

## SECOND DIVISION

**[ G.R. No. 189792, June 20, 2018 ]**

**COMMISSIONER OF INTERNAL REVENUE, PETITIONER, V. CEBU HOLDINGS, INC., RESPONDENT.**

### D E C I S I O N

**CARPIO, J.:**

#### The Case

This petition for review<sup>[1]</sup> assails the 29 July 2009 Decision and the 9 October 2009 Resolution of the Court of Tax Appeals (CTA) *En Banc* in C.T.A. EB No. 478. The CTA *En Banc* affirmed the 10 November 2008 Decision and the 12 March 2009 Resolution of the CTA First Division which ordered the issuance of a tax credit certificate in the reduced amount of P2,083,878.07<sup>[2]</sup> representing the excess creditable taxes for taxable year 2002 in favor of respondent Cebu Holdings, Inc. (respondent).

#### The Facts

Respondent is a registered real estate developer. On 15 April 2003, respondent filed with the Bureau of Internal Revenue (BIR) its Income Tax Return (ITR) for the year ending 31 December 2002, which states:

Sales/Revenues/Receipts/Fees	395,529,877
Less: Cost of Sales/Services	<u>213,551,009</u>
Gross Income from Operation	181,978,868
Add: Non-Operation and	<u>9,170,916</u>
Other Income	191,149,784
Total Gross Income	<u>147,535,224</u>
Less: Deductions	43,614,560
Taxable Income	<u>32.00%</u>
Tax Rate	13,956,659
Income Tax	<u>4,377,937</u>
MCIT	<b>13,956,659</b>
<b>Tax Due</b>	
Less:	
Prior Year's Excess Credits	33,468,076
Creditable Tax Withheld for	12,130,450
the First Three Quarters	<u>6,861,605</u>
Creditable Tax Withheld for	<u>52,460,131</u>
Fourth Quarter	<u>(19,511,417).</u>
Total Tax Credits/Payments	
Tax	
Payable/(Overpayment)-	
prior year's tax credit	
 Tax	 <b>(18,992.055)<sup>[3]</sup></b>

Payable/(Overpayment)-       =====  
current year's tax credit

Respondent indicated in its ITR that it is opting to be issued a tax credit certificate for the alleged overpayment of P18,992,055.00.

Subsequently, respondent filed an amended ITR for taxable year 2002, which states:

Sales/Revenues/Receipts/Fees	395,529,877
Less: Cost of Sales/Services	<u>213,551,009</u>
Gross Income from Operation	181,978,868
Add: Non-Operation and	<u>9,170,916</u>
Other Income	191,149,784
Total Gross Income	<u>147,535,224</u>
Less: Deductions	43,614,560
Taxable Income	=====

Tax Due (32%)	13,956,659
Less: Tax Credits/Payments	
Prior Years' Excess Credits	<u>30,150,767</u>

Creditable Tax Withheld for the First Three Quarters	12,130,450
	<u>6,861,605</u>
Creditable Tax Withheld for the Fourth Quarter	<u>18,992,055</u>
Total Creditable Tax Withheld - 2002	

Total Tax Credits/Payments	49,142,822
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Tax Payable (Overpayment)   (35,186,163)<sup>[4]</sup>

Respondent likewise indicated in its amended ITR that it is opting to be issued a tax credit certificate for the alleged overpayment of P18,992,055.00.

On 4 March 2005, respondent filed with the BIR a written claim for a tax credit certificate in the amount of P18,992,055.00. When petitioner failed to act upon respondent's claim, respondent filed a Petition for Review with the CTA First Division on 15 April 2005.

On 6 June 2006, the CTA First Division granted respondent's request for the appointment of an Independent Certified Public Accountant (CPA) under Rule 13 of the Revised Rules of the Court of Tax Appeals. The Court commissioned Independent CPA filed his Final and Consolidated Report on 3 August 2006.

