REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

PHILIPPINE AIRLINES, INC. (PAL),
Petitioner,

C.T.A. EB No. 27
(C.T.A. Case No. 6298)

Present:

-versus-

Acosta, P.J.
Castañeda, Jr.
Bautista,
Uy,
Casanova, and
Palanca-Enriquez, JJ.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:

OCT 07 2005

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DECISION

BAUTISTA, J.:

Before the Court *en banc* is a Petition for Review seeking the reversal of the decision of the Court of Tax Appeals, sitting as a Division, promulgated on April 23, 2004 and the Resolution dated August 20, 2004, both denying petitioner's claim for refund of alleged erroneously collected Overseas Communication Tax for the period covering January to December 1999.

The facts as gathered from the records.

Petitioner is a domestic corporation organized in accordance with the laws of the Republic of the Philippines with principal office at the 9th Floor, PAL Center, Legazpi St., Legazpi Village, Makati City.

On June 11, 1978, petitioner was granted a franchise to establish, operate and maintain air transport services in the Philippines and between the Philippines and other countries by Presidential Decree (PD) No. 1590. Under Section 13 of PD 1590, petitioner Philippine Airlines, Inc. was granted the option to pay either the basic corporate income tax based on its annual net taxable income computed in accordance with the provisions of the National Internal Revenue Code, or a 2% franchise tax based on its gross revenues derived from all sources, whichever of the two will result in a lower tax. The tax paid by PAL under either of these alternatives shall be "*in lieu of* all other taxes."

For its communications services necessary for its day-to-day operations, petitioner engaged the services of Philippine Long Distance Telephone Company (PLDT, for brevity). Aside from the basic fee which PLDT charges its customers for the use of the communication services, it also includes in its monthly statements of account taxes, imposts and other governmental charges such as the 10% Tax on Overseas Dispatch, Message, or Conversation Originating from the Philippines in accordance with Section 120(A) of the National Internal Revenue Code (NIRC) of 1997 which provides:

> *"SEC. 120. Tax on Overseas Dispatch, Message or Conversation Originating from the Philippines.-*
>
> *(A) Persons Liable. – There shall be collected upon every overseas dispatch, message or conversation transmitted from the Philippines by telephone, telegraph, telewriter exchange, wireless and other communication equipment services, a tax of ten percent (10%) on the amount paid for such services. The tax imposed in this Section shall be payable by the person paying for the services rendered and shall be paid to the person rendering services who is required to collect and pay the tax within twenty (20) days after the end of each quarter."*

For the period January to December 1999, petitioner allegedly paid PLDT for the latter's services, including a total amount of P727,193.91, purportedly representing the 10% Overseas Communication Tax.

On October 25, 2000, a claim for refund was filed by petitioner, through its AVP-Financial Planning & Analysis, with the Office of the Commissioner of Internal Revenue of its alleged erroneous payment of Overseas Communication Tax. The claim was anchored on the basis of Section 13 of PD 1590.

Due to respondent's inaction on petitioner's claim for refund and in order to toll the running of the two-year prescriptive period, petitioner filed its judicial claim before the Division of the Court of Tax Appeals on April 27, 2001. Respondent filed his Answer dated June 25, 2001.

On April 23, 2004, a Decision was rendered by the Division of this Court denying the petition for review due to petitioner's failure to prove that it has paid either of the two taxes provided for under Section 13 of PD 1590, which is an indispensable requirement before it may enjoy the privileges granted therein.

On May 14, 2004, petitioner moved for the reconsideration of the decision. The court likewise denied the same in a Resolution dated August 20, 2004 which was received by petitioner on September 2, 2004.

Pursuant to Section 11 of Republic Act No. 9282 in relation to Section 4 of Rule 43 of the 1997 Rules of Civil Procedure, petitioner has fifteen (15) days from receipt thereof within which to file its Petition for Review with the Court of Tax Appeals e*n banc*.

On September 15, 2004, petitioner filed with the Court e*n banc* a "Motion for Extension of Time to File Petition for Review En Banc" praying for an extension of fifteen (15) days from September 17, 2004 or until October 4, 2004. Petitioner's motion was granted in a Resolution dated November 17, 2004.

On October 4, 2004, petitioner filed the instant petition for review advancing the following assignment of errors:

1. The First Division of the Court of Tax Appeals erred in holding that proof of payment by petitioner of either of the two taxes provided for under Section 13 of P.D. No. 1590 is an indispensable requirement before it may enjoy the privileges granted therein, citing in support thereof the CTA's decision in the case of Philippine Airlines, Inc. (PAL)

vs. Commissioner Internal Revenue, CTA Case No. 5825, September 5, 2001, where the Honorable Court denied a similar claim for refund of overseas communications tax, citing in turn the CTA decision in the case of Philippine Airlines, Inc. (PAL) vs. Commissioner of Internal Revenue, CTA Case No. 5824, dated June 13, 2001.

