

THIRD DIVISION

[G.R. No. 163345, July 04, 2008]

COMMISSIONER OF INTERNAL REVENUE, PETITIONER, VS. PERF REALTY CORPORATION, RESPONDENT.

DECISION

REYES, R.T., J.:

FOR Our review on *certiorari* is the Decision^[1] of the Court of Appeals (CA) granting the claim for refund of respondent PERF Realty Corporation (PERF) for creditable withholding tax for the year 1997.

Facts

Petitioner Commissioner is the head of the Bureau of Internal Revenue (BIR) whose principal duty is to assess and collect internal revenue taxes. Respondent PERF is a domestic corporation engaged in the business of leasing properties to various clients including the Philippine American Life and General Insurance Company (Philamlife) and Read-Rite Philippines (Read-Rite).

On April 14, 1998, PERF filed its Annual Income Tax Return (ITR) for the year 1997 showing a net taxable income in the amount of P6,430,345.00 and income tax due of P2,250,621.00.

For the year 1997, its tenants, Philamlife and Read-Rite, withheld and subsequently remitted creditable withholding taxes in the total amount of P3,531,125.00.

After deducting creditable withholding taxes in the total amount of P3,531,125.00 from its total income tax due of P2,250,621.00, PERF showed in its 1997 ITR an overpayment of income taxes in the amount of P1,280,504.00.

On November 3, 1999, PERF filed an administrative claim with the appellate division of the BIR for refund of overpaid income taxes in the amount of P1,280,504.00.

On December 3, 1999, due to the inaction of the BIR, PERF filed a petition for review with the Court of Tax Appeals (CTA) seeking for the refund of the overpaid income taxes in the amount of P1,280,504.00.

CTA Disposition

In a Decision dated November 20, 2001, the CTA denied the petition of PERF on the ground of insufficiency of evidence. The CTA noted that PERF did not indicate in its 1997 ITR the option to either claim the excess income tax as a refund or tax credit pursuant to Section 69^[2] (now 76) of the National Internal Revenue Code (NIRC)

Further, the CTA likewise found that PERF failed to present in evidence its 1998 annual ITR. It held that the failure of PERF to signify its option on whether to claim for refund or opt for an automatic tax credit and to present its 1998 ITR left the Court with no way to determine with certainty whether or not PERF has applied or credited the refundable amount sought for in its administrative and judicial claims for refund.

PERF moved for reconsideration attaching to its motion its 1998 ITR. The motion was, however, denied by the CTA in its Resolution dated March 26, 2002.

Aggrieved by the decision of the CTA, PERF filed a petition for review with the CA under Rule 43 of the Rules of Court.

CA Disposition

In a Decision dated July 18, 2003, the CA ruled in favor of PERF, disposing as follows:

WHEREFORE, the petition is hereby GRANTED. The assailed Decision dated November 20, 2001, and Resolution of March 26, 2002 of the Court of Tax Appeals are SET ASIDE. The Commissioner of Internal Revenue is ordered to REFUND to the petitioner the amount of P1,280,504.00 as creditable withholding tax for the year 1997.

SO ORDERED.^[3]

According to the appellate court, even if the taxpayer has indicated its option for refund or tax credit in its ITR, it does not mean that it will automatically be entitled to either option since the Commissioner of Internal Revenue (CIR) must be given the opportunity to investigate and confirm the veracity of the claim. Thus, there is still a need to file a claim for refund.

As to the failure of PERF to present its 1998 ITR, the CA observed that there is no need to rule on its admissibility since the CTA already held that PERF had complied with the requisites for applying for a tax refund. The sole purpose of requiring the presentation of PERF's 1998 ITR is to verify whether or not PERF had carried over the 1997 excess income tax claimed for refund to the year 1998. The verification process is not incumbent upon PERF; rather, it is the duty of the BIR to disprove the taxpayer's claim.

The CIR filed a motion for reconsideration which was subsequently denied by the CA. Thus, this appeal to Us under Rule 45.

Issues

Petitioner submits the following assignment:

I

THE COURT OF APPEALS ERRED IN GRANTING RESPONDENT'S TAX REFUND CONSIDERING THE LATTER'S FAILURE TO SUBSTANTIALLY

ESTABLISH ITS CLAIM FOR REFUND.

