

THIRD DIVISION

[G.R. No. 206019, March 18, 2015]

PHILIPPINE NATIONAL BANK, PETITIONER, VS. COMMISSIONER OF INTERNAL REVENUE, RESPONDENT.

DECISION

VELASCO JR., J.:

Nature of the Case

This is an appeal via a Petition for Review on Certiorari under Rule 45 of the Rules of Court seeking to reverse and set aside the Court of Tax Appeals (CTA) *En Banc* September 12, 2012 Decision, as reiterated in a Resolution of February 12, 2013 in CTA EB Case No. 762, affirming the earlier decision of its First Division denying petitioner's claim for their fund of excess creditable withholding tax which it allegedly erroneously paid the Bureau of Internal Revenue (BIR) in the amount of Twelve Million Four Hundred Thousand and Four Pesos and Seventy-One Centavos (P12,400,004.71).

The Facts

GotescoTyan Ming Development, Inc. (Gotesco), a Filipino corporation engaged in the real estate business,^[1] entered on April 7, 1995 into a syndicated loan agreement with petitioner Philippine National Bank (PNB) and three (3) other banks. To secure the loan, Gotesco mortgaged a six-hectare expanse known as the Ever Ortigas Commercial Complex, under a mortgage trust indenture agreement in favor of PNB, through its Trust Banking Group, as trustee.^[2]

Gotesco subsequently defaulted on its loan obligations. Thus, PNB foreclosed the mortgaged property through a notarial foreclosure sale on July 30, 1999. On August 4, 1999, a certificate of sale was issued in favor of PNB, subject to Gotesco's right, as debtor and mortgagor, to redeem the property within one (1) year from the date of inscription of the certificate of sale with the Register of Deeds of Pasig City on November 9, 1999.^[3]

On October 20, 2000, Gotesco filed a civil case against PNB before the Regional Trial Court of Pasig, Branch 168 (RTC) for the annulment of the foreclosure proceedings, specific performance and damages with prayer for temporary restraining order (TRO) and/or preliminary injunction.^[4]

On November 9, 2000, the RTC issued a TRO enjoining PNB from consolidating ownership over the mortgaged property, then on December 21, 2000, a writ of preliminary injunction. PNB's motion for reconsideration was subsequently denied.^[5]

PNB went to the Court of Appeals (CA) via a Petition for Certiorari. The CA ruled in favor of PNB and issued an Order reversing and setting aside the writ of preliminary injunction issued by the RTC. Gotesco's Motion for Reconsideration was denied on December 22, 2003.^[6] As Gotesco did not challenge the CA ruling, the setting aside of the writ of preliminary injunction became final and executory.

As it prepared for the consolidation of its ownership over the foreclosed property, PNB paid the BIR Eighteen Million Six Hundred Fifteen Thousand Pesos (P18,615,000) as documentary stamp tax (DST) on October 31, 2003. PNB also withheld and remitted to the BIR withholding taxes equivalent to six percent (6%) of the bid price of One Billion Two Hundred Forty Million Four Hundred Sixty-Nine Pesos and Eighty-Two Centavos (P1,240,000,469.82) or Seventy-Four Million Four Hundred Thousand and Twenty-Eight Pesos and Forty-Nine Centavos (P74,400,028.49) on October 31, 2003 and November 11, 2003.^[7]

Pending the issuance of the Certificate Authorizing Registration (CAR), the BIR informed PNB that it is imposing interests, penalties and surcharges of Sixty-One Million Six Hundred Seventy-Eight Thousand Four Hundred Ninety Pesos and Twenty-Eight Centavos (Php61,678,490.28) on capital gains tax and Fifteen Million Four Hundred Ninety-Four Thousand and Sixty-Five Pesos (Php15,494,065) on DST. To facilitate the release of the CAR, petitioner paid all the surcharges, interests and penalties assessed against it in the total amount of Seventy-Seven Million One Hundred Seventy-Two Thousand Five Hundred Fifty-Five Pesos and Twenty-Eight Centavos (Php77,172,555.28) on April 5, 2005.^[8]

On the claim that what it paid the BIR was not entirely due, PNB lost no time in instituting the necessary actions. Thus, on October 27, 2005, it filed an administrative claim for the refund of excess withholding taxes with the BIR. A day after, or on October 28, 2005, it filed its petition for review before the tax court, docketed thereat as CTA Case No. 7355.^[9]

In its claim for refund, PNB explained that it inadvertently applied the six percent (6%) creditable withholding tax rate on the sale of real property classified as ordinary asset, when it should have applied the five percent (5%) creditable withholding tax rate on the sale of ordinary asset, as provided in Section 2.57.2 (J) (B) of Revenue Regulation (RR) No. 2-98 as amended by RR No. 6-01, considering that Gotesco is primarily engaged in the real estate business. The applicable creditable withholding tax rate of five percent (5%) of the bid price is equivalent to the amount of Sixty-Two Million Twenty-Three Pesos and Forty-Nine Centavos (Php62,000,023.49). Therefore, PNB claimed that it erroneously withheld and remitted to the BIR excess taxes of Twelve Million Four Hundred Thousand and Four Pesos and Seventy-One Centavos (Php12,400,004.71).^[10]

On March 22, 2007, PNB filed another claim for refund claiming erroneous assessment and payment of the surcharges, penalties and interests. Petitioner filed its corresponding Petition for Review on March 30, 2007, docketed as CTA Case No. 7588.^[11]

Upon motion of petitioner, CTA Case Nos. 7355 and 7588 were consolidated. The consolidated cases were set for pre-trial conference which CIR failed to attend despite several resetting. On September 21, 2007, CIR was declared to be in

default.^[12]

CTA Decision

In its July 12, 2010 consolidated Decision,^[13] the CTA Special First Division (First Division), in CTA Case No. 7588, ordered the CIR to refund to PNB P77,172,555.28 representing its claim for refund of interests, surcharges and penalties on capital gains taxes and documentary stamp taxes for the year 2003.^[14]

In CTA Case No. 7355, however, the First Division denied PNB's claim for the refund of excess creditable withholding taxes for insufficiency of evidence. The tax court agreed with PNB that the applicable withholding rate was indeed five percent (5%) and not six percent (6%).^[15] Nevertheless, it held that PNB, while able to establish the fact of tax withholding and the remittance thereof to the BIR, failed to present evidence to prove that Gotesco did not utilize the withheld taxes to settle its tax liabilities. The First Division further stated that PNB should have offered as evidence the 2003 Income Tax Return (2003 ITR) of Gotesco to show that the excess withholding tax payments were not used by Gotesco to settle its tax liabilities for 2003. The First Division elucidated:

With the above proof of payments, this Court finds that the fact of withholding and payment of the withholding tax due were properly established by petitioner. xxx

However, it must be noted that although petitioner duly paid the withholding taxes, there was no evidence presented to this Court showing that GOTESCO utilized the taxes withheld to settle its own tax liability for the year 2003. Being creditable in nature, petitioner should have likewise offered as evidence the 2003 Income Tax Return of GOTESCO to convince the court that indeed the excess withholding tax payments were not used by GOTESCO. The absence of such relevant evidence is fatal to petitioner's action preventing this Court from granting its claim. To allow petitioner its claim may cause jeopardy to the Government if it be required to refund the claim already utilized.^[16]

On July 30, 2010, PNB filed a Motion for Reconsideration (MR), attaching therewith, among others, Gotesco's 2003 ITR and the latter's Schedule of Prepaid Tax, which the First Division admitted as part of the records.

On April 5, 2011, the First Division issued a Resolution^[17] denying PNB's MR mainly because there were no documents or schedules to support the figures reported in Gotesco's 2003 ITR to show that no part of the creditable withholding tax sought to be refunded was used, in part, for the settlement of Gotesco's tax liabilities for the same year. It stated that PNB should have likewise presented the Certificate of Creditable Tax Withheld at Source (BIR Form No. 2307) issued to Gotesco in relation to the creditable taxes withheld reported in its 2003 ITR. BIR Form No. 2307, so declared in the Resolution, will confirm whether or not that the amount being claimed by PNB was indeed not utilized by Gotesco to offset its taxes. In denying the MR, the First Division explained:

Petitioner attached to its Motion, income tax returns of GOTESCO for the taxable year 2003, to prove that the latter did not utilize the taxes withheld by petitioner. The returns were submitted without any attachment regarding its creditable taxes withheld. Except for GOTESCO's Unadjusted Schedule of Prepaid Tax for the taxable year 2003, there were no other documents or schedules presented before this Court to support the figures reported in the tax returns of GOTESCO for the same year under Lines 27 (C), (D) and (G) of the Creditable Taxes Withheld.

