667 Phil. 208

SECOND DIVISION

[G.R. No. 171742, June 15, 2011]

COMMISSIONER OF INTERNAL REVENUE, PETITIONER, VS. MIRANT (PHILIPPINES) OPERATIONS, CORPORATION, RESPONDENT.

[G.R. No. 176165]

MIRANT (PHILIPPINES) OPERATIONS CORPORATION (FORMERLY: SOUTHERN ENERGY ASIA-PACIFIC OPERATIONS (PHILS.), INC.), PETITIONER, VS. COMMISSIONER OF INTERNAL REVENUE, RESPONDENT.

D E C I S I O N

MENDOZA, J.:

These are two consolidated petitions for review on certiorari under Rule 45 of the Rules of Court.

In G.R. No. 171742, petitioner Commissioner of Internal Revenue *(CIR)* seeks the reversal of the January 17, 2006 Decision [1] and March 9, 2006 Resolution [2] of the Court of Tax Appeals *(CTA)* En Banc in CTA E.B. Case No. 123.

In G.R. No. 176165, petitioner Mirant (Philippines) Operations, Corporation *(Mirant)* seeks the reversal of the October 26, 2006 Decision [3] and January 5, 2007 Resolution [4] of the CTA En Banc in CTA E.B. Case No. 125.

THE FACTS

Petitioner is empowered to perform the lawful duties of his office including, among others, the duty to act on and approve claims for refund or tax credit as provided by law.

Respondent Mirant is a corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with principal office at Bo. Ibabang Pulo, Pagbilao Grande Island, Pagbilao, Quezon. [5]

Mirant also operated under the names Southern Energy Asia-Pacific Operations (Phils.),

Inc., CEPA Operations (Philippines) Corporation; CEPA Tileman Project Management Corporation; and Hopewell Tileman Project Management Corporation. [6]

Mirant, duly licensed to do business in the Philippines, is primarily engaged in the design, construction, assembly, commissioning, operation, maintenance, rehabilitation and management of gas turbine and other power generating plants and related facilities using coal, distillate, and other fuel provided by and under contract with the Government of the Republic of the Philippines or any subdivision, instrumentality or agency thereof, or any government-owned or controlled corporations or other entities engaged in the development, supply or distribution of energy. [7]

Mirant entered into Operating and Management Agreements with Mirant Pagbilao Corporation (formerly Southern Energy Quezon, Inc.) and Mirant Sual Corporation (formerly Southern Energy Pangasinan, Inc.) to provide these companies with maintenance and management services in connection with the operation, construction and commissioning of coal-fired power stations situated in Pagbilao, Quezon, and Sual, Pangasinan respectively. [8]

On October 15, 1999, Mirant filed with the Bureau of Internal Revenue (*BIR*) its income tax return for the fiscal year ending June 30, 1999, declaring a net loss of P235,291,064.00 and unutilized tax credits of ?32,263,388.00:

Gross Income	P (64,438,434.00)
Less: Deductions	170,852,630.00
Net Loss	P(235,291,064.00)
Income Tax Due	P---
Less: Prior Year's Excess Credits	4,714,516.00
Creditable Tax Withheld	
First Three Quarters	21,702,771.00
Fourth Quarter	5,846,101.00
Tax Overpayment	P32,263,388.00 [9]

On April 17, 2000, Mirant filed with the BIR an amended income tax return *(ITR)* for the fiscal year ending June 30, 1999, reporting an increased net loss amount of ? 379,324,340.00 but reporting the same unutilized tax credits of ?32,263,388.00, which it opted to carry over as a tax credit to the succeeding taxable year, thus:

Gross Income	P(113,113,036.00)
Less: Deductions	248,211,204.00
Net Loss	P(379,324,240.00)
Income Tax Due	P ---
Less: Prior Year's Excess Credits	4,714,516.00
Creditable Tax Withheld	

First Three Quarters	21,702,771.00
Fourth Quarter	5,846,101.00
Tax Overpayment	P32,263,388.00 [10]

