

FIRST DIVISION

[G.R. No. 185728, October 16, 2013]

**COMMISSIONER OF INTERNAL REVENUE, PETITIONER, VS. TEAM
(PHILIPPINES) OPERATIONS CORPORATION [FORMERLY
MIRANT (PHILIPPINES) OPERATIONS CORPORATION],
RESPONDENT.**

D E C I S I O N

VILLARAMA, JR., J.:

On appeal under Rule 45 is the August 27, 2008 Decision^[1] of the Court of Tax Appeals (CTA) En Banc in C.T.A. E.B. No. 369 which affirmed the August 29, 2007 Decision^[2] of the CTA First Division in CTA Case No. 6970 ordering petitioner Commissioner of Internal Revenue (CIR) to refund, or in the alternative, issue a tax credit certificate, in favor of respondent TeaM (Philippines) Operations Corporation^[3] the amount of P23,053,919.22 representing excess/unutilized creditable withholding taxes for the taxable year 2002. Petitioner likewise assails the November 28, 2008 Resolution^[4] of the CTA En Banc denying its motion for reconsideration from the assailed decision.

The facts as summarized in the assailed CTA En Banc decision are as follows:

Petitioner is the duly appointed Commissioner of Internal Revenue vested with the authority to act as such, including inter alia, the power to decide, approve, and grant refunds or tax credits of overpaid internal revenue taxes as provided by law with office address at the BIR National Office Building, Agham Road, Diliman, Quezon City.

Respondent, on the other hand, is duly licensed to do business in the Philippines and is primarily engaged in the business of designing, construction, erecting, assembling, commissioning, operating, maintaining, rehabilitating and managing gas turbine and other power generating plants and related facilities for the conversion into electricity of 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 entity engaged in the development, supply or distribution of energy.

Respondent entered into Operating and Management Agreements with Mirant Pagbilao Corporation [formerly Southern Energy Quezon, Inc.] or (MPagC) and Mirant Sual Corporation [formerly Southern Energy Pangasinan, Inc.] or (MSC) to provide these corporations with maintenance and management services in connection with the operation,

construction and commissioning of the coal-fired power stations situated in Pagbilao, Province of Quezon and Sual, Province of Pangasinan, respectively. Payments received by respondent for the operating and management services rendered to MPagC and MSC were allegedly subjected to creditable withholding tax.

On April 15, 2003, respondent filed with the Bureau of Internal Revenue (BIR) its original Annual Income Tax Return (ITR) for the calendar year ended December 31, 2002 declaring zero taxable income and unutilized tax credits of P23,108,689.00, detailed as follows:

| | |
|---|---------------------------------|
| Gross Income | P 82,732,818.00 |
| Add: Non-operating & Other Income | <u>172,834.00</u> |
| Total Gross Income | P 82,905,652.00 |
| Less: Deductions | <u>82,905,652.00</u> |
| Taxable Income | P NIL |
| Tax Rate | <u>32%</u> |
| Minimum Corporate Income Tax (MCIT) | <u>P 1,658,113.00</u> |
| Income Tax Due | <u>P 1,658,113.00</u> |
| Less: Prior Years' Excess Credits | NIL |
| Tax Payments for 1 st 3 Quarters | NIL |
| Creditable Tax Withheld for 1 st 3 Quarters | <u>P 24,766,802.00</u> |
| Total Tax Credits/Payments | <u>P 24,766,802.00</u> |
| Tax Overpayment | <u>(P 23,108,689.00)</u> |

In its ITR for the year 2002, respondent indicated its option to refund its alleged excess creditable withholding tax when it marked "X" the box corresponding to the option "To be refunded" under line 30 of said ITR.

On March 17, 2004, respondent filed an administrative claim for refund or issuance of tax credit certificate with the BIR in the total amount of P23,108,689.00, allegedly representing overpaid income tax or excess creditable withholding tax for calendar year ended December 31, 2002.

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 petitioner, respondent elevated its case before the Court in Division by way of Petition for Review on April 27, 2004, docketed as C.T.A. Case No. 6970.^[5]

On August 29, 2007, the CTA First Division rendered a Decision^[6] partially granting respondent's petition and ordered petitioner to refund or issue a tax credit certificate in the reduced amount of P23,053,919.22 representing excess/unutilized creditable withholding taxes for the taxable year 2002. The CTA First Division found that respondent complied with the substantiation requirements for it to be entitled to a claim of excess/unutilized tax credits for the said taxable year. It observed that respondent presented Certificates of Creditable Tax Withheld at Source issued to it by Mirant Pagbilao Corporation (MPagC) and Mirant Sual Corporation (MSC) for the

year 2002 and which were found by the court-commissioned auditing firm, SGV & Co., to be faithful reproductions of the original copies of the certificates, duly signed and prepared under the penalties of perjury and are presumed to be true and correct.

