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While the law also grants petitioner the option to enforce said lien through either the judicial or extrajudicial foreclosure sale of the condominium unit, Section 20 does not by itself, *ipso facto*, authorize judicial as extra-judicial foreclosure of the condominium unit. Petitioner may avail itself of either option only in the manner provided for by the governing law and rules. As already pointed out, A.M. No. No. 99-10-05-0, as implemented under Circular No. 7-2002, requires that petitioner furnish evidence of its special authority to cause the extrajudicial foreclosure of the condominium unit.

There being no evidence of such special authority, petitioner failed to establish a clear right to a writ of *mandamus* to compel the RTC to act on its petition for extrajudicial foreclosure.

WHEREFORE, the petition is *DENIED* for lack of merit.

Costs against petitioner.

SO ORDERED.

Ynares-Santiago (Chairperson), Chico-Nazario, Nachura, and *Reyes, JJ.*, concur.

THIRD DIVISION

[G.R. No. 163345. July 4, 2008]

COMMISSIONER OF INTERNAL REVENUE, *petitioner, vs.* **PERF REALTY CORPORATION,** *respondent.*

SYLLABUS

1. TAXATION; TAX ON INCOME; CLAIM FOR REFUND; REQUISITES. — The CTA, citing *Section 10 of Revenue Regulations 6-85 and Citibank, N.A. v. Court of Appeals,*

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determined the requisites for a claim for refund, thus: 1) That the claim for refund was filed within the two (2) year period as prescribed under Section 230 of the National Internal Revenue Code; 2) That the income upon which the taxes were withheld were included in the return of the recipient; 3) That the fact of withholding is established by a copy of a statement (BIR Form 1743.1) duly issued by the payor (withholding agent) to the payee, showing the amount paid and the amount of tax withheld therefrom.

2. REMEDIAL LAW; APPEALS; FACTUAL FINDINGS OF THE COURT OF TAX APPEALS, NOT DISTURBED ON APPEAL; EXCEPTION.— It is settled that findings of fact of the CTA are entitled to great weight and will not be disturbed on appeal unless it is shown that the lower courts committed gross error in the appreciation of facts.

3. TAXATION; TAX ON INCOME; SECTION 76 OF THE NATIONAL INTERNAL REVENUE CODE, EXPLAINED.— Section 76 [of the NIRC] offers two options: (1) filing for tax refund and (2) availing of tax credit. The two options are alternative and the choice of one precludes the other. However, in *Philam Asset Management, Inc. v. Commissioner of Internal Revenue*, the Court ruled that failure to indicate a choice, however, will not bar a valid request for a refund, should this option be chosen by the taxpayer later on. The requirement is only for the purpose of easing tax administration particularly the self-assessment and collection aspects.

APPEARANCES OF COUNSEL

Special Counsel (BIR) for petitioner.

Martin L. Buenaventura and *Celestino R. Miranda* for respondent.

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D E C I S I O N

REYES, R.T., *J.*:

FOR Our review on *certiorari* is the Decision[1] of the Court of Appeals (CA) granting the claim for refund of respondent PERF Realty Corporation (PERF) for creditable withholding tax for the year 1997.

Facts

Petitioner Commissioner is the head of the Bureau of Internal Revenue (BIR) whose principal duty is to assess and collect internal revenue taxes. Respondent PERF is a domestic corporation engaged in the business of leasing properties to various clients including the Philippine American Life and General Insurance Company (Philamlife) and Read-Rite Philippines (Read-Rite).

On April 14, 1998, PERF filed its Annual Income Tax Return (ITR) for the year 1997 showing a net taxable income in the amount of ₱6,430,345.00 and income tax due of ₱2,250,621.00.

For the year 1997, its tenants, Philamlife and Read-Rite, withheld and subsequently remitted creditable withholding taxes in the total amount of ₱3,531,125.00.

After deducting creditable withholding taxes in the total amount of ₱3,531,125.00 from its total income tax due of ₱2,250,621.00, PERF showed in its 1997 ITR an overpayment of income taxes in the amount of ₱1,280,504.00.