To synchronize its accounting period with those of its affiliates, Mirant allegedly secured the approval of the BIR to change its accounting period from fiscal year (*FY*) to calendar year (*CY*) effective December 31, 1999. Thus, on April 17, 2000, Mirant filed its income tax return for the interim period July 1, 1999 to December 31, 1999, declaring a net loss in the amount of ?381,874,076.00 and unutilized tax credits of ?48,626,793.00:

Gross Income	P(320,895,462.00)
Less: Deductions	60,978,614.00
Net Loss	P(381,874,076.00)
Income Tax Due	P ---
Less: Prior Year's Excess Credits	32,263,388.00
Creditable Tax Withheld	
First Three Quarters	16,363,405.00
Fourth Quarter	---
Tax Overpayment	P48,626,793.00 [11]

Mirant indicated the excess amount of ?48,626,793.00 as "To be carried over as tax credit next year/quarter." [12]

On April 10, 2001, it filed with the BIR its income tax return for the calendar year ending December 31, 2000, reflecting a net loss of ?56,901,850.00 and unutilized tax credits of ?87,345,116.00, computed as follows:

Gross Income	P(4,080,541.00)
Less: Deductions	52,821,309.00
Net Loss	P(56,901,850.00)
Income Tax Due	P ---
Less: Prior Year's Excess Credits	48,626,793.00
Creditable Tax Withheld	
First Three Quarters	25,336,971.00
Fourth Quarter	13,381,352.00
Tax Overpayment	P87,345,116.00 [13]

On September 20, 2001, Mirant wrote the BIR a letter claiming a refund of ?87,345,116.00 representing overpaid income tax for the FY ending June 30, 1999, the interim period

covering July 1, 1999 to December 31, 1999, and CY ending December 31, 2000. [14]

As the two-year prescriptive period for the filing of a judicial claim under Section 229 of the National Internal Revenue Code (NIRC) of 1997 was about to lapse without action on the part of the BIR, Mirant elevated its case to the CTA by way of Petition for Review on October 12, 2001. The case was docketed as CTA Case No. 6340. [15]

The CTA First Division rendered judgment partially granting Mirant's claim for refund in the reduced amount of P38,620,427.00, representing its duly substantiated unutilized creditable withholding taxes for taxable year 2000 out of the total claim of ?38,718,323.00 therefor. [16] It appears that the total claim was reduced by P97,896.00 for the following reasons: the amount of P92,996.00 was deducted because the CTA First Division found that it was not covered by the withholding tax certificate issued by Southern Energy Quezon, Inc. for the period October 1, 2000 to December 31, 2000. Moreover the additional amount of P4,900.00 was also deducted because based on the reconciliation schedule for the creditable taxes of P745,290.00 withheld by Southern Energy Quezon, Inc. for the period October 1, 2000 to December 31, 2000 on Mirant's Philippine peso billings under Invoice No. 0015, the corresponding creditable taxes claimed by Mirant in its 2000 income tax return amounted to P750,190.00 which was higher by ?4,900.00 than that reflected in the certificate. [17]

Additionally, Mirant's claim for the refund of its unutilized tax credits for the taxable year 1999 in the total amount of P48,626,793.00, was denied as it exercised the carry-over option with regard to the said unutilized tax credits, which is irrevocable pursuant to the provisions of Section 76 of the 1997 NIRC. [18]

The dispositive portion of the assailed May 18, 2005 Decision [19] of the CTA First Division reads:

> **IN VIEW OF ALL THE FOREGOING**, the instant Petition for Review is hereby **GRANTED** but in a reduced amount of P38,620,427.00. Accordingly, respondent is **ORDERED TO REFUND**, or in the alternative, **ISSUE A TAX CREDIT CERTIFICATE** in favor of the petitioner in the amount of P38,620,427.00 representing unutilized creditable withholding taxes for taxable year 2000.

Both parties filed their respective motions for partial reconsideration of the above decision, but these were both denied for lack of merit in a Resolution [20] dated September 22, 2005.

