

## SECOND DIVISION

[ G.R. No. 180290, September 29, 2014 ]

### COMMISSIONER OF INTERNAL REVENUE, PETITIONER, VS. PHILIPPINE NATIONAL BANK, RESPONDENT.

#### DECISION

**LEONEN, J.:**

Before this court is a petition for review<sup>[1]</sup> under Rule 45 of the Rules of Court, seeking to annul the October 1, 2007 decision<sup>[2]</sup> and October 30, 2007 resolution<sup>[3]</sup> of the Court of Tax Appeals En Banc in C.T.A. E.B. No. 285.

The assailed decision denied petitioner's appeal and affirmed the January 30, 2007 decision<sup>[4]</sup> and May 30, 2007 resolution<sup>[5]</sup> of the First Division of the Court of Tax Appeals, granting respondent a tax refund or credit in the amount of P23,762,347.83, representing unutilized excess creditable withholding taxes for taxable year 2000. The assailed resolution denied petitioner's motion for reconsideration.

The pertinent facts are summarized in the assailed decision as follows:

In several transactions including but not limited to the sale of real properties, lease and commissions, [respondent] allegedly earned income and paid the corresponding income taxes due which were collected and remitted by various payors as withholding agents to the Bureau of Internal Revenue ("BIR") during the taxable year 2000.

On April 18, 2001, [respondent] filed its tentative income tax return for taxable year 2000 which [it] subsequently amended on July 25, 2001.

. . . [Respondent] filed again an amended income tax return for taxable year 2000 on June 20, 2002, declaring no income tax liability . . . as it incurred a net loss in the amount of P11,318,957,602.00 and a gross loss of P745,713,454.00 from its Regular Banking Unit ("RBU") transactions. However, [respondent] had a 10% final income tax liability of P210,364,280.00 on taxable income of P1,959,931,182.00 earned from its Foreign Currency Deposit Unit ("FCDU") transactions for the same year. Likewise, in the [same] return, [respondent] reported a total amount of P245,888,507.00 final and creditable withholding taxes which was applied against the final income tax due of P210,364,280.00 leaving an overpayment of P35,524,227.00. . . .

. . . .

In its second amended return, [respondent's] income tax overpayment of P35,524,227.00 consisted of the balance of the prior year's (1999) excess credits of P9,057,492.00 to be carried-over as tax credit to the succeeding quarter/year and excess creditable withholding taxes for taxable year 2000 in the amount of P26,466,735.00 which [respondent] opted to be refunded.

On November 11, 2002, [respondent] . . . filed a claim for refund or the issuance of a tax credit certificate in the amount of P26,466,735.40 for the taxable year 2000 with the [BIR].

Due to [BIR's] inaction on its administrative claim, [respondent] appealed before [the Court of Tax Appeals] by way of a Petition for Review on April 11, 2003.<sup>[6]</sup> (Citation omitted)

On January 30, 2007, the Court of Tax Appeals First Division rendered a decision in favor of respondent as follows:

**WHEREFORE**, premises considered, the petition is hereby **GRANTED**. Accordingly, respondent is hereby **ORDERED TO REFUND** or **ISSUE A TAX CREDIT CERTIFICATE** to petitioner in the reduced amount of Twenty Three Million Seven Hundred Sixty Two Thousand Three Hundred Forty Seven Pesos and 83/100 (P23,762,347.83) representing unutilized excess creditable withholding taxes for taxable year 2000.<sup>[7]</sup> (Emphasis in the original)

Petitioner's motion for reconsideration was subsequently denied for lack of merit in the First Division's resolution dated May 30, 2007.

On appeal, the Court of Tax Appeals En Banc sustained the First Division's ruling. It held that the fact of withholding and the amount of taxes withheld from the income payments received by respondent were sufficiently established by the creditable withholding tax certificates, and there was no need to present the testimonies of the various payors or withholding agents who issued the certificates and made the entries therein. It also held that respondent need not prove actual remittance of the withheld taxes to the Bureau of Internal Revenue because the functions of withholding and remittance of income taxes are vested in the payors who are considered the agents of petitioner.<sup>[8]</sup>

The Court of Tax Appeals En Banc also denied petitioner's motion for reconsideration<sup>[9]</sup> in its October 30, 2007 resolution.

Hence, this instant petition was filed.

