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FIRST DIVISION

[G.R. No. 188016, January 14, 2015]

REPUBLIC OF THE PHILIPPINES, REPRESENTED BY THE COMMISSIONER OF INTERNAL REVENUE, PETITIONER, VS. TEAM (PHILS.) ENERGY CORPORATION (FORMERLY MIRANT (PHILS.) ENERGY CORPORATION), RESPONDENT.

D E C I S I O N

BERSAMIN, J.:

The Republic of the Philippines, represented by the Commissioner of Internal Revenue, appeals the decision promulgated on April 15, 2009,[1] whereby the Court of Tax Appeals *En Banc* (CTA *En Banc*) upheld the decision of the CTA in Division rendered on May 15, 2008 ordering the Commissioner of Internal Revenue to refund or to issue a tax credit certificate in favor of the respondent in the modified amount of P16,366,412.59 representing the respondent's excess and unutilized creditable withholding taxes for calendar years 2002 and 2003.

Antecedents

Respondent Mirant (Philippines) Energy Corporation, a domestic corporation, is primarily engaged in the business of developing, designing, constructing, erecting, assembling, commissioning, owning, operating, maintaining, rehabilitating, and managing gas turbine and other power generating plants and related facilities for conversion into electricity, coal, distillate and other fuel provided by and under contract with the Government, or any subdivision, instrumentality or agency thereof, or any government-owned or controlled corporations or any entity engaged in the development, supply or distribution of energy.[2] On August 16, 2001, the respondent filed with the Securities and Exchange Commission (SEC) its Amended Articles of Incorporation stating its intent to change its corporate name from Mirant (Philippines) Mobile Corporation to Mirant (Philippines) Energy Corporation; and to include the business of supplying and delivering electricity and providing services necessary in connection with the supply or delivery of electricity. The SEC approved the amendment on October 22, 2001.[3]

The respondent filed its annual income tax return (ITR) for calendar years 2002 and 2003 on April 15, 2003 and April 15, 2004, respectively, reflecting overpaid income taxes or excess creditable withholding taxes in the amounts of P6,232,003.00 and P10,134,410.00 for taxable years 2002 and 2003, respectively.[4] It indicated in the ITRs its option for the refund of the tax overpayments for calendar years 2002 and 2003.[5]

On March 22, 2005, the respondent filed an administrative claim for refund or issuance of tax credit certificate with the Bureau of Internal Revenue (BIR) in the

total amount of P16,366,413.00, representing the overpaid income tax or the excess creditable withholding tax of the respondent for calendar years 2002 and 2003.[6]

Due to the inaction of the BIR and in order to toll the running of the two-year prescriptive period for claiming a refund under Section 229 of the National Internal Revenue Code (NIRC) of 1997, the respondent filed a petition for review in the Court of Tax Appeals (CTA) on April 14, 2005.[7]

In the answer, the petitioner interposed the following special and affirmative defenses, to wit:

> x x x x
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> 3. He reiterates and repleads the preceding paragraphs of this answer as part of his Special and Affirmative Defenses;
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> 4. Petitioner's claim for refund is still subject to the administrative routinary investigation/examination by the respondent's Bureau;
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> 5. Taxes paid and collected are presumed to have been made in accordance with law and implementing regulations, hence, not refundable.
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> 6. Petitioner's claim for refund/issuance of tax credit in the amount of **P16,366,413.00**, as alleged overpaid income taxes or excess creditable withholding taxes for taxable year ended December 31, 2002 and December 31, 2003 were not fully substantiated by proper documentary evidence.
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> 7. Petitioner failed to prove that the amount of **P16,366,413.00** as alleged overpaid income taxes or excess creditable withholding taxes for taxable year ended December 31, 2002 and December 31, 2003 were included as part of its gross income for the said taxable years 2002 and 2003, and did not carry-over to the succeeding taxable quarter/year the subject of its claim, and the same were not utilized in payment of its income tax liability for the succeeding taxable quarter/year.
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> 8. The filing of the instant petition for review with this Honorable Court was premature since respondent was not given an ample opportunity to examine its claim for refund;
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> 9. Assuming but without admitting that petitioner is entitled to tax refund, it is incumbent upon the latter to show that it complied with the provisions of **Sections 204** in relation to **Section 230 (now 229)** of the Tax Code. Otherwise, its failure to prove the same is fatal to its claim for refund.
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> 10. Claims for refund are construed strictly against the claimant for the same partake the nature of exemption from taxation ***(Commissioner of Internal Revenue v. Ledesma, 31 SCRA 95)*** and as such, they are

looked upon with disfavor ***(Western Minolco Corp. v. Commissioner of Internal Revenue,* 124 SCRA 121)**.[8]

On May 15, 2008, the CTA in Division rendered its decision in favor of the respondent, disposing thusly:

> **WHEREFORE,** the instant "Petition for Review" is hereby **GRANTED.** Accordingly, respondent is hereby **ORDERED TO REFUND or TO ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the modified amount of **SIXTEEN MILLION THREE HUNDRED SIXTY-SIX THOUSAND FOUR HUNDRED TWELVE AND 59/100 (P16,366,412.59)**, representing petitioner's excess and unutilized creditable withholding taxes for calendar years 2002 and 2003.
>
> **SO ORDERED**.[9]

The CTA in Division found that the respondent had signified in its ITRs for the same years its intent to have its excess creditable tax withheld for calendar years 2002 and 2003 be refunded; that the respondent's administrative and judicial claims for refund had been timely filed within the two-year prescriptive period under Section 204 (C) in relation to Section 229 of the NIRC; that the fact of withholding had been established by the respondent because it had submitted its certificate of creditable tax withheld at source showing that the aggregate amount of P17,168,749.60 constituted the CWT withheld by the respondent on its services to Republic Cement Corporation, Mirant (Philippines) Industrial Power Corporation and Solid Development Corporation for taxable years 2002 and 2003; and that the income from which the CWT had been withheld was duly declared as part of the respondent's income in its annual ITRs for 2002 and 2003.