II

THE COURT OF APPEALS ERRED IN CONSIDERING RESPONDENT'S ANNUAL CORPORATE INCOME TAX RETURN FOR 1998 NOTWITHSTANDING THAT IT WAS NOT FORMALLY OFFERED IN EVIDENCE.^[4] (Underscoring supplied)

Our Ruling

We rule in favor of respondent.

I. Respondent substantially complied with the requisites for claim of refund.

The CTA, citing *Section 10 of Revenue Regulations 6-85 and Citibank, N.A. v. Court of Appeals*,^[5] determined the requisites for a claim for refund, thus:

- 1) That the claim for refund was filed within the two (2) year period as prescribed under Section 230 of the National Internal Revenue Code;
- 2) That the income upon which the taxes were withheld were included in the return of the recipient;
- 3) That the fact of withholding is established by a copy of a statement (BIR Form 1743.1) duly issued by the payor (withholding agent) to the payee, showing the amount paid and the amount of tax withheld therefrom.^[6]

We find that PERF filed its administrative and judicial claims for refund on November 3, 1999 and December 3, 1999, respectively, which are within the two-year prescriptive period under Section 230 (now 229) of the National Internal Tax Code.

The CTA noted that based on the records, PERF presented certificates of creditable withholding tax at source reflecting creditable withholding taxes in the amount of P4,153,604.18 withheld from PERF's rental income of P83,072,076.81 (Exhibits B, C, D, E, and H). In addition, it submitted in evidence the Monthly Remittance Returns of its withholding agents to prove the fact of remittance of said taxes to the BIR. Although the certificates of creditable withholding tax at source for 1997 reflected a total amount of P4,153,604.18 corresponding to the rental income of P83,072,076.81, PERF is claiming only the amount of P3,531,125.00 pertaining to a rental income of P70,813,079.00. The amount of P3,531,125.00 less the income tax due of PERF of P2,250,621.00 leaves the refundable amount of P1,280,504.00.

It is settled that findings of fact of the CTA are entitled to great weight and will not be disturbed on appeal unless it is shown that the lower courts committed gross error in the appreciation of facts. We see no cogent reason not to apply the same principle here.

II. The failure of respondent to indicate its option in its annual ITR to avail itself of either the tax refund or tax credit is not fatal to its claim for refund.

Respondent PERF did not indicate in its 1997 ITR the option whether to request a refund or claim the excess withholding tax as tax credit for the succeeding taxable year.

Citing Section 76 of the NIRC, the CIR opines that such failure is fatal to PERF's claim for refund.

We do not agree.

In *Philam Asset Management, Inc. v. Commissioner of Internal Revenue*,^[7] the Court had occasion to trace the history of the Final Adjustment Return found in Section 69 (now 76) of the NIRC. Thus:

The provision on the final adjustment return (FAR) was originally found in Section 69 of Presidential Decree (PD) No. 1158, otherwise known as the "National Internal Revenue Code of 1977." On August 1, 1980, this provision was restated as Section 86 in PD 1705.

On November 5, 1985, all prior amendments and those introduced by PD 1994 were codified into the National Internal Revenue Code (NIRC) of 1985, as a result of which Section 86 was renumbered as Section 79.

On July 31, 1986, Section 24 of Executive Order (EO) No. 37 changed all "net income" phrases appearing in Title II of the NIRC of 1977 to "taxable income." Section 79 of the NIRC of 1985, however, was not amended.

On July 25, 1987, EO 273 renumbered Section 86 of the NIRC as Section 76, which was also rearranged to fall under Chapter of Title II of the NIRC. Section 79, which had earlier been renumbered by PD 1994, remained unchanged.

Thus, Section 69 of the NIRC of 1977 was renumbered as Section 86 under PD 1705; later, as Section 79 under PD 1994; then, as Section 76 under EO 273. Finally, after being renumbered and reduced to the chaff of a grain, Section 69 was repealed by EO 37.

Subsequently, Section 69 reappeared in the NIRC (or Tax Code) of 1997 as Section 76, which reads:

"Section 76. *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.