Petitioner claims that the Court of Tax Appeals "erred on a question of law in ordering the refund to respondent of alleged excess creditable withholding taxes because(:)

- A. Respondent failed to prove that the creditable withholding taxes amounting to P23,762,347.83 are duly supported by valid certificates of creditable tax withheld at source;
- B. Respondent failed to prove actual remittance of the alleged withheld taxes to the Bureau of Internal Revenue (BIR); and
- C. Respondent failed to discharge its burden of proving its entitlement to a refund.”<sup>[10]</sup>

Petitioner questions the validity of respondent’s certificates of creditable tax withheld at source (withholding tax certificates) and contends that even if the original certificates were offered in evidence, respondent failed to present the various withholding agents to: (1) identify and testify on their contents; and (2) prove the subsequent remittance of the withheld taxes to the Bureau of Internal Revenue. Moreover, petitioner faults respondent for presenting the withholding tax certificates only before the Court of Tax Appeals, and not at the first instance when it filed its claim for refund administratively before the Bureau of Internal Revenue.<sup>[11]</sup>

In its comment,<sup>[12]</sup> respondent counters that:

- 1) The petition should be dismissed for being pro forma because it does not specify the reversible errors of either fact or law that the lower courts committed, and the arguments raised are all rehash and purely factual;
- 2) It complied with all the requirements for judicial claim for refund of unutilized creditable withholding taxes;
- 3) The fact of withholding was sufficiently established by the 622 creditable withholding tax certificates, primarily attesting the amount of taxes withheld from the income payments received by respondent. Furthermore, to present to the court all the withholding agents or payors to identify and authenticate each and every one of the 622 withholding tax certificates would be too burdensome and would unnecessarily prolong the trial of the case; and
- 4) Respondent need not prove the actual remittance of withheld taxes to the Bureau of Internal Revenue because the remittance is the responsibility of the payor or withholding agent and not the payee.

In its reply,<sup>[13]</sup> petitioner maintains that claims for refund are strictly construed against the claimant, and “it is incumbent upon respondent to discharge the burden of proving . . . the fact of withholding of taxes and their subsequent remittance to the Bureau of Internal Revenue.”<sup>[14]</sup>

In the resolution dated February 2, 2009,<sup>[15]</sup> the court resolved to give due course to the petition and decide the case according to the pleadings already filed.

The petition, however, should be denied.

The petition is but a reiteration of reasons and arguments previously set forth in petitioner's pleadings before the Court of Tax Appeals En Banc, and which the latter had already considered, weighed, and resolved before it rendered its decision and resolution now sought to be set aside.

Furthermore, the questions on whether respondent's claim for refund of unutilized excess creditable withholding taxes amounting to P23,762,347.83 were duly supported by valid certificates of creditable tax withheld at source and whether it had sufficiently proven its claim are questions of fact. These issues require a review, examination, evaluation, or weighing of the probative value of evidence presented, especially the withholding tax certificates, which this court does not have the jurisdiction to do, barring the presence of any exceptional circumstance, as it is not a trier of facts.<sup>[16]</sup>

Besides, as pointed out by respondent, petitioner did not object to the admissibility of the 622 withholding tax certificates when these were formally offered by respondent before the tax court.<sup>[17]</sup> Hence, petitioner is deemed to have admitted the validity of these documents.<sup>[18]</sup> Petitioner's "failure to object to the offered evidence renders it admissible, and the court cannot, on its own, disregard such evidence."<sup>[19]</sup>

At any rate, the Court of Tax Appeals First Division and En Banc uniformly found that respondent has established its claim for refund or issuance of a tax credit certificate for unutilized excess creditable withholding taxes for the taxable year 2000 in the amount of P23,762,347.83. The Court of Tax Appeals First Division thoroughly passed upon the evidence presented by respondent and the report of the court-commissioned auditing firm, SGV & Co., and found:

[O]ut of the total claimed creditable withholding taxes of P26,466,735.40, [respondent] was able to substantiate only the amount of P25,666,064.80 [sic], computed as follows:

Amount of Claimed Creditable Taxes Withheld	P26,466,735.40
Less: 1.) Certificates which do not bear any date or period when the indicated creditable taxes were withheld	48,600.00
2.) Certificates dated outside the period of claim	730,151.10
3.) Certificate without indicated amount of tax withheld	8,794.50
4.) Certificates taken-up twice	<u>9,000.00</u>
Substantiated Creditable Taxes Withheld	<b><u>P25,670,189.80</u></b>

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