

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	<u>61,076.00</u>
	<u>38,301,198.00</u>
Total Overpayment	<u>P30,890,556.00</u>

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	<u>14,920,979.00</u>	<u>58,217,108.00</u>
Total Overpayment		<u>P51,760,312.00</u>

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		<u>61,076.00</u>
Total		P 15,050,464.00
Less: 2000 MCIT		<u>7,410,642.00</u>
Unutilized 2000 Creditable Taxes Withheld		P 7,639,822.00
Less: 2001 MCIT		<u>6,456,796.00</u>
Remaining Unutilized 2000 Creditable Taxes Withheld		<u>P 1,183,026.00</u>

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	— <u>27,326,552.00</u>
	<u>14,920,979.00</u>
Total	<u>P28,509,578.00</u>

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 two-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:

	<u>Amount</u>	
2000 Supported Creditable Taxes Withheld	14,986,640.75	P
Less: 2000 MCIT	<u>7,410,642.00</u>	
Unutilized 2000 Creditable Taxes Withheld	7,575,998.75	P
Less: 2001 MCIT	<u>6,456,796.00</u>	
Remaining Unutilized 2000 Creditable Taxes Withheld	P 1,119,202.75	
Add: 2001 Supported and Unapplied Creditable Taxes Withheld	<u>24,325,856.58</u>	
Supported Unapplied Creditable Taxes Withheld as of December 31, 2001	<u>P25,445,059.33</u>	

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:

<u>Income</u>	<u>Payment</u>	<u>Tax Withheld</u>	<u>Withholding Agent</u>	<u>Exh.</u>
P 300,603,978.00	P 3,006,039.78	-	Mitsubishi Phils. Corp.	S
195,263.12		1,952.63	Nidec-Shimpo	T