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SECOND DIVISION

[G.R. No. 179617, January 19, 2011]

COMMISSIONER OF INTERNAL REVENUE, PETITIONER, VS. ASIAN TRANSMISSION CORPORATION, RESPONDENT.

D E C I S I O N

MENDOZA, J.:

This case is a petition for review on certiorari under Rule 45 of the Rules of Court filed by petitioner Commissioner of Internal Revenue *(CIR)* seeking to reverse and set aside the July 16, 2007 Decision [1] of the Court of Tax Appeals En Banc *(CTA-En Banc),* in C.T.A. EB No. 205 and its September 11, 2007 Resolution [2] denying its motion for reconsideration.

Through the assailed issuances, the CTA-En Banc affirmed *in toto* the Decision [3] and the Amended Decision [4] of its First Division *(CTA-First Division)* in CTA Case No. 9282 ordering the CIR to refund or issue a tax credit certificate in favor of respondent Asian Transmission Corporation *(ATC)* for unutilized creditable withholding taxes for the taxable year 2001.

From the records, it appears that ATC is a domestic corporation engaged in the manufacture of automotive parts. It filed its annual Income Tax Return *(ITR)* for the year 2000 [5] on April 10, 2001 where it declared a gross income of P370,532,082.00, a net loss of P279,926,225.00 and a minimum corporate income tax *(MCIT)* of P7,410,642.00. The MCIT due was offset against the P38,301,198.00 existing tax credits and creditable taxes withheld of the ATC, thereby leaving an excess tax credit or overpayment of P30,890,556.00, as shown below:

MCIT		P 7,410,642.00
Less: Tax Credits/Payments		
a. Prior Year's Excess Credits	P23,250,734.00	
b. Creditable Tax Withheld for First Three Quarters	11,868,132.00	
c. Creditable Tax Withheld for the Fourth Quarter	3,121,256.00	
d. Foreign Tax Credits	61,076.00	38,301,198.00
Total Overpayment		P30,890,556.00

For the P30,890,556.00 overpayment, ATC opted "To be issued a Tax Credit Certificate."

In its ITR for the year 2001, [6] ATC declared a gross income of P322,839,802.00, a net loss of P37,869,455.00, and MCIT of P6,456,796.00. After deducting its MCIT due against its existing tax credits and creditable taxes, ATC was left with a total tax credit of P51,760,312.00 detailed as follows:

MCIT		P 6,456,796.00
Less: Tax Credits/Payments		
a. Prior Year's Excess Credits	P30,890,556.00	
b. Creditable Tax Withheld for First Three Quarters	12,405,573.00	
c. Creditable Tax Withheld for the Fourth Quarter	14,920,979.00	58,217,108.00
Total Overpayment		P51,760,312.00

ATC, however, applied part of its unutilized creditable taxes for the year 2000 amounting to P7,639,822.00 to its MCIT due of P6,456,796.00 for the year 2001. Left unapplied of its 2000 creditable taxes, therefore, was the amount of P1,183,026.00 as shown in the following computation:

Creditable Tax Withheld for the First Three Quarters of 2000	P 11,868,132.00
Creditable Tax Withheld for the Fourth Quarter of 2000	P 3,121,256.00
Foreign Tax Credits for 2000	61,076.00
Total	P 15,050,464.00
Less: 2000 MCIT	7,410,642.00
Unutilized 2000 Creditable Taxes Withheld	P 7,639,822.00
Less: 2001 MCIT	P 6,456,796.00
Remaining Unutilized 2000 Creditable Taxes Withheld	P 1,183,026.00

Again, ATC opted "To be issued a Tax Credit Certificate" for the excess income tax payment.

