner filed the above-captioned case before this Court on May 15, 2007.

In his Answer filed on June 27, 2007, respondent interposed the following Special and Affirmative Defenses⁵:

- "6. Petitioner's alleged claim for refund is subject to the administrative investigation/examination by respondent.
7. Taxes remitted to the BIR are presumed to have been made in the regular course of business and in accordance with the provision of law.
8. Claims for refund are construed strictly against the claimant for the same partake the nature of exemption from taxation.
9. 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 organic or statutory law. An exemption from common burden cannot be permitted to exist upon vague implications."

After the issues were joined, the trial of the case proceeded. Petitioner presented documentary and testimonial evidence. On the other hand, respondent waived his right to present evidence, considering that there was no final report on petitioner's claim for refund.⁶

The case was submitted for decision after petitioner filed its Memorandum on April 17, 2009, and after the Court's Record Division reported that respondent did not file a memorandum.⁷ *ju*

⁴ Par. 6, JSFI, docket, p. 94.

⁵ Docket, pp. 50-51.

⁶ Docket, p. 359.

⁷ Docket, p. 388.

The issue⁸, as stipulated by the parties, is:

"Whether or not Petitioner is entitled to a claim for refund or the issuance of a Tax Credit Certificate (TCC) in the amount of Php984,375.00 representing its erroneous payment of Expanded Withholding Tax?"

The Court shall first resolve the timeliness of petitioner's claim.

Applicable here are Sections 204(C) and 229 of the National Internal Revenue Code (NIRC) of 1997, as amended, which state:

"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

⁸ Docket, p. 94.

tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid.”

The above provisions mandate that the administrative and judicial remedy of filing a claim for refund of erroneously paid tax must be done within two years from the payment of the tax.

A close scrutiny of the records reveals that the amount petitioner seeks to be refunded represent the five percent (5%) withholding taxes on its lease payment to PNR that was withheld and remitted to the BIR on May 16, 2005.⁹ It is from this date that the two-year prescriptive period commences to run, pursuant to Sections 204(C) and 229 of the NIRC. Petitioner therefore had until May 16, 2007 within which to file the administrative and judicial claims for refund.

Petitioner filed its administrative claim for refund before the BIR on April 18, 2007¹⁰ and the instant Petition for Review on May 15, 2007, clearly both filed within the two-year prescriptive period.

Petitioner presented its Monthly Remittance Returns of Creditable Income Taxes Withheld (Expanded) for the months of January¹¹, February¹², March¹³, and April¹⁴ of the year 2005, with the schedule of breakdown of Expanded Withholding Tax payments¹⁵, to prove that it timely filed, withheld, and remitted the amount of taxes due the BIR. *gc*

⁹ Exhibits “F-1” and “F-2”.

¹⁰ Exhibit “N”.

¹¹ Exhibit “C”.

¹² Exhibit “D”.

¹³ Exhibit “E”.

¹⁴ Exhibit “F”.

¹⁵ Exhibit “K”.

The alleged erroneous remittance of the amount of P984,375.00 arose from the remittance of withholding tax on rental payments to PNR for the quarter ending March 2005, broken down as follows:

Period Covered (2005)	Rental	EWT
January	P 6,562,500.00	P 328,125.00
February	6,562,500.00	328,125.00
March	6,562,500.00	328,125.00
TOTAL	P 19,687,500.00	P 984,375.00

Pursuant to revenue regulations and petitioner's accounting practice, remittance of the equivalent expanded withholding tax due on rentals is made upon the monthly accrual of rent payable. On the basis thereon, petitioner filed with the BIR its Monthly Remittance Returns of Creditable Income Taxes Withheld (Expanded) for the months of January, February, and March 2005 on February 14, 2005¹⁶, March 14, 2005¹⁷, and April 13, 2005¹⁸, respectively. Petitioner correspondingly remitted, among others, the EWT on rentals paid to PNR¹⁹ on February 15, 2005²⁰, March 15, 2005²¹, and April 15, 2005²², detailed below:

	January 2005	February 2005	March 2005
PNR			
Fixed Component	P 328,125.00	P 328,125.00	P 328,125.00
Variable Component	43,682.69	36,061.00	-
	P 371,807.69	P 364,186.00	P 328,125.00
POPI	9,179.06	9,179.06	9,179.06
LKG Tower	5,290.74	5,290.74	
ICEC Land	685.00	685.00	5,975.74
Kooler			240.00
Total EWT-Rentals²³	P 386,962.49	P 379,340.80	P 343,519.80

¹⁶ Exhibit "C".

¹⁷ Exhibit "D".

¹⁸ Exhibit "E".

¹⁹ Excerpt from Exhibit "Y".

²⁰ Exhibit "C-2".

²¹ Exhibit "D-2".

²² Exhibit "E-2".

²³ These amounts are equivalent to the EWT – Rentals shown in the Monthly Remittance Return of Creditable Income Taxes Withheld (Expanded) as per Exhibit "C-1", "D-1" and "E-1".