The CTA in Division, however, disallowed the amount of P54,769.78 from the amount claimed since respondent's Annual Income Tax Return only reflected an income of P247,120,318.00 although the income upon which taxes were withheld amounted to P247,668,015.80. Thus, the tax that corresponds to the difference of P547,697.80 was deducted from the tax claim because the income upon which it was withheld did not form part of the income as declared in respondent's 2002 ITR.

Petitioner filed a motion for partial reconsideration from the aforementioned decision but the motion was denied by the CTA First Division in a Resolution^[7] dated February 4, 2008.

Petitioner appealed the decision of the CTA First Division to the CTA En Banc raising the sole issue of whether respondent is entitled to the refund of excess or unutilized creditable withholding taxes for the taxable year 2002 in the amount of P23,053,919.22.

On August 27, 2008, the CTA En Banc denied the petition for lack of merit and affirmed the ruling of the CTA First Division granting respondent's claim for refund or issuance of tax credit certificate in the amount of P23,053,919.22.

Petitioner's motion for reconsideration from the foregoing ruling was denied in a Resolution^[8] dated November 28, 2008.

Hence, petitioner filed the present petition insisting that--

RESPONDENT FAILED TO COMPLY WITH THE REQUIREMENTS FOR
REFUND OF CREDITABLE WITHHOLDING TAX.^[9]

Petitioner CIR argues that the withholding of the subject taxes had not been duly proven by respondent. Petitioner posits that in order that the claim for refund of creditable withholding tax will be granted, the claimant must present an authentic certificate of creditable withholding tax. Petitioner points out that the original copies of the subject withholding tax certificates were not presented by respondent before the CTA. It only presented the testimony of the court-commissioned independent accountant (ICPA), Mr. Henry Tan, who merely identified the certificates and opined that said certificates were faithful reproductions of the original. Thus, petitioner claims that she was deprived of the opportunity to scrutinize the certificates to determine their authenticity.

Petitioner also assails the CTA En Banc's ruling brushing aside the fact that mere photocopies were presented and holding that the documents were executed under the penalties of perjury pursuant to Section 267 of the National Internal Revenue Code of 1997. According to petitioner, even if the documents presented were executed under the penalties of perjury, it does not guarantee that the same were not perjured and does not dispense with the best evidence rule. She claims that the

competent witness who can prove the truth of the contents of the certificates is the person who prepared the same.

In its Comment/Opposition,^[10] respondent maintains that it had presented the original copies of the withholding tax certificates to the court-commissioned ICPA for examination under the procedures laid down in CTA Circular No. 1-95, as amended by CTA Circular No. 10-97. Respondent avers that the original copies of those certificates were among the voluminous documents submitted by respondent for examination by the court-commissioned ICPA. Respondent asserts that under the aforementioned circulars, the duly commissioned ICPA was authorized to examine the original copies of the certificates, make photocopies thereof, and certify that the photocopies are faithful reproductions of the original. It contends that the original copies of the certificates need not be presented in court after the court-commissioned ICPA has submitted his report together with all the supporting documents and testified on his findings and conclusions. Respondent submits that it is enough that those certificates were properly pre-marked, introduced as evidence and made available to petitioner in case she wants to verify their authenticity.

In reply,^[11] petitioner stresses that the presentation of Mr. Henry Tan, the court-commissioned ICPA, who identified the withholding tax certificates and testified that said certificates were faithful reproductions of the original, does not satisfy the requirements and conditions for tax refund. Petitioner adds that tax refunds, like tax exemptions are construed strictly against the taxpayer and a refund claimant is required to prove the inclusion of the income payments which were the basis of the withholding taxes and the fact of withholding.

The main issue to be resolved in this petition is whether respondent has complied with the requirements for refund or issuance of tax credit certificate of creditable withholding taxes for calendar year ended December 31, 2002.

We affirm the ruling of the CTA En Banc that respondent has complied with the requirements for refund of creditable withholding taxes and is therefore entitled to the P23,053,919.22 claim for refund or issuance of tax credit certificate.

A taxpayer claiming for a tax credit or refund of creditable withholding tax must comply with the following requisites:

- 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 of the recipient that the income received was declared as part of the gross income; and
- 3) The fact of withholding is established by a copy of a statement duly issued by the payor to the payee showing the amount paid and the amount of tax withheld.^[12]

The first requirement is based on Section 229 of the National Internal Revenue Code of 1997 which provides that: