

## FIRST DIVISION

[ G.R. No. 171956, January 18, 2008 ]

**STATE LAND INVESTMENT CORPORATION, Petitioner, vs.  
COMMISSIONER OF INTERNAL REVENUE, Respondent.**

### D E C I S I O N

**SANDOVAL-GUTIERREZ, J.:**

Before us is a Petition for Review on *Certiorari*<sup>[1]</sup> assailing the Decision<sup>[2]</sup> dated November 22, 2004 and Resolution dated March 14, 2006 of the Court of Appeals in CA-G.R. SP No. 72500.

State Land Investment Corporation, petitioner, is a corporation duly organized and existing under the laws of the Republic of the Philippines. It is a real estate developer engaged in the development and marketing of low, medium and high cost subdivision projects in the cities of Manila, Pasay and Quezon; and in Cavite and Bulacan.

On April 15, 1997, petitioner filed with the Bureau of Internal Revenue (BIR) its annual income tax return for the calendar year ending December 31, 1997. Its taxable income was P27,723,328.00 with tax due in the amount of P9,703,165.54. Its total tax credits for the same year amounted to P23,632,959.05, inclusive of its prior year's excess tax credits of P9,289,084.00. Thus, after applying its total tax credits of P23,632,959.05 against its income tax liability of P9,703,165.54, the amount of P13,929,793.51 remained unutilized. Petitioner opted to apply this amount as tax credit to the succeeding taxable year 1998.

On April 15, 1999, petitioner again filed with the BIR its **annual income tax return for the calendar year ending December 31, 1998**, declaring a minimum corporate income tax due in the amount of P4,187,523.00. Petitioner charged the said amount against its 1997 excess credit of P13,929,793.51, leaving a balance of **P9,742,270.51**.

On April 7, 2000, petitioner filed with the BIR a claim for refund of its unutilized tax credit for the year 1997 in the amount P9,742,270.51.

On April 13, 2000, in order to toll the running of the two-year prescriptive period and there being no immediate action on the part of respondent Commissioner of Internal Revenue, petitioner filed a petition for review with the Court of Tax Appeals (CTA).

On April 4, 2002, the CTA denied petitioner's claim for refund of its unutilized tax credit for 1997. In its Decision dated April 4, 2002, the CTA held that petitioner's 1998 income tax return showed its intention of carrying over its 1997 excess tax credit to the following taxable year 1999 by marking an "x" on the box (appearing

on its 1998 income tax return) indicating "to be carried as tax credit next year"; and that petitioner failed to present its 1999 income tax return to enable the CTA to determine with certainty that its 1997 tax credit was not charged against its tax liabilities for the said year (1999). Specifically, the CTA ruled that the failure of petitioner to present its 1999 corporate annual income tax return is fatal to its claim for refund. Well-settled is the rule that tax refunds, like tax exemptions, are construed strictly against the taxpayer.

Petitioner filed a motion for reconsideration and attached its 1999 and 2000 income tax returns. In its motion, petitioner alleged that the "x" mark in its 1998 income tax return indicating "to be carried as tax credit next year" was intended to show its intention to carry over as tax credit for 1999 only what it earned during the taxable year 1998 amounting to P6,228,288.00, as it was aware it could no longer utilize the 1997 excess tax credit for the year 1999. However, in a Resolution dated August 8, 2002, the CTA denied the motion.

Petitioner then filed with the Court of Appeals a petition for review.

In its Decision, the appellate court affirmed the CTA judgment, holding that:

While we agree with petitioner that since the CTA, under its charter, is not governed strictly by technical rules of evidence so that additional evidence may be submitted by a party in the motion for reconsideration, nonetheless, we deny petitioner's claim for refund of its excess tax credit for the year 1997.

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It bears reiterating that after signifying its option in its 1998 Annual Income Tax Return to apply the 1997 excess tax credit to the following year 1999, petitioner never submitted succeeding quarterly returns to negate the fact that said tax overpayment was applied to its 1999 Annual Income Tax Return, or beyond the one-year period limitation.

Petitioner filed a motion for reconsideration but the same was denied.

Hence, this petition.

The main issue for our resolution is whether petitioner is entitled to the refund of P9,742,270.51 representing the excess creditable withholding tax for taxable year 1997.

Petitioner contends that it has shown by sufficient and uncontested evidence that it did not utilize the 1997 excess withholding tax credits amounting to P9,742,270.51 against its income tax liability for taxable year 1999 and succeeding years. Petitioner pointed out that the CTA and the Court of Appeals misappreciated the "x" marking on its 1998 income tax return, thus concluding that petitioner intended to carry over its 1997 excess tax credit to taxable year 1999. Petitioner stressed that its 1999 annual income tax return clearly shows that it incurred a net loss that year in the amount of P33,610,028.00. Thus, it has no tax liability in 1999 to which the 1997 excess tax credits may be applied or utilized.

On the other hand, respondent maintains that despite petitioner's knowledge that it could carry over the excess tax credits only to the succeeding taxable year (1998), it still signified its intention to apply the 1997 excess tax credits to taxable year 1999 by marking an "x" on the box (printed on the 1998 income tax return form) stating "to be credited as tax credit next year," referring to taxable year 1999. Respondent also clarified that the two remedies of **refund** and **tax credit** are alternative and the choice of one precludes the other. Since the "x" mark shows that petitioner intended to carry over the questioned tax credit to taxable year 1999, it can no longer claim for refund.

We find for petitioner.

Time and again, we have held that this Court is not a trier of facts and it is not its function to examine and evaluate the probative value of the evidence presented before the concerned tribunal upon which its impugned decision or resolution is based.<sup>[3]</sup> However, this rule does not apply where the judgment is premised on a misapprehension of facts, or when the appellate court failed to notice certain relevant facts which if considered would justify a different conclusion.<sup>[4]</sup> This case is one such exception.

Under Section 69<sup>[5]</sup> (now Section 76) of the Tax Code then in force, a corporation entitled to a refund of excess creditable withholding tax may either obtain the refund or credit the amount to the succeeding taxable year, thus:

Section 69. Final Adjustment Return. – Every corporation liable to tax under Section 24 shall file a final adjustment return covering the total net 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 net income of that year the corporation shall either:

(a) Pay the excess tax still due; or

(b) Be refunded the excess amount paid, as the case may be.

In case the corporation is entitled to a refund of the excess estimated quarterly income taxes paid, the refundable amount shown on its final adjustment return may be credited against the estimated quarterly income tax liabilities for the taxable quarters of the succeeding taxable year.

It is well-defined from the said provision that if the total tax due is less than the quarterly tax payments made during the year, a taxpayer is entitled to a refund or credit for the excess amount paid. Petitioner's 1997 income tax due amounted to P9,703,165.54. After applying its tax excess credits for 1996 in the amount of P9,289,084.00, the net income tax payable for 1997 was only P414,081.54. However, based on the quarterly income tax payments of petitioner, the total creditable withholding tax for the year 1997 amounted to P14,343,875.05. Thus, the amount of overpayment of tax as of 1997 was P13,929,793.51 (after deducting P414,081.54 from P14,343,875.05). In the final adjustment return filed for the same taxable year, petitioner indicated its option to apply the said overpayment as tax credit **for the succeeding taxable year 1998, not 1999**. There still remains a