On November 3, 1999, PERF filed an administrative claim with the appellate division of the BIR for refund of overpaid income taxes in the amount of ₱1,280,504.00.

On December 3, 1999, due to the inaction of the BIR, PERF filed a petition for review with the Court of Tax Appeals (CTA) seeking for the refund of the overpaid income taxes in the amount of ₱1,280,504.00.

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[1] *Rollo*, pp. 42-49. Dated July 18, 2003. Penned by Associate Justice Hakim S. Abdulwahid, with Associate Justices B. A. Adefuin Dela Cruz and Jose L. Sabio, Jr., concurring.

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CTA Disposition

In a Decision dated November 20, 2001, the CTA denied the petition of PERF on the ground of insufficiency of evidence. The CTA noted that PERF did not indicate in its 1997 ITR the option to either claim the excess income tax as a refund or tax credit pursuant to Section 69[2] (now 76) of the National Internal Revenue Code (NIRC).

Further, the CTA likewise found that PERF failed to present in evidence its 1998 annual ITR. It held that the failure of PERF to signify its option on whether to claim for refund or opt for an automatic tax credit and to present its 1998 ITR left the Court with no way to determine with certainty whether or not PERF has applied or credited the refundable amount sought for in its administrative and judicial claims for refund.

PERF moved for reconsideration attaching to its motion its 1998 ITR. The motion was, however, denied by the CTA in its Resolution dated March 26, 2002.

Aggrieved by the decision of the CTA, PERF filed a petition for review with the CA under Rule 43 of the Rules of Court.

CA Disposition

In a Decision dated July 18, 2003, the CA ruled in favor of PERF, disposing as follows:

WHEREFORE, the petition is hereby GRANTED. The assailed Decision dated November 20, 2001, and Resolution of March 26, 2002

[2] Section 69. *Final Adjustment Return*. – Every corporation liable to pay tax under Section 24 shall file a final adjustment return covering the total net income for the preceding calendar year 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 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.

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of the Court of Tax Appeals are SET ASIDE. The Commissioner of Internal Revenue is ordered to REFUND to the petitioner the amount of ₱1,280,504.00 as creditable withholding tax for the year 1997.

SO ORDERED.[3]

According to the appellate court, even if the taxpayer has indicated its option for refund or tax credit in its ITR, it does not mean that it will automatically be entitled to either option since the Commissioner of Internal Revenue (CIR) must be given the opportunity to investigate and confirm the veracity of the claim. Thus, there is still a need to file a claim for refund.

As to the failure of PERF to present its 1998 ITR, the CA observed that there is no need to rule on its admissibility since the CTA already held that PERF had complied with the requisites for applying for a tax refund. The sole purpose of requiring the presentation of PERF's 1998 ITR is to verify whether or not PERF had carried over the 1997 excess income tax claimed for refund to the year 1998. The verification process is not incumbent upon PERF; rather, it is the duty of the BIR to disprove the taxpayer's claim.

The CIR filed a motion for reconsideration which was subsequently denied by the CA. Thus, this appeal to Us under Rule 45.

Issues

Petitioner submits the following assignment:

I

THE COURT OF APPEALS ERRED IN GRANTING RESPONDENT'S TAX REFUND CONSIDERING THE LATTER'S FAILURE TO SUBSTANTIALLY ESTABLISH ITS CLAIM FOR REFUND.

II

THE COURT OF APPEALS ERRED IN CONSIDERING RESPONDENT'S ANNUAL CORPORATE INCOME TAX RETURN

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[3] *Rollo,* p. 48.

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FOR 1998 NOTWITHSTANDING THAT IT WAS NOT FORMALLY OFFERED IN EVIDENCE.[4] (Underscoring supplied)

Our Ruling

We rule in favor of respondent.

I. Respondent substantially complied with the requisites for claim of refund.

The CTA, citing *Section 10 of Revenue Regulations 6-85 and Citibank, N.A. v. Court of Appeals*,[5] determined the requisites for a claim for refund, thus:

1) That the claim for refund was filed within the two (2) year period as prescribed under Section 230 of the National Internal Revenue Code;

2) That the income upon which the taxes were withheld were included in the return of the recipient;

3) That the fact of withholding is established by a copy of a statement (BIR Form 1743.1) duly issued by the payor (withholding agent) to the payee, showing the amount paid and the amount of tax withheld therefrom.[6]

We find that PERF filed its administrative and judicial claims for refund on November 3, 1999 and December 3, 1999, respectively, which are within the two-year prescriptive period under Section 230 (now 229) of the National Internal Tax Code.