On May 13, 2005, petitioner filed its Monthly Remittance Return of Creditable Income Taxes Withheld (Expanded) for the month of April 2005. On May 16, 2005, petitioner remitted the EWT due thereon,²⁴ which included the EWT due on rentals paid to PNR for the months of January to March 2005, and the EWT on accrued rent for the month of April 2005, in the sum of P1,368,136.91, broken down as follows:

PNR	
Fixed Component	
January	P 328,125.00
February	328,125.00
March	328,125.00
April	328,125.00
Variable Component - April	40,482.11
	P 1,352,982.11
POPI	9,179.06
ICEC Land	5,975.74
Total EWT-Rentals²⁵	P 1,368,136.91

The pieces of evidence presented by petitioner, including the Report of Ms. Myra Celeste Dabalos, the Court-commissioned Independent Certified Public Accountant (CPA), prove that there was double remittance of EWT. The remittance made to BIR on May 16, 2005 included the EWT on rentals pertaining to January, February, and March 2005. However, the amount of double remittance amounts to P953,230.31 only, as against petitioner's claim of P984,375.00, computed below:

	January	February	March 2005	April 2005	Total
Due to PNR					
Fixed Charges	P6,562,500.00	P6,562,500.00	P6,562,500.00	P 6,562,500.00	P 26,250,000.00
Add: 2% share	733,554.94	721,219.92	755,636.88	816,998.10	3,027,409.84
Total Charges	P7,296,054.94	P7,283,719.92	P7,318,136.88	P 7,379,498.10	P 29,277,409.84
x EWT Rate	5%	5%	5%	5%	
Total EWT Due	P 364,802.75	P 364,186.00	P 365,906.84	P 368,974.90	P 1,463,870.49

²⁴ Exhibit "F".

²⁵ This amount is equivalent to the EWT – Rentals shown in Monthly Remittance Return of Creditable Income Taxes Withheld (Expanded) as per Exhibit "F-1".

Less: EWT Remitted	371,807.69	364,186.00	328,125.00	1,352,982.11	2,417,100.80
Under/Over Remittance	P (7,004.94)	-	P 37,781.84	P (984,007.21)	P (953,230.31)

Although petitioner had over-remitted the EWT on the fixed component portion of the rental due to PNR by P984,375.00, it has under-remitted the EWT on the variable component of the rental (2% share in gross income) by P31,144.69, as detailed below:

	January	February	March	April	Total
Variable per CPA's findings	P 733,554.94	P 721,219.92	P 755,636.88	P 816,998.10	P3,027,409.84
Variable per Return	873,653.70	721,220.00		809,642.20	2,404,515.90
	(140,098.76)	(0.08)	755,636.88	7,355.90	622,893.94
x EWT Rate	5%	5%	5%	5%	
Under/Over Remittance	P (7,004.94)	P (0.00)	P 37,781.84	P 367.79	P 31,144.69

However, before petitioner can validly claim the refund or tax credit, it has the duty not only to establish the fact of double remittance but also, to prove that there was no double utilization of the claimed creditable withholding taxes on the part of petitioner's lessee, the PNR.

In its attempt to establish that there was no double utilization of the subject EWT, petitioner presented as evidence PNR's Annual Income Tax Returns (BIR Form 1702) for calendar years 2005²⁶ and 2006²⁷, and the Judicial Affidavit of petitioner's Assistant Manager for Accounting, Ms. Myrna Revilla.²⁸

The documents presented however are insufficient to prove that there was no double utilization of the claimed EWT. As a matter of fact, the Annual Income Tax Returns of PNR for calendar years 2005 and 2006 were merely stamped with the words "certified xerox copy." These returns cannot be given

²⁶ Exhibit "AA".

²⁷ Exhibit "BB".

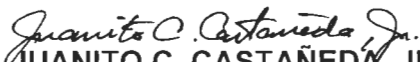
²⁸ Exhibit "CC".

evidentiary value since this Court cannot determine who certified the same as no name appears below the signature and/or whether the same is the actual and authorized custodian of said documents. Without the presentation of the original Annual Income Tax Returns of PNR, the authenticity of the purported "certified xerox copies" thereof cannot be ascertained.

It bears stressing that tax refunds, like tax exemptions, are construed strictly against the taxpayer. Petitioner, as claimant, has the burden of proof to establish the factual basis of its claim for tax credit or refund.²⁹ Its failure to overcome this burden will result in the denial of its refund claim.

WHEREFORE, premises considered, the instant Petition for Review is hereby **DENIED** for lack of merit.

SO ORDERED.


JUANITO C. CASTAÑEDA, JR.
Associate Justice

WE CONCUR:


ERLINDA P. UY
Associate Justice


OLGA PALANCA-ENRIQUEZ
Associate Justice

²⁹ *Citibank, N.A. vs. Court of Appeals and the Commissioner of Internal Revenue*, G.R. No. 107434, October 10, 1997.

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.


JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 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