Both parties sought redress before the CTA En Banc in two separate petitions for review docketed as CTA EB Case No. 123 and CTA EB Case No. 125, respectively.

According to the CTA, although arising from the same case, CTA Case No. 6340, these two cases were not consolidated because CTA EB Case No. 125 was initially dismissed due to procedural infirmities.

In a Resolution dated April 28, 2006, however, acting on Mirant's motion for reconsideration, the CTA En Banc recalled its earlier resolution and reinstated the case. [21] Eventually, the CTA En Banc in separate decisions, denied due course and dismissed the two cases. The CIR and Mirant filed their respective motions for reconsideration but both were denied. Thus, the CIR and Mirant filed their respective petitions for review with this Court, docketed as G.R. No. 171742 and G.R. No. 176165, respectively.

ISSUES

In G.R. No. 171742, the CIR raises the following issue:

> **WHETHER OR NOT THE COURT OF TAX APPEALS ERRED ON A QUESTION OF LAW IN HOLDING RESPONDENT ENTITLED TO A REFUND OR TAX CREDIT IN THE AMOUNT OF P38,620,427.00.**

In G.R. No. 176165, Mirant raises the following issue:

> **WHETHER OR NOT PETITIONER IS ENTITLED TO A CLAIM FOR ADDITIONAL REFUND OR ISSUANCE OF A TAX CREDIT CERTIFICATE IN THE AMOUNT OF P48,626,793.00 REPRESENTING EXCESS CREDITABLE WITHHOLDING TAXES FOR THE FISCAL YEAR ENDED JUNE 30, 1999 AND THE INTERIM PERIOD FROM JULY 1, 1999 TO DECEMBER 31, 1999.**

In essence, the issue is whether Mirant is entitled to a tax refund or to the issuance of a tax credit certificate and, if it is, then what is the amount to which it is entitled.

RULING OF THE COURT

The Court finds the assailed decisions and resolutions of the CTA En Banc in CTA E.B. Case Nos. 123 and 125 to be consistent with law and jurisprudence.

Once exercised, the option to carry over is irrevocable.

Section 76 of the National Internal Revenue Code (Presidential Decree No. 1158, as amended) provides:

> **SEC. 76. -** ***Final Adjustment Return*****.** - Every corporation liable to tax under Section 27 shall file a final adjustment return covering the total taxable 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 income of that year, the corporation shall either:
>
> (A) Pay the balance of tax still due; or
> (B) Carry-over the excess credit; or
> (C) Be credited or refunded with the excess amount paid, as the case may be.
>
> In case the corporation is entitled to a tax credit or refund of the excess estimated quarterly income taxes paid, the excess amount shown on its final adjustment return may be carried over and credited against the estimated quarterly income tax liabilities for the taxable quarters of the succeeding taxable years. **Once the option to carry-over and apply the excess quarterly income tax against income tax due for the taxable quarters of the succeeding taxable years has been made, such option shall be considered irrevocable for that taxable period and no application for cash refund or issuance of a tax credit certificate shall be allowed therefor.** (Underscoring and emphasis supplied.)

The last sentence of Section 76 is clear in its mandate. Once a corporation exercises the option to carry-over and apply the excess quarterly income tax against the tax due for the taxable quarters of the succeeding taxable years, such option is irrevocable for that taxable period. Having chosen to carry-over the excess quarterly income tax, the corporation cannot thereafter choose to apply for a cash refund or for the issuance of a tax credit certificate for the amount representing such overpayment.

In the recent case of *Commissioner of Internal Revenue v. PL Management International Philippines, Inc.*, [22] the Court discussed the irrevocability rule of Section 76 in this wise:

> The predecessor provision of Section 76 of the NIRC of 1997 is Section 79 of the NIRC of 1985, which provides:
>
> Section 79. *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.