The CTA noted that based on the records, PERF presented certificates of creditable withholding tax at source reflecting creditable withholding taxes in the amount of ₱4,153,604.18 withheld from PERF's rental income of ₱83,072,076.81 (Exhibits B, C, D, E, and H). In addition, it submitted in evidence the Monthly Remittance Returns of its withholding agents to prove the fact of remittance of said taxes to the BIR. Although the

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[4] *Id*. at 20-21.

[5] G.R. No. 107434, October 10, 1997, 280 SCRA 459.

[6] *Rollo,* p. 52.

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certificates of creditable withholding tax at source for 1997 reflected a total amount of ₱4,153,604.18 corresponding to the rental income of ₱83,072,076.81, PERF is claiming only the amount of ₱3,531,125.00 pertaining to a rental income of ₱70,813,079.00. The amount of ₱3,531,125.00 less the income tax due of PERF of ₱2,250,621.00 leaves the refundable amount of ₱1,280,504.00.

It is settled that findings of fact of the CTA are entitled to great weight and will not be disturbed on appeal unless it is shown that the lower courts committed gross error in the appreciation of facts. We see no cogent reason not to apply the same principle here.

II. The failure of respondent to indicate its option in its annual ITR to avail itself of either the tax refund or tax credit is not fatal to its claim for refund.

Respondent PERF did not indicate in its 1997 ITR the option whether to request a refund or claim the excess withholding tax as tax credit for the succeeding taxable year.

Citing Section 76 of the NIRC, the CIR opines that such failure is fatal to PERF's claim for refund.

We do not agree.

In *Philam Asset Management, Inc. v. Commissioner of Internal Revenue*,[7] the Court had occasion to trace the history of the Final Adjustment Return found in Section 69 (now 76) of the NIRC. Thus:

> The provision on the final adjustment return (FAR) was originally found in Section 69 of Presidential Decree (PD) No. 1158, otherwise known as the "National Internal Revenue Code of 1977." On August 1, 1980, this provision was restated as Section 86 in PD 1705.
>
> On November 5, 1985, all prior amendments and those introduced by PD 1994 were codified into the National Internal Revenue Code

[7] G.R. Nos. 156637 & 162004, December 14, 2005, 477 SCRA 761.

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(NIRC) of 1985, as a result of which Section 86 was renumbered as Section 79.

On July 31, 1986, Section 24 of Executive Order (EO) No. 37 changed all "net income" phrases appearing in Title II of the NIRC of 1977 to "taxable income." Section 79 of the NIRC of 1985, however, was not amended.

On July 25, 1987, EO 273 renumbered Section 86 of the NIRC as Section 76, which was also rearranged to fall under Chapter of Title II of the NIRC. Section 79, which had earlier been renumbered by PD 1994, remained unchanged.

Thus, Section 69 of the NIRC of 1977 was renumbered as Section 86 under PD 1705; later, as Section 79 under PD 1994; then, as Section 76 under EO 273. Finally, after being renumbered and reduced to the chaff of a grain, Section 69 was repealed by EO 37.

Subsequently, Section 69 reappeared in the NIRC (or Tax Code) of 1997 as Section 76, which reads:

> "Section 76. *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."[8]

Section 76 offers two options: (1) filing for tax refund and (2) availing of tax credit. The two options are alternative and the choice of one precludes the other. However, in *Philam*

[8] *Philam Asset Management, Inc. v. Commissioner of Internal Revenue, id.* at 769-771.