We note that the amounts reported by GOTESCO as creditable taxes withheld for the year 2003 were just P6,014,433.00 in total, which is less than P74,400,028.49, the creditable taxes withheld from it by the petitioner. In fact, it is less than the P12,400,004.70 creditable taxes withheld being claimed by petitioner in its present motion. However, this Court deemed that such observation alone, without any supporting document or schedule, is not enough to convince us that no part of the creditable withholding tax sought to be refunded is included in the total tax credits reported by GOTESCO in its tax returns for the taxable year 2003 which was used, in part, for the settlement of its tax liabilities for the same year.

To sufficiently prove that GOTESCO did not utilize the creditable taxes withheld, petitioner should have likewise presented BIR Forms No. 2307 issued to GOTESCO in relation to the creditable taxes withheld reported in its 2003 tax returns. Doing so will dispel any doubt as to the composition of GOTESCO's creditable taxes withheld for 2003. This will settle once and for all that the amount being claimed by petitioner was not utilized by GOTESCO, and thus the claim should be granted. Until then, this Court will stand by its decision and deny the claim.^[18]

In due time, PNB filed an appeal before the CTA *En Banc* by way of a Petition for Review, docketed as CTA EB Case No. 762.^[19] PNB argued that its evidence confirms that Gotesco's Six Million Fourteen Thousand and Four Hundred Thirty-Three Pesos (P6,014,433) worth of tax credits, as reported and claimed in its 2003 ITR, did not form part of the P74,400,028.49 equivalent to six percent (6%) creditable tax withheld. To support the foregoing position, PNB highlighted the following:

1. Gotesco continues to recognize the foreclosed property as its own asset in its 2003 audited financial statements. It did not recognize the foreclosure sale and has not claimed the corresponding creditable withholding taxes withheld by petitioner on the foreclosure sale.
2. Gotesco testified that the P6,014,433.00 tax credits claimed in the year 2003 does not include the P74,400,028.49 withholding taxes withheld and paid by petitioner in the year 2003.
3. PNB presented BIR Form No. 1606, the withholding tax remittance return filed by PNB as withholding agent, which clearly shows that the amount of P P74,400,028.49 was withheld and paid upon PNB's foreclosure of Gotesco's asset.^[20]

Finally, in its July 12, 2010 Decision, the First Division expressly provided that Gotesco's 2003 ITR was the only evidence it needed to show that the excess withholding taxes paid and remitted to the BIR were not utilized by Gotesco.

On September 12, 2012, the CTA *En Banc*, in the first assailed Decision,^[21] denied PNB's Petition for Review and held:

In this case, petitioner is counting on the Income Tax Returns of GOTESCO for the taxable year 2003 and on a certain Unadjusted Schedule of Prepaid Tax for the same year to support its argument that GOTESCO did not utilize the taxes withheld by petitioner; however, We are not persuaded.

To reiterate, since the claim for refund involves creditable taxes withheld from GOTESCO, it is necessary to prove that these creditable taxes were not utilized by GOTESCO to pay for its liabilities. The income tax returns alone are not enough to fully support petitioner's contention that no part of the creditable withholding tax sought to be refunded by petitioner was utilized by GOTESCO; first, there were no other relevant supporting documents or schedules presented to delineate the figures constituting the creditable taxes withheld that was reported in GOTESCO's 2003 tax returns; and second, this Court cannot give credence to the Unadjusted Schedule of Prepaid Tax for the taxable year 2003 being referred to by petitioner as the same pertains merely to a list of GOTESCO's creditable tax withheld for taxable year 2003 and was not accompanied by any attachment to support its contents; also it is manifest from the records that petitioner failed to have this Schedule of Prepaid Tax offered in evidence, and thus, was not admitted as part of the records of this case.

^[22]

After the denial of PNB's Motion for Reconsideration on February 12, 2013,^[23] the bank filed this instant petition.

Issue

Whether or not PNB is entitled to the refund of creditable withholding taxes erroneously paid to the BIR. Subsumed in this main issue is the evidentiary value under the premises of BIR Form No. 2307.

The Court's Ruling

The petition is impressed with merit. As PNB insists at every turn, it has presented sufficient evidence showing its entitlement to the refund of the excess creditable taxes it erroneously withheld and paid to the BIR.

As earlier stated, the CTA predicated its denial action on the postulate that even if PNB's withholding and remittance of taxes were undisputed, it was not able to prove that Gotesco did not utilize the taxes thus withheld to pay for its tax liabilities for the year 2003.

In its Decision, the First Division categorically stated, "[P]etitioner should have likewise offered as evidence the 2003 Income Tax Return of GOTESCO to convince