As can be seen, Congress added a sentence to Section 76 of the NIRC of 1997 in order to lay down the irrevocability rule, to wit:

xxx Once the option to carry-over and apply the excess quarterly income tax against income tax due for the taxable quarters of the succeeding taxable years has been made, such option shall be considered irrevocable for that taxable period and no application for tax refund or issuance of a tax credit certificate shall be allowed therefor

.

In *Philam Asset Management, Inc. v. Commissioner of Internal Revenue,* [23] the Court expounds on the two alternative options of a corporate taxpayer whose total quarterly income tax payments exceed its tax liability, and on how the choice of one option precludes the other, *viz*:

The first option is relatively simple.Any tax on income that is paid in excess of the amount due the government may be refunded, provided that a taxpayer properly applies for the refund.

The second option works by applying the refundable amount, as shown on the FAR of a given taxable year, against the estimated quarterly income tax liabilities of the succeeding taxable year.

These two options under Section 76 are alternative in nature. The choice of one precludes the other. Indeed, in *Philippine Bank of Communications v. Commissioner of Internal Revenue*, [24] **the**

Court ruled that a corporation must signify its intention - whether to request a tax refund or claim a tax credit - by marking the corresponding option box provided in the FAR.While a taxpayer is required to mark its choice in the form provided by the BIR, this requirement is only for the purpose of facilitating tax collection.

One cannot get a tax refund and a tax credit at the same time for the same excess income taxes paid. xxx

In *Commissioner of Internal Revenue v. Bankof the Philippine Islands,* [25] the Court, citing the aforequoted pronouncement in *Philam Asset Management, Inc.,* points out that Section 76 of the NIRC of 1997 is clear and unequivocal in providing that the carry-over option, once actually or constructively chosen by a corporate taxpayer, becomes *irrevocable*. The Court explains:

Hence, the controlling factor for the operation of the irrevocability rule is that the taxpayer chose an option; and once it had already done so, it could no longer make another one. Consequently, after the taxpayer opts to carry-over its excess tax credit to the following taxable period, the question of whether or not it actually gets to apply said tax credit is irrelevant. Section 76 of the NIRC of 1997 is explicit in stating that once the option to carry over has been made, "no application for tax refund or issuance of a tax credit certificate shall be allowed therefor."

The last sentence of Section 76 of the NIRC of 1997 reads: "Once the option to carry-over and apply the excess quarterly income tax against income tax due for the taxable quarters of the succeeding taxable years has been made, such option shall be considered irrevocable for that taxable period and no application for tax refund or issuance of a tax credit certificate shall be allowed therefor." The phrase "for that taxable period" merely identifies the excess income tax, subject of the option, by referring to the taxable period when it was acquired by the taxpayer. In the present case, the excess income tax credit, which BPI opted to carry over, was acquired by the said bank during the taxable year 1998. The option of BPI to carry over its 1998 excess income tax credit is irrevocable; it cannot later on opt to apply for a refund of the very same 1998 excess income tax credit.

The Court of Appeals mistakenly understood the phrase "for that taxable period" as a prescriptive period for the irrevocability rule. This would mean that since the tax credit in this case was acquired in

1998, and BPI opted to carry it over to 1999, then the irrevocability of the option to carry over expired by the end of 1999, leaving BPI free to again take another option as regards its 1998 excess income tax credit. This construal effectively renders nugatory the irrevocability rule. The evident intent of the legislature, in adding the last sentence to Section 76 of the NIRC of 1997, is to keep the taxpayer from flip-flopping on its options, and avoid confusion and complication as regards said taxpayer's excess tax credit. The interpretation of the Court of Appeals only delays the flip-flopping to the end of each succeeding taxable period.

The Court similarly disagrees in the declaration of the Court of Appeals that to deny the claim for refund of BPI, because of the irrevocability rule, would be tantamount to unjust enrichment on the part of the government. The Court addressed the very same argument in *Philam*, where it elucidated that there would be no unjust enrichment in the event of denial of the claim for refund under such circumstances, because there would be no forfeiture of any amount in favor of the government. **The amount being claimed as a refund would remain in the account of the taxpayer until utilized in succeeding taxable years, as provided in Section 76 of the NIRC of 1997. It is worthy to note that unlike the option for refund of excess income tax, which prescribes after two years from the filing of the FAR, there is no prescriptive period for the carrying over of the same. Therefore, the excess income tax credit of BPI, which it acquired in 1998 and opted to carry over, may be repeatedly carried over to succeeding taxable years, *i.e.*, to 1999, 2000, 2001, and so on and so forth, until actually applied or credited to a tax liability of BPI.**

Inasmuch as the respondent already opted to carry over its unutilized creditable withholding tax of P1,200,000.00 to taxable year 1998, the carry-over could no longer be converted into a claim for tax refund because of the irrevocability rule provided in Section 76 of the NIRC of 1997. Thereby, the respondent became barred from claiming the refund. [Underscoring supplied] [26]

In this case, in its amended ITR for the year ended July 30, 1999 [27] and for the interim period ended December 31, 1999, [28] Mirant clearly ticked the box signifying that the overpayment was "To be carried over as tax credit next year/quarter." Item 31 of the Annual Income Tax Return Form (BIR Form No. 1702) also clearly indicated "If overpayment, mark one box only. (once the choice is made, the same is irrevocable)."

Applying the irrevocability rule in Section 76, Mirant having opted to carry over its tax

overpayment for the fiscal year ending July 30, 1999 and for the interim period ending December 31, 1999, it is now barred from applying for the refund of the said amount or for the issuance of a tax credit certificate therefor, and for the unutilized tax credits carried over from the fiscal year ended June 30, 1998.

Mirant is entitled to the refund of its unutilized creditable withholding taxes for the taxable year 2000.

It is apt to restate here the time-honored doctrine that the findings and conclusions of the CTA are accorded the highest respect and will not be lightly set aside. The CTA, by the very nature of its functions, is dedicated exclusively to the resolution of tax problems and has accordingly developed an expertise on the subject unless there has been an abusive or improvident exercise of authority. [29] Citing *Barcelon, Roxas Securities, Inc. (now known as UBP Securities, Inc.) v. Commissioner of Internal Revenue*, [30] this Court in *Toshiba Information Equipment (Phils.), Inc. v. Commissioner of Internal Revenue,*[31] 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. [32]

In this case, having studied the applicable law and jurisprudence, the Court agrees with the conclusion of the CTA that Mirant complied with all the requirements for the refund of its unutilized creditable withholding taxes for taxable year 2000.

In *Commissioner of Internal Revenue v. Far East Bank & Trust Company (now Bank of the Philippine Islands)*, [33] the Court enumerated the requisites for claiming a tax credit or a refund of creditable withholding tax:

> 1) The claim must be filed with the CIR within the two-year period from the date of payment of the tax;

2) It must be shown on the return that the income received was declared as part of the gross income; and

3) The fact of withholding must be established by a copy of a statement duly issued by the payor to the payee showing the amount paid and the amount of the tax withheld. [34]

First, Mirant clearly complied with the two-year period. This requirement is based on Section 229 of the NIRC of 1997 which provides:

SEC. 229. ***Recovery of Tax Erroneously or Illegally Collected.*** **-** No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.

In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment: *Provided, however,* That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid. [Underscoring supplied]

Mirant filed its income tax return for the taxable year ending December 31, 2000 on April 10, 2001. Thus, from such date of filing, petitioner had until April 10, 2003 within which to file its claim for refund or for the issuance of a tax credit certificate in its favor. [35]

Mirant filed its administrative claim with the BIR on September 20, 2001. It thereafter filed its Petition for Review with the CTA on October 12, 2001, [36] or clearly within the prescribed two-year period.

Second, Mirant was also able to establish that the income, upon which the creditable withholding taxes were paid, was declared as part of its gross income in its ITR. As the CTA En Banc concluded:

As regards petitioner CIR's contention that respondent Mirant was not able to establish that the income upon which the creditable withholding taxes were paid was included in respondent's Income Tax Returns, a perusal of the records

> reveals otherwise. The reported creditable taxes withheld of ?38,718,323.00 were withheld from the services fees of ?871,127,253.00 received by respondent from its affiliates, the Southern Energy Quezon, Inc. and the Southern Energy Pangasinan, Inc., pursuant to the Operating and Maintenance Service Agreements entered into by respondent Mirant with said entities (*Exhibits "HH", "K", and "K-1"*). The gross income figure of ?871,127,253.00 is the very same amount declared by respondent in its income tax return for taxable year 2000 (*Exhibits "O-11" & "O-12"*). [37]

The CIR disagrees but merely alleges without any clear argument or basis that Mirant failed to prove that the income from which its creditable taxes were withheld were duly declared as part of its income in its annual ITR.

Thus, there being no cogent reason presented to reverse the findings and conclusions of the CTA, the Court affirms its finding that the income received was declared as part of the gross income, as shown in Mirant's tax return.

Finally, Mirant was also able to establish the fact of withholding of the creditable withholding tax.

The CIR is of the opinion that Mirant's non-presentation of the various payors or withholding agents to verify the Certificates of Creditable Tax Withheld at Source (*CWT's*), the registered books of accounts and the audited financial statements for the various periods covered to corroborate its other allegations, and its failure to offer other evidence to prove and corroborate the propriety of its claim for refund and failure to establish the fact of remittance of the alleged withheld taxes by various payors to the BIR, are all fatal to its claim. [38]

Citing the CTA First Division, Mirant argues that since the CWT's were duly signed and prepared under pain of perjury, the figures appearing therein are presumed to be true and correct. [39] The CWT's were presented and duly identified by its witness, Magdalena Marquez, and further verified by the duly commissioned independent CPA, Ruben R. Rubio, on separate hearing dates, before the CTA First Division. [40] Moreover, these certificates were found by the duly commissioned independent CPA to be faithful reproductions of the originals, as stated in his supplementary report dated March 24, 2003. [41]

The Court agrees with the conclusion of the CTA En Banc:

> Contrary to petitioner CIR's contention, the fact of withholding was likewise established through respondent's presentation of the Certificates of Creditable Tax Withheld At Source, duly issued to it by Southern Energy Pangasinan, Inc.

and Southern Energy Quezon, Inc., for the year 2000 (*Exhibits "Y", "Z", "AA" to "FF"*). These certificates were found by the duly commissioned independent CPA to be faithful reproductions of the original copies, as per his Supplementary Report dated March 24, 2003 (*Exhibit "RR"*).

As to petitioner CIR's contention that the Report of the independent CPA dated February 21, 2003 shows several discrepancies, We sustain the findings of the First Division. On direct examination, Mr. Ruben Rubio, the duly commissioned independent CPA, testified and explained that the discrepancy was merely brought about by: (1) the difference in foreign exchange (forex) rates at the time the certificates were recorded by respondent Mirant and the forex rates used at the time the certificates were issued by its customers; and (2) the timing difference between the point when respondent Mirant recognized or accrued its income and the time when the corresponding creditable tax was withheld by its customers. x x x

x x x

As extensively discussed by the First Division:

> "The creditable withholding taxes of P40,600,971.79 reflected in the certificates were higher by P1,882,648.79 when compared with the creditable withholding taxes of P38,718,323.00 reported by petitioner in its income tax return for taxable year 2000 (Exhibit O-7). As stated by SGV & Co. in its report dated February 21, 2003 (Exhibit NN), tax credits were claimed by petitioner in its income tax return for taxable year 2000 prior to its receipt of the certificates from the withholding agents. At the time it recognized and accrued its income, petitioner also reported the related creditable withholding taxes, which was prior to the receipt of the certificates from the withholding agents. Hence, the discrepancy of P1,882,648.79 in creditable withholding taxes was mainly brought about by the difference between the foreign exchange (forex) rates used at the time when petitioner recorded its income and the related tax credits and the forex rates used by the withholding agents at the time when income payments were made to petitioner in reporting its tax credits, the same do not have a bearing on petitioner's total claim because the resulting increase in the amounts of creditable withholding taxes reflected in the certificates were not declared by the petitioner in its income tax return for the said year. However, for the creditable taxes withheld by Southern Energy Quezon, Inc. for the period October 1, 2000 to December 31, 2000 totalling P7,670,746.00 (which formed part of the creditable withholding taxes of P8,834,280.11 shown in the certificate marked as Exhibit EE), the same were based on forex