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Asset Management, Inc. v. Commissioner of Internal Revenue,[9] the Court ruled that failure to indicate a choice, however, will not bar a valid request for a refund, should this option be chosen by the taxpayer later on. The requirement is only for the purpose of easing tax administration particularly the self-assessment and collection aspects. Thus:

> 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*, 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. Failure to signify one's intention in the FAR does not mean outright barring of a valid request for a refund, should one still choose this option later on. A tax credit should be construed merely as an alternative remedy to a tax refund under Section 76, subject to prior verification and approval by respondent.
>
> The reason for requiring that a choice be made in the FAR upon its filing is to ease tax administration, particularly the self-assessment and collection aspects. A taxpayer that makes a choice expresses certainty or preference and thus demonstrates clear diligence. Conversely, a taxpayer that makes no choice expresses uncertainty or lack of preference and hence shows simple negligence or plain oversight.
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> x x x x x x x x x
>
> *Third*, there is no automatic grant of a *tax refund*. As a matter of procedure, the BIR should be given the opportunity "to investigate and confirm the veracity" of a taxpayer's claim, before it grants the refund. Exercising the option for a tax refund or a tax credit does not *ipso facto* confer upon a taxpayer the right to an immediate availment of the choice made. Neither does it impose a duty on the government to allow tax collection to be at the sole control of a taxpayer.
>
> *Fourth*, the BIR ought to have on file its own copies of petitioner's FAR for the succeeding year, on the basis of which it could rebut the assertion that there was a subsequent credit of the excess income tax

[9] *Id*. at 772.

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payments for the previous year. Its failure to present this vital document to support its contention against the grant of a *tax refund* to petitioner is certainly fatal.

Fifth, the CTA should have taken judicial notice of the fact of filing and the pendency of petitioner's subsequent claim for a refund of excess creditable taxes withheld for 1998. The existence of the claim ought to be known by reason of its judicial functions. Furthermore, it is decisive to and will easily resolve the material issue in this case. If only judicial notice were taken earlier, the fact that there was no carry-over of the excess creditable taxes withheld for 1997 would have already been crystal clear.

Sixth, the Tax Code allows the refund of taxes to a taxpayer that claims it in writing within two years after payment of the taxes erroneously received by the BIR. Despite the failure of petitioner to make the appropriate marking in the BIR form, the filing of its written claim effectively serves as an expression of its choice to request a *tax refund*, instead of a tax credit. To assert that any future claim for a tax refund will be instantly hindered by a failure to signify one's intention in the FAR is to render nugatory the clear provision that allows for a two-year prescriptive period.

In fact, in *BPI-Family Savings Bank v. CA*, this Court even ordered the refund of a taxpayer's excess creditable taxes, despite the express declaration in the FAR to apply the excess to the succeeding year. When circumstances show that a choice of tax credit has been made, it should be respected. But when indubitable circumstances clearly show that another choice – a tax refund – is in order, it should be granted. "Technicalities and legalisms, however exalted, should not be misused by the government to keep money not belonging to it and thereby enrich itself at the expense of its law-abiding citizens."

In the present case, although petitioner did not mark the refund box in its 1997 FAR, neither did it perform any act indicating that it chose a tax credit. On the contrary, it filed on September 11, 1998, an administrative claim for the refund of its excess taxes withheld in 1997. In none of its quarterly returns for 1998 did it apply the excess creditable taxes. Under these circumstances, petitioner is entitled to a *tax refund* of its 1997 excess tax credits in the amount of ₱522,092.[10]

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[10] *Philam Asset Management, Inc. v. Commissioner of Internal Revenue*, *id.* at 772-777.

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In this case, PERF did not mark the refund box in its 1997 FAR. Neither did it perform any act indicating that it chose tax credit. In fact, in its 1998 ITR, PERF left blank the portion "Less: Tax Credit/ Payments." That action coupled with the filing of a claim for refund indicates that PERF opted to claim a refund. Under these circumstances, PERF is entitled to a refund of its 1997 excess tax credits in the amount of ₱1,280,504.00.

III. The failure of respondent to present in evidence the 1998 ITR is not fatal to its claim for refund.

The CIR takes the view that the CA erred in considering the 1998 ITR of PERF. It was not formally offered in evidence. Section 34, Rule 132 of the Revised Rules of Court states that the court shall consider no evidence which has not been formally offered.

The reasoning is specious.