The petitioner then filed a motion for reconsideration, but the CTA in Division denied the motion on September 5, 2008.

The petitioner brought a petition for review before the CTA *En Banc* raising two issues, namely:

> I.
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> THE SECOND DIVISION OF THIS HONORABLE COURT ERRED IN HOLDING THAT RESPONDENT IS ENTITLED TO ITS CLAIMED REFUND OF EXCESS AND UNUTILIZED CREDITABLE WITHHOLDING TAXES FOR CALENDAR YEARS 2002 AND 2003, SINCE THERE WAS A VIOLATION ON THE PART OF THE RESPONDENT TO FULLY COMPLY WITH THE REQUIREMENTS UNDER SECTION 76 OF THE 1997 TAX CODE.
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> II.
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> THE SECOND DIVISION OF THIS HONORABLE COURT ERRED IN NOT APPLYING THE RULE THAT TAX REFUNDS BEING IN THE NATURE OF TAX

EXEMPTION ARE CONSTRUED STRICTISSIMI JURIS AGAINST THE PERSON OR ENTITY CLAIMING THE EXEMPTION.[10]

On April 15, 2009, however, the CTA *En Banc* rendered its assailed judgment, disposing thus:

> **WHEREFORE**, the instant petition is hereby **DISMISSED.** Accordingly, the assailed Decision and Resolution are hereby **AFFIRMED.**
>
> **SO ORDERED**.[11]

The CTA *En Banc* held that the defenses raised by the petitioner were general and standard arguments to oppose any claim for refund by a taxpayer; that the trial proper was conducted in the CTA in Division, during which the respondent presented evidence of its entitlement to the refund and in negation of the defenses of the petitioner; and that the petitioner raised the issue on the non-presentment of the respondent's quarterly returns for 2002 and 2003 only in the petition for review, which was not allowed, stating thusly:

> This cannot be allowed. Petitioner had the opportunity to raise this issue either during the trial or at the latest, in his Motion for Reconsideration of the assailed Decision of the Court in Division but he cited only the following grounds in his motion: x x x
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> x x x x
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> In its assailed Resolution, the Court in Division reiterated its finding that respondent had complied with the substantiation requirements for its entitlement to refund. It also ruled that the alleged under-declaration of respondent cannot be determined by the Court since it is the duty of the BIR to investigate and confirm the truthfulness of each and every item in the ITR. It finally declared that respondent, by presenting copies of CWT certificates of unutilized CWT, sufficiently complied with the requirements of the fact of withholding.
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> Thus, petitioner's averment that Section 76 of the NIRC speaks of quarterly income tax payments which consequently requires the offer in evidence of quarterly income tax returns is raised for the first time on appeal with the Court *En Banc*. It is a well-settled rule that points of law, theories, issues and arguments not adequately brought to the attention of the lower court need not be considered by the reviewing court as they cannot be raised for the first time on appeal. x x x
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> x x x x
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> In the present case, petitioner could have simply exercised his power to examine and verify respondent's claim for refund by presenting the latter's quarterly income tax returns. The BIR ought to have on file the originals or copies of respondent's quarterly income tax returns for the

subject years, on the basis of which it could rebut respondent's claim that it did not carry-over its unutilized and excess creditable withholding taxes for taxable years 2002 and 2003 to the succeeding taxable quarters of taxable years 2003 and 2004. Petitioner's failure to present these vital documents before the Court in Division to support his contention against the grant of a tax refund to respondent, is fatal.

At any rate, Section 76 of the 1997 NIRC speaks only of the filing of the Final Adjusted Return and as held by the Supreme Court, the Annual ITR or "(t)he Final Adjustment Return is the most reliable firsthand evidence of corporate acts pertaining to income taxes. In it are found the itemization and summary of additions to and deductions from income taxes due. These entries are not without rhyme or reason. They are required, because they facilitate the tax administration process." And in this case, respondent offered in evidence its Annual ITRs for calendar years 2002, 2003, and 2004.[12]

As to whether the respondent proved its entitlement to the refund, the CTA *En Banc* declared:

However, petitioner's entitlement to refund is still subject to the satisfaction of the requirements laid down by the NIRC of 1997, as amended, namely:

1. That the claim for refund was filed within the two-year reglementary period pursuant to Section 230 of the Tax Code, as amended;

2. That the fact of withholding is established by a copy of the statement duly issued by the payor to the payee showing the amount paid and the amount withheld therefrom; and

3. That the income upon which the taxes were withheld is included as part of the gross income declared in the income tax return of the recipient.

Petitioner complied with the first requisite. The subject claim involves calendar years 2002 and 2003. Petitioner filed its Annual Income Tax Returns on April 15, 2003 and April 15, 2004. Counting from these dates, petitioner had until April 15, 2005 and April 15, 2006 within which to file its administrative and judicial claims for refund. Petitioner filed with the BIR its administrative claim for refund on March 22, 2005. The instant petition was filed on April 15, 2005. Hence, both the administrative and judicial claims for refund were timely filed within the two-year prescriptive period.

Anent the second requirement, the Supreme Court enunciated in the case of **Banco Filipino Savings and Mortgage Bank v. Court of Appeals, Court of Tax Appeals and Commissioner of Internal Revenue** that the fact of withholding is established by a copy of the statement duly issued by the payor to the payee through the Certificates