rates which were lower than those used by petitioner in recognizing the tax credits of P7,763,742.00 for the same transactions. In other words, petitioner's claimed unutilized tax credits of P92,996.00 (P7,763,742.00 less P7,670,746.00) were not covered by the withholding tax certificate issued by Southern Energy, Quezon Inc. for the period October 1, 2000 to December 31, 2000 and should therefore be deducted from the total claim of P38,718,323.00 Below is the breakdown of the amount of P92,996.00:

			Creditable Withholding Taxes		Overclaimed Tax Credits
Exhibits	Period Covered	Withholding Agent	Per Certificate (a)	Per ITR (b)	(b) - (a)
EE, QQ	10/01/00 - 12/31/00	Southern Energy Quezon, Inc.	P4,298,892.00	P4,350,327.00	P51,435.00
			3,371,854.00	3,413,415.00	41,561.00
			P7,670,746.00	P7,763,742.00	P92,996.00

The reconciliation schedule also shows that for the creditable taxes of P745,290.00 withheld by Southern Energy Quezon Inc. for the period October 1, 2000 to December 31, 2000 on petitioner's Philippine peso billings under Invoice No. 0015, the corresponding creditable taxes claimed by petitioner in its 2000 income tax return amounted to P750,190.00 which were higher by P4,900.00 than those reflected in the certificate. Accordingly, the amount of P4,900.00 shall be deducted from petitioner's total claim.

In fine, this Court finds that of the total unutilized credits of P38,718, 323.00 declared by petitioner in its 2000 income tax return, only the amount of P38,620,427.00 (P38,718,323.00 less P92,996.00) was duly substantiated by withholding tax certificates."

Therefore, as the CTA ruled, Mirant complied with all the legal requirements and it is entitled, as it opted, to a refund of its excess creditable withholding tax for the taxable year 2000 in the amount of ?38,620,427.00.

The Court finds no abusive or improvident exercise of authority on the part of the CTA. Since there is no showing of gross error or abuse on the part of the CTA, and its findings are supported by substantial evidence, there is no cogent reason to disturb its findings and conclusions.

WHEREFORE, the petitions in G.R. No. 171742 and G.R. No. 176165 are **DENIED**.

SO ORDERED.

Carpio, (Chairperson), Leonardo-De Castro, [*] *Peralta,* and *Abad, JJ.,* concur.

---

[*] Designated as acting member of the Second Division per Special Order No. 1006 dated June 10, 2011.

[1] *Rollo* (G.R. No. 171742), pp. 48-67. Penned by Associate Justice Olga Palanca-Enriquez, with Presiding Justice Ernesto D. Acosta and Associate Justices Juanito C. Castañeda, Jr., Lovell R. Bautista, Erlinda P. Uy, and Caesar A. Casanova, concurring.

[2] Id. (G.R. No. 171742), pp. 69-70. Signed by Presiding Justice Ernesto D. Acosta and Associate Justices Juanito C. Castañeda, Jr., Lovell R. Bautista, Erlinda P. Uy, Caesar A. Casanova, and Olga Palanca-Enriquez.

[3] Id. (G.R. No. 176165), pp. 29-44. Penned by Associate Justice Erlinda P. Uy, with Presiding Justice Ernesto D. Acosta and Associate Justices Juanito C. Castañeda, Jr., Lovell R. Bautista, Caesar A. Casanova, and Olga Palanca-Enriquez, concurring.