PERF attached its 1998 ITR to its motion for reconsideration. The 1998 ITR is a part of the records of the case and clearly showed that income taxes in the amount of ₱1,280,504.00 were not claimed as tax credit in 1998.

In *Filinvest Development Corporation v. Commissioner of Internal Revenue*,[11] the Court held that the 1997 ITR attached to the motion for reconsideration is part of the records of that case and cannot be simply ignored by the CTA. Moreover, technicalities should not be used to defeat substantive rights, especially those that have been held as a matter of right. We quote:

> In the proceedings before the CTA, petitioner presented in evidence its letter of claim for refund before the BIR to show that it was made within the two-year reglementary period; its Income Tax Returns for the years 1995 and 1996 to prove its total creditable withholding tax and the fact that the amounts were declared as part of its gross income; and several certificates of income tax withheld at source

[11] G.R. No. 146941, August 9, 2007, 529 SCRA 605.

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corresponding to the period of claim to prove the total amount of the taxes erroneously withheld. More importantly, petitioner attached its 1997 Income Tax Return to its Motion for Reconsideration, making the same part of the records of the case. The CTA cannot simply ignore this document.

Thus, we hold that petitioner has complied with all the requirements to prove its claim for tax refund. The CA, therefore, erred in denying the petition for review of the CTA's denial of petitioner's claim for tax refund on the ground that it failed to present its 1997 Income Tax Return.

The CA's reliance on Rule 132, Section 34 26 of the Rules on Evidence is misplaced. This provision must be taken in the light of Republic Act No. 1125, as amended, the law creating the CTA, which provides that proceedings therein shall not be governed strictly by technical rules of evidence. Moreover, this Court has held time and again that technicalities should not be used to defeat substantive rights, especially those that have been established as a matter of fact.

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We must also point out that, simply by exercising the CIR's power to examine and verify petitioner's claim for tax exemption as granted by law, respondent CIR could have easily verified petitioner's claim by presenting the latter's 1997 Income Tax Return, the original of which it has in its files. However, records show that in the proceedings before the CTA, respondent CIR failed to comment on petitioner's formal offer of evidence, waived its right to present its own evidence, and failed to file its memorandum. Neither did it file an opposition to petitioner's motion to reconsider the CTA decision to which the 1997 Income Tax Return was appended.

That no one shall unjustly enrich oneself at the expense of another is a long-standing principle prevailing in our legal system. This applies not only to individuals but to the State as well. In the field of taxation where the State exacts strict compliance upon its citizens, the State must likewise deal with taxpayers with fairness and honesty. The harsh power of taxation must be tempered with evenhandedness. Hence, under the principle of *solutio indebiti*, the Government has to restore to petitioner the sums representing erroneous payments of taxes.[12]

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[12] *Filinvest Development Corporation v. Commissioner of Internal Revenue, id.* at 611-620.

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Further, We sustain the CA that there is no need to rule on the issue of the admissibility of the 1998 ITR since the CTA ruled that PERF already complied with the requisites of applying for a tax refund. The verification process is not incumbent on PERF; it is the duty of the CIR to verify whether or not PERF had carried over the 1997 excess income taxes.

WHEREFORE, the petition is *DENIED* for lack of merit.

SO ORDERED.

Ynares-Santiago (Chairperson), Austria-Martinez, Chico-Nazario, and *Nachura, JJ.,* concur.

THIRD DIVISION

[G.R. No. 164919. July 4, 2008]

CHINA BANKING CORPORATION, *petitioner, vs.* **SPOUSES TOBIAS L. LOZADA and ERLINA P. LOZADA,** *respondents.*

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; DUE PROCESS; PROCEDURAL DUE PROCESS; EXPLAINED.— Procedural due process "refers to the method or manner by which the law is enforced." It consists of the two basic rights of notice and hearing, as well as the guarantee of being heard by an impartial and competent tribunal. True to the mandate of the due process clause, the basic rights of notice and hearing pervade not only in criminal and civil proceedings, but in administrative proceedings as well. Non-observance of these rights will invalidate the proceedings. Individuals are entitled to be notified of any pending case affecting their interests; and upon notice, they may claim the