2. The First Division erred in holding that since the subject overseas communication tax was already claimed as part of the communications expense of the petitioner deducted from its gross income, the same can no longer be refunded to the petitioner.
3. The First Division erred in holding that petitioner did not submit the required Certification in accordance with the Rules of Court, more particularly, Section 34 of Rule 132 governing the presentation of evidence; hence, the requirement under CTA Circular 1-95, as amended, was not complied with.
4. The First Division erred in holding that petitioner failed to prove the remittance to the BIR of the overseas communication tax it paid to the Philippine Long Distance Telephone Company (PLDT).

The Court rules to deny the petition.

On the first assignment of error, petitioner argues that the Court's Division erred in relying on CTA Case No. 5825 (citing the CTA Case No. 5824) as these cases have been reversed by the Court of Appeals in the cases of *Philippine Airlines, Inc. vs. Court of Tax Appeals and The Commissioner of Internal Revenue, C.A. G.R. SP No. 69388, promulgated on November 25, 2003* and *Philippine Airlines, Inc. vs. Honorable Court of Tax appeals and the Commissioner Internal Revenue, CA G.R. No. 67970, promulgated on September 30, 2003.*

This issue has been aptly explained in the assailed Resolution, and We quote:

> "The decisions of the Court of Appeals in CTA Case Nos. 5824 and 5825 reversing the decisions of this Court are not binding with this court but only carry a persuasive effect. In the case of *Commissioner of Internal Revenue vs. Michel J. Lhuiller, G.R. 150947, July 15, 2003*, the Supreme Court declared:
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>> The Supreme Court by tradition and in our system of judicial administration, has the last word on what the law is; it is the final arbiter of any justifiable controversy. There is only one Supreme Court whose decision all other courts should take their bearings.
>
> However, in the case of *Commissioner Internal Revenue vs. Court of Appeals, et al. [G.R. No. 104151, March 10, 1995] and Atlas Consolidated Mining and Development Corporation vs. Court of Appeals, et al. [G.R. No. 105563, March 10, 1995]*, the Supreme Court held in this wise:
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>> Although only the decisions of the Supreme Court establish jurisprudence or doctrines in this jurisdiction, nonetheless the decisions of subordinate courts have a persuasive effect and

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> may serve as judicial guides. It is even possible that such a conclusion or pronouncement can be raised to the status of a doctrine if, after it has been subjected to test in the crucible of analysis and revision the Supreme Court should find that it has merits and qualities sufficient for its consecration as a rule of jurisprudence.
>
> Prescinding from the above, the ruling of the Court of Appeals in the above-mentioned PAL cases can only be raised to the status of a doctrine upon affirmation by the Supreme Court."

Furthermore, petitioner claims that it is exempt from the 10% overseas communication tax as this is not one of the taxes enumerated in its charter for which it is liable.

According to petitioner, applying the principle of *'inclusio unius est exclusio alterius'* it is liable to pay for the following taxes, namely:

1. Whichever of the following results in a lower tax:
    a. the basic corporate income tax based on PAL's annual net taxable income computed in accordance with the provisions of the National Internal Revenue Code; or
    b. a franchise tax of two percent (2%) of gross revenues derived by PAL from all sources without distinction as to transport or nontransport operations.
2. The tax on its real property.

Hence, being excluded from the enumeration of taxes petitioner is liable to pay under its charter, petitioner contends that the 10% overseas communication tax is deemed included in the term taxes of the 'in lieu of' clause to which it shall not be subject.

We are not convinced by petitioner's contentions.

Petitioner's franchise, P.D. 1590, particularly Section 13 thereof provides:

> "Sec. 13. In consideration of the franchise and rights hereby granted, the grantee shall pay to the Philippine Government during the life of this franchise whichever of sub-sections (a) and (b) hereunder will result in a lower tax:
>
> (a) The basic corporate income tax based on the grantee's annual net taxable income computed in accordance with the provisions of the National Internal Revenue Code; or,
>
> (b) A franchise tax of two percent (2%) of the gross revenues derived by the grantee from all sources, without distinction as to transport or non-transport operations; provided that with respect to international air-transport services, only the gross passengers mail and freight revenues from its outgoing lights shall be subject to this tax.
>
> <u>The tax paid by the grantee under either of the above alternatives shall be in lieu of all other taxes duties, royalties, registration, license and other fees and charges of any kind, nature or description imposed established, assessed or collected by any municipal, city, provincial or national authority or government agency, now or in the future</u>, x x x. (Underscoring supplied)
>
> xxx xxx xxx
>
> The grantee, shall, however, pay the tax on its real property in conformity with existing law."