[4] Id. (G.R. No. 176165), pp. 45-48. Penned by Associate Justice Erlinda P. Uy, with Presiding Justice Ernesto D. Acosta and Associate Justices Juanito C. Castañeda, Jr., Lovell R. Bautista (on leave), Caesar A. Casanova, and Olga Palanca-Enriquez, concurring.

[5] Id. (G.R. No. 171742), p. 50.

[6] Id.

[7] Id. (G.R. No. 171742), p. 51.

[8] Id. (G.R. No. 171742), pp. 51-52.

[9] Id. (G.R. No. 171742), p. 52.

[10] Id. (G.R. No. 171742), pp.52-53.

[11] Id. (G.R. No. 171742), p. 53.

[12] Id. (G.R. No. 171742), p. 54.

[13] Id.

[14] Id.

[15] Id. (G.R. No. 171742), p. 55.

[16] Id. (G.R. No. 171742), p. 151.

[17] Id. (G.R. No. 176165), pp. 35-36.

[18] Id. (G.R. No. 176165), p. 36.

[19] Id. (G.R. No. 171742), pp. 137-152.

[20] Id. (G.R. No. 171742), p. 151.

[21] Id. (G.R. No. 176165), p. 31.

[22] G.R. No. 160949, April 4, 2011.

[23] 514 Phil. 147, 157 (2005), cited in *Commissioner of Internal Revenue v. PL Management International Philippines, Inc.*, G.R. No. 160949, April 4, 2011. See also *Asiaworld Properties Philippine Corporation v. Commissioner of Internal Revenue*, G.R. No. 171766, July 29, 2010, 626 SCRA 172; and *Commissioner of Internal Revenue v. McGeorge Food Industries, Inc*., G.R. No. 174157, October 20, 2010.

[24] 361 Phil. 916 (1999).

[25] G.R. No. 178490, July 7, 2009, 592 SCRA 219, 231.

[26] *Commissioner of Internal Revenue v. PL Management International Philippines, Inc.*, G.R. No. 160949, April 4, 2011.

[27] *Rollo* (G.R. No. 171742), p. 84.

[28] Id. (G.R. No. 171742), p. 87.

[29] *Toshiba Information Equipment (Phils.), Inc. v. Commissioner of Internal Revenue*, G.R. No. 157594, March 9, 2010, 614 SCRA 526, 561, citing *Commissioner of Internal Revenue v. Cebu Toyo Corporation*, 491 Phil. 625, 640 (2005).

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

[31] Supra note 29.

[32] *Barcelon, Roxas Securities, Inc. (now known as UBP Securities, Inc.) v. Commissioner of Internal Revenue*, supra note 30, cited in *Toshiba Information Equipment (Phils.), Inc. v. Commissioner of Internal Revenue*, G.R. No. 157594, March 9, 2010, 614 SCRA 526, 561.

[33] G.R. No. 173854, March 15, 2010, 615 SCRA 417.

[34] Id. at 424.

[35] See *ACCRA Investments Corporation v. Court of Appeals*, G.R. No. 96322, December 20, 1991, 204 SCRA 957, where the Court ruled that the two-year prescriptive period commences to run on the date when the final adjustment return is filed, as that is the date when ACCRAIN could ascertain whether it made a profit or incurred losses in its business operation. The Court therein stated that, "there is the need to file a return first before a claim for refund can prosper inasmuch as the respondent Commissioner by his own rules and regulations mandates that the corporate taxpayer opting to ask for a refund must show in its final adjustment return the income it received from all sources and the amount of withholding taxes remitted by its withholding agents to the Bureau of Internal Revenue."

[36] *Rollo* (G.R. No. 171742), p. 55.

[37] Id. (G.R. No. 171742), p. 61.

[38] Id. (G.R. No. 171742), p. 279.

[39] Id. (G.R. No. 171742), p. 300.

[40] Id. (G.R. No. 171742), pp. 299-300.

[41] Id. (G.R. No. 171742), p. 300.

Supreme Court E-Library