The report of the Independent CPA states:

### Summary of Findings

In summary, based on the procedures performed to verify the accuracy of the amount of overpaid income tax/excess Creditable Withholding Taxes (CWTs) as of the year ended December 31, 2002 amounting to

PhP18,992,054.91 and the propriety of the documents supporting the claim for refund or tax credit of the Company on the present case at hand, we present below our findings and observations according to the particular source of creditable taxes, as follows:

**Real Estate Sales- PhP 6,067,093.08**

<p>A. CWTs supported by original Withholding Tax Remittance Return duly stamped "Received" by the Authorized Agent Bank and were machine validated with its supporting Contract to Sell or (Annex Deed of Sale 1)</p>	<p>P5,764,623.06</p>
<p>B. CWT supported by Certificate Authorizing Registration; no related income declared during the (Annex taxable year 2002 2)</p>	<p>18,856.25</p>
<p>C. CWT[s] supported by original Withholding Tax Remittance Return not stamped "Received"; but were Machine Validated by the Authorized Agent (Annex Bank 3)</p>	<p>141,087.59</p>
<p>D. CWT[s] supported by original Withholding Tax Remittance Return duly stamped "Received" by Authorized Agent Bank but were not Machine Validated by the Authorized Agent Bank; but supported by BIR-Collections and (Annex Reconciliation System 4)</p>	<p><u>142,526.18</u></p>
<p>TOTAL - CWTs per reviewed certificates</p>	<p>P6,067,093.08</p>
<p>Unaccounted Difference - passed due to immateriality</p>	<p><u>(0.00).</u></p>

TOTAL- CWTs claimed per December 31, 1998 [sic] Amended ITR	P6,067,093.08 =====
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**Real Estate Leasing-**  
**Php 12,800,461.83**

E. CWTs supported by original Certificates of Creditable Tax (Annex Withheld at Source 5)	P9,707,369.69
F. CWTs not supported by Certificates of Creditable Tax Withheld at Source (Annex Withholding Tax 6)	67,710.10
G. CWTs filed out of (Annex period 7)	2,818,260.83
H. Double Claim (Annex 8)	213,124.04

TOTAL - CWTs per reviewed certificates	12,806,464.66
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Unaccounted difference passed due to immateriality	(6,002.83).
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TOTAL CWTs claimed per December 31, 1998 [sic] Amended ITR	P 12,800,461.83 =====
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**Other Income-**  
**Management Fees -**  
**Php 124,500.00**

I. CWTs supported by original Certificates of Creditable Tax (Annex Withheld at Source 9)	<u>P 124,500.00</u>
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TOTAL- CWTs per reviewed certificates	<u>P 124,500.00</u>
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Unaccounted Difference	(00.00).
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TOTAL - CWTs claimed per December 31, 1998 [sic] Amended ITR	P 124,500.00 <sup>[5]</sup> =====
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**The Ruling of the CTA First Division**

The CTA First Division agreed with the findings of the Independent CPA, except for the amount of P3,857.33 which the Independent CPA erroneously included as part of the Creditable Withholding Taxes (CWTs) filed out of period in the amount of P2,818,260.83. The CTA First Division found that the certificate supporting the creditable tax of P3,857.33 shows that the same was withheld in taxable year 2002. Thus, the CTA First Division held that only the amount of P2,814,403.50 pertains to "CWTs filed out of period," after deducting the amount of P3,857.33 from P2,818,260.83.

The CTA First Division further held that out of the total creditable tax withheld of P18,992,055.00, only the amount of P15,877,961.02 represents respondent's valid claim for taxable year 2002. The CTA First Division disallowed CWTs totaling P3,114,093.89:

CWT supported by Certificate Authorizing Registration	P 18,856.25
CWTs not supported by Certificate of Creditable Tax Withheld at Source	
Withholding Tax	67,710.10
CWTs filed out of period	2,814,403.50
Double Claim	<u>213,124.04</u>
<b>Disallowed Creditable Withholding Taxes</b>	<b><u>P3,114,093.89</u></b> <sup>[6]</sup>

The CTA First Division also found a discrepancy in respondent's revenue from sales of real properties in the amount of P120,964,737.00 as indicated in its ITR, which is lower by P19,999.70 compared to the amount of P120,984,736.70 gross sales stated in its withholding tax remittance returns. For failure of respondent to account for the discrepancy in sales of real properties amounting to P19,999.70, the CTA First Division disallowed CWTs in the amount of P999.99, computed as follows:

Sales of Goods/Properties per income tax return	P 120,964,737.00
Less: Sales of Real properties per withholding tax remittance returns	<u>P 120,984,736.70</u>
Discrepancy in sales of real properties	P 19,999.70
Multiply by : 5% withholding tax rate	<u>0.05</u>
<b><u>Disallowed Creditable</u></b>	<b><u>P 999.99</u></b> <sup>[7]</sup>