On April 9, 2003, ATC filed with CIR's Large Taxpayers Service an administrative claim [7] for the issuance of tax credit certificate or cash refund in the amount of P28,509,578.00, representing excess/unutilized creditable income taxes withheld as of December 31, 2001, to wit:

Remaining Unutilized 2000 Creditable Taxes Withheld		P1,183,026.00
Unapplied 2001 Creditable Taxes Withheld:		
a. Creditable Tax Withheld for the First Three Quarters of 2001	P 12,405,573.00	
b. Creditable Tax Withheld for the Fourth Quarter of 2001	14,920,979.00	27,326,552.00
Total		P28,509,578.00

The next day, on April 10, 2003, ATC filed a petition for review [8] with the CTA without waiting for an action from the CIR to avoid the prescriptive period under Section 229 of the Tax Code.

On July 30, 2003, both parties filed a Joint Stipulation of Facts and Issues with the CTA-First Division, submitting the following issues for consideration of the tax tribunal:

1. Whether petitioner's claim for refund was filed within the two-year prescriptive period as prescribed under Section 204 and 229 of the NIRC;

2. Whether the income upon which the creditable taxes withheld were included and reported as income in the income tax returns of petitioner for both years;

3. Whether the creditable taxes are duly substantiated by the necessary statement issued by the withholding agent to the petitioner, showing the amount paid and the amount of the tax withheld therefrom;

4. Whether petitioner incurred a net loss of P279,926,225.00 and P37,869,455.00 during the taxable years 2000 and 2001, respectively; and

5. Whether petitioner is entitled to the refund and/or credit of the amount of 28,509,578.00 representing its excess/unutilized creditable income taxes as of December 31, 2001.

After the CTA-First Division approved the Joint Stipulation of Facts and Issues, the case was submitted for decision. [9]

On March 20, 2006, the CTA-First Division rendered its Decision partially granting ATC's claim for refund on its unutilized creditable withholding taxes for the taxable year 2001, *viz*:

> WHEREFORE, the instant petition for review is hereby *PARTIALLY GRANTED*. Respondent is ordered to ISSUE A TAX CREDIT CERTIFICATE in favor of petitioner in the reduced amount of P24,325,856.58 representing the unutilized creditable withholding taxes for the taxable year 2001.

The CTA-First Division found that, contrary to the contentions of the CIR, ATC was able to establish the factual basis for its claim for refund or for the issuance of a tax credit certificate, and that the same was filed within the period prescribed under Section 229 of the Tax Code. Thus, it was written:

> In the case of *Citibank N.A. vs. Court of Appeals*, the Supreme Court emphasized that the burden of proving the factual basis of his claim for tax credit or refund is upon the claimant. Thus, for a claim [for] tax credit or refund be granted, the taxpayer must establish that:
>
> > (i) The claim for refund was filed within two years as prescribed in Sec. 230 (now 229) of the Tax Code;
> >
> > (ii) The income upon which the taxes were withheld were included in the return of the recipient; and
> >
> > (iii) The fact of withholding is established by a copy of statement (BIR Form 1743-A) duly issued by the payer (withholding agent) to the payee showing the amount paid and the amount of tax withheld therefrom.
>
> Applying the above rule, the following are evident:
>
> *One*, the petitioner complied with the first requirement. The claim for refund of petitioner for the calendar years ended December 31, 2000 and December 31, 2001 were filed within the two-year prescriptive period reckoned from the date of payment of the tax. The phrase "date of payment of tax" is construed to mean the dates of the filing of the 2000 and 2001 annual income tax returns. Petitioner filed its 2000 and 2001 original annual income tax return on April 10, 2001 and April 15, 2002, respectively. The administrative and judicial claims for refund were filed on April 9, 2003 and April 10, 2003, respectively. Both

filings of claim for refund and Petition for Review were made within the tw0-year prescriptive period.