Under the foregoing provision, petitioner is liable to pay for either the basic corporate income tax or the 2% franchise tax and the tax on its real property. The phrase *'in lieu of* all other taxes' contemplates the fulfillment of a condition before the exemption from all other taxes may be applied. In other words, the exemption from all other taxes will only take effect after payment of either the basic corporate income tax or the 2% franchise tax, whichever will result in a lower tax.

Petitioner further argues that judicial notice may be taken of cases decided by or pending before the Court's Division involving PAL's claims for refund of other kinds of taxes, showing that for the fiscal years ended March 31, 1999 and March 31, 2000 covering the period involved in the instant case, petitioner had actually chosen to pay the basic corporate income tax instead of the 2% franchise tax. The decided cases referred to by petitioner are, namely, (1) CTA Case No. 6134 promulgated on May 16, 2003, (2) CTA Case No. 6327 promulgated on August 28, 2003 and the pending cases referred to are: (1) CTA Case No. 6724 and (2) CTA Case No. 7029. Moreover, petitioner asserts that it is of common knowledge that it has applied for and was granted receivership because of its continued operating losses exacerbated by the debilitating pilots' strike the previous year which forced PAL to stop operations for two (2) weeks. It resumed operations thereafter, but under a rehabilitation plan approved by the Securities and Exchange Commission, but continued to incur losses.

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As a general rule, courts are not authorized to take judicial notice in the adjudication of cases pending before them of the contents of the records of other cases, even when such cases have been tried or are pending in the same court, and notwithstanding the fact that both cases may have been tried or are actually pending before the same judge. But in the absence of objection, and as a matter of convenience to all parties, a court may properly treat all or any part of the original record of a case filed in its archives as read into the record of a case pending before it, when, with the knowledge of the opposing party, reference is made to it for that purpose, by name and number or in some other record of the former case or any part of it, is actually withdrawn from the archives by the court's direction, at the request or with the consent of the parties, and admitted as part of the record of the case then pending. ***(U.S. vs. Claveria, 29 Phil. 527; cited in Compendium on Evidence, Third Edition, by Jose Agaton R. Sibal and Jaime N. Salazar, Jr.)***

Apparently, petitioner did not make any reference to the abovementioned cases and the fact of receivership during the pendency of the case before the Court's Division such that these may be admitted as part of the record of the case. Hence, the Court's Division cannot take judicial notice of them.

On the second assignment of error, petitioner submits that assuming that the tax involved was already claimed as an expense, the claim for refund thereof should be given due course considering that once granted, the amount of the refund would be considered as taxable income to the petitioner.

We do not agree.

Expenses claimed as deductions from gross income are means by which taxpayers may be relieved from the rigors of taxation. In other words, these are tools designed to ease the burden of taxation. On the other hand, the claim for refund is a remedy given to taxpayers in case of an erroneous payment of taxes. Petitioner cannot simultaneously claim for the deduction from its gross income the overseas communication tax paid and at the same time claim for the refund thereof. This will result in an absurd situation where petitioner recognizes the validity of its payment of the overseas communication tax by claiming it as a deduction from gross income and later on asserting that it is exempt from the payment of such tax by claiming for the refund thereof. In the assailed Resolution, the Court's Division has correctly ruled on the matter in this wise:

> "The subject matter of the present petition is a percentage tax - overseas communication tax. While the said tax may qualify as "other taxes", there must first be showing that either of the two taxes in Section 13 of P.D. 1590 has been paid otherwise the privilege provided cannot be availed of. To consider the version of petitioner is to sanction both the claim for deduction and at the same time grant a refund, to the detriment of the government."

The third and fourth assignment of errors pertain to the substantiation requirements of petitioner's claim for refund.

Petitioner asserts that it did submit before the Court's Division the required Certification such that it has complied with the requirement under CTA Circular No. 1-95, as amended. Furthermore, petitioner claims that it has presented evidence sufficient enough to support its claim that the amount of overseas communications tax verified by the commissioned external auditor to have been collected by PLDT from PAL was duly remitted by PLDT to the BIR.

Even assuming petitioner's arguments to be correct, the claim for refund would still fail because the privilege of exemption from 'all other taxes' as provided under its franchise will apply only upon proof of payment of either the basic corporate income tax or the 2% franchise tax.

It is a well-settled rule in taxation that "as the power of taxation is a high prerogative of sovereignty, the relinquishment is never presumed and any reduction or dimunition thereof with respect to its mode or its rate, must be strictly construed