Two, petitioner was able to establish its qualified compliance with requirement numbers two and three. In the admitted 2000 and 2001 Certificates of Creditable Withholding at Source, the following amounts of income payments and withholding taxes were reflected -

x x x x x x

We have traced the income payments in the 2000 and 2001 income tax returns and found out that petitioner declared the same. It should be noted though that the substantiated 2000 and 2001 creditable taxes amounted only to P14,986,640.75 (instead of P15,050,464.00) and P24,325,856.58 (instead of P27,326,552.00) respectively. Hence we recomputed the supported unapplied creditable taxes withheld as of December 31, 2001, to wit:

	Amount
2000 Supported Creditable Taxes Withheld	P 14,986,640.75
Less: 2000 MCIT	7,410,642.00
Unutilized 2000 Creditable Taxes Withheld	P 7,575,998.75
Less: 2001 MCIT	6,456,796.00
Remaining Unutilized 2000 Creditable Taxes Withheld	P 1,119.202.75
Add: 2001 Supported and Unapplied Creditable Taxes Withheld	24,325,856.58
Supported Unapplied Creditable Taxes Withheld as of December 31, 2001	P25,445,059.33

As to the losses declared by ATC for the years 2000 and 2001, the CTA-First Division opined that ATC was not required to prove them. It explained:

Lastly, we do not agree with the respondent that petitioner is required to prove that it incurred a net loss for the years 2000 and 2001. The implied allegation of irregularity in the declared operational losses is a matter which must be proven by competent evidence. And the burden of proof as to whether petitioner incurred net losses from its operations rests on the respondent. This is the reason why respondent is authorized by law to examine the books and accounting records to ascertain the truthfulness of petitioner's declaration in its income tax return. In the absence of any showing that there is irregularity in claimed losses for 2000 and 2001 business operations and taking into account that income tax returns are prepared under penalty of perjury, We consider the returns of petitioner to be accurate and regular. [10]

The CTA-First Division, however, noted that ATC could not be issued a tax credit certificate for the remaining 2000 unutilized creditable taxes pursuant to Section 78 of the Tax Code, considering that ATC initially declared that it would opt "To be Issued a Tax Credit Certificate" for its 2000 creditable taxes, but never really exercised this option. Instead, it made use of the option to carry-over its excess income tax payments, when it applied the same in reducing its 2001 MCIT.

Thus, the CTA-First Division ordered the CIR to issue a tax credit certificate in favor of ATC in the reduced amount of P24,325,856.58 representing the unutilized creditable withholding taxes for the taxable year 2001 based on its own computation, to wit:

Income Payment	Tax Withheld	Withholding Agent	Exh.
P 300,603,978.00	P 3,006,039.78	Mitsubishi Motors Phils. Corp.	S
195,263.12	1,952.63	Nidec-Shimpo Philippines Corp.	T
363,266,839.00	3,632,668.39	Mitsubishi Motors Phils. Corp.	U
137,659.10	1,376.59	Nidec-Shimpo Philippines Corp.	V
576,146,311.00	5,761,463.11	Mitsubishi Motors Phils. Corp.	W
137,659.10	1,376.59	Nidec-Shimpo Philippines Corp.	X
488,449,635.00	4,884,496.35	Mitsubishi Motors Phils. Corp.	Y
103,611.44	2,072.23	Nidec-Shimpo Philippines Corp.	Z
44,663,912.73	6,702,586.91	MMC Sittipol Co. Ltd.	AA
22,212,158.06	331,824.00	MMC Sittipol Co. Ltd.	BB
P1,795,937,026.55	P24,325,856.58		

Both parties sought reconsideration. On one hand, CIR insisted that ATC failed to establish the net loss it incurred and the tax credits due it. [11] On the other hand, ATC averred that the CTA-First Division erred in: a) crediting only the amount of P331,824.00 as the amount withheld by MMC Sittipol Co. Ltd. instead of the P3,831,824.00 it actually withheld from ATC; and b) in ordering the issuance of a Tax Credit Certificate in the amount of P24,325,856.58. [12]

Finding merit only in the motion for reconsideration of ATC, the CTA-First Division issued the Amended Decision [13] on August 4, 2006, disposing the case in the following manner:

> WHEREFORE, petitioner's Motion is hereby GRANTED while respondent's Motion is hereby DENIED for lack of merit. Accordingly, respondent is ORDERED TO REFUND or in the alternative, ISSUE A TAX CREDIT CERTIFICATE in favor of the petitioner the amount of TWENTY SEVEN MILLION THREE HUNDRED TWENTY FIVE THOUSAND EIGHT HUNDRED FIFTY SIX & 58/100 PESOS (P27,325,856.58) representing

unutilized creditable withholding taxes for taxable year 2001.

On appeal, the CTA-En Banc was convinced that ATC was able to provide sufficient evidence to establish its claim for refund or issuance of a tax credit certificate. [14] Thus, it rendered its July 16, 2007 Decision, the decretal portion of which states:

> WHEREFORE, premises considered, the instant petition is hereby DENIED DUE COURSE, and, accordingly, DISMISSED for lack of merit.

Hence this petition .

The CIR raises the sole issue of:

> **WHETHER OR NOT RESPONDENT IS ENTITLED TO REFUND IN THE AMOUNT OF P27,325,856.58 REPRESENTING THE ALLEGED UNUTILIZED CREDITABLE WITHHOLDING TAXES FOR THE TAXABLE YEAR 2001.** [15]

The petition has no merit.

The CIR argues that while the certificates of withholding taxes and the annual income tax returns for the years 2000 and 2001 submitted by ATC may prove the inclusion of income payments which were the bases of the withholding taxes and the fact of withholding, they are not sufficient to prove entitlement to the tax refund requested. According to the CIR, since Section 2.58.3 (B) of Revenue Regulation provides that "claims for refund or tax credit shall be given due course upon showing that income payment has been declared as part of gross income and the fact of withholding is established," the mere submission of the withholding tax statements shall only mean that ATC's claim shall be given due course, i.e., heard or considered. Accordingly, the CIR posits that ATC still has to show that it is entitled to the refund requested by proving not only the income payments made but also the reported losses.

It should be pointed out that the arguments raised by the CIR in support of its position have already been thoroughly discussed both by the CTA-First Division and the CTA-En Banc. Notwithstanding, the CIR comes to this Court insisting that the same be once again reviewed. Oft-repeated is the rule that the Court will not lightly set aside the conclusions reached by the CTA which, by the very nature of its function of being dedicated exclusively to the resolution of tax problems, has accordingly developed an expertise on the subject, unless there has been an abuse or improvident exercise of authority.[16] In *Barcelon, Roxas Securities, Inc. (now known as UBP Securities, Inc.) v. Commissioner of*

Internal Revenue,[17] this Court more explicitly pronounced:

> Jurisprudence has consistently shown that this Court accords the findings of fact by the CTA with the highest respect. In *Sea-Land Service Inc. v. Court of Appeals* [G.R. No. 122605, 30 April 2001, 357 SCRA 441, 445-446], this Court recognizes that the Court of Tax Appeals, which by the very nature of its function is dedicated exclusively to the consideration of tax problems, has necessarily developed an expertise on the subject, and its conclusions will not be overturned unless there has been an abuse or improvident exercise of authority. Such findings can only be disturbed on appeal if they are not supported by substantial evidence or there is a showing of gross error or abuse on the part of the Tax Court. In the absence of any clear and convincing proof to the contrary, this Court must presume that the CTA rendered a decision which is valid in every respect.

At any rate, the CIR is correct in stating that the taxpayer bears the burden of proof to establish not only that a refund is justified under the law but also that the amount that should be refunded is correct. In this case, however, the CTA-First Division and the CTA-En Banc uniformly found that from the evidence submitted, ATC has established its claim for refund or issuance of a tax credit certificate for unutilized creditable withholding taxes for the taxable year 2001 in the amount of P27,325,856.58. The Court finds no cogent reason to rule differently. As correctly noted by the CTA-En Banc:

> x x x proof of actual remittance by the respondent is not needed in order to prove withholding and remittance of taxes to petitioner. Section 2.58.3 (B) of Revenue Regulation No. 2-98 clearly provides that proof of remittance is the responsibility of the withholding agent and not of the taxpayer-refund claimant. It should be borne in mind by the petitioner that payors of withholding taxes are by themselves constituted as withholding agents of the BIR. The taxes they withhold are held in trust for the government. In the event that the withholding agents commit fraud against the government by not remitting the taxes so withheld, such act should not prejudice herein respondent who has been duly withheld taxes by the withholding agents acting under government authority. Moreover, pursuant to Section 57 and 58 of the NIRC of 1997, as amended, the withholding of income tax and the remittance thereof to the BIR is the responsibility of the payor and not the payee. Therefore, respondent, x x x has no control over the remittance of the taxes withheld from its income by the withholding agent or payor who is the agent of the petitioner. The Certificates of Creditable Tax Withheld at Source issued by the withholding agents of the government are prima facie proof of actual payment by herein respondent-payee to the government itself through said agents. We stress that the pertinent provisions of law and the established jurisprudence evidently demonstrate that there is no need for the claimant, respondent in this case, to prove actual remittance by the withholding agent (payor) to the BIR.In this regard, We do not agree with petitioner's allegation that respondent failed to prove that creditable

> withholding taxes were duly supported by valid Certificates of Creditable Tax Withheld at Source. As aptly ruled by the Court in Division, and We reiterate, the evidence on record in which petitioner interposed no objection to its admission and was subsequently admitted by the Court in Division, show that respondent was able to substantiate its claim through the presentation of Exhibits "J" to "P" and "R" to "Z", the Certificates of Creditable Tax Withheld At Source. The documentary evidence presented were sufficient to establish that respondent was withheld taxes and that there was an excess which remain unutilized and now subject of refund.

With respect to the losses incurred by the ATC, it is true that the taxpayer bears the burden to establish the losses, but it is quite clear from the evidence presented that ATC has fulfilled its duty. Moreover, other than the bare assertion that ATC must establish its losses, the CIR fails to point to any circumstance or evidence that would cast doubt on ATC's sworn declaration that it incurred losses in 2000 and 2001.Curiously, in its petition, the CIR further adds that ATC cannot claim a cash refund or tax credit for the unutilized withholding tax for the year 2000 as this would be violative of Section 76 of the Tax Code. This matter, however, was already acted upon in favor of the CIR, when the CTA-First Division only partially granted ATC's petition by disallowing its claim for cash refund or tax credit for the unutilized withholding tax for the year 2000. This reiteration by the CIR of this argument despite the fact that it has already been acted favorably by the tax court below, only shows that the appeal has not been thoroughly studied.

WHEREFORE, the petition is **DENIED**.

SO ORDERED.

Carpio, (Chairperson), Carpio Morales,[*] *Peralta,* and *Abad*, *JJ.*, concur.

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[*]Designated as an additional member in lieu of Associate Justice Antonio Eduardo B. Nachura per Raffle dated July 29, 2009.

[1] *Rollo*, pp. 42-53. Penned by Associate Justice Erlinda P. Uy, with Associate Justices Ernesto D. Acosta, Juanito C. Castañeda, Jr., Lovell R. Bautista, Caesar A. Casanova and Olga Palanca-Enriquez, concurring.

[2] Id. at 70-73.

[3] Id. at 54-64.

[4] Id. at 65-69.

[5] Id. at 89-91.

[6] Id. at 92-94.

[7] Id. at 78-80.

[8] Id. at 81-88.

[9] Id. at 101-102.

[10] Decision, CTA-First Division, p. 10, *rollo*, p. 63.

[11] Id. at 105.

[12] Amended Decision, p. 2, id. at 66.

[13] Id. at 65-68.

[14] *Rollo,* p.51.

[15] Id. at 170.

[16] *Toshiba Information Equipment (Phils), Inc. v. Commissioner of Internal Revenue,* G.R. No. 157594 March 9, 2010.

[17] G.R. No. 150764, August 7, 2006, 498 SCRA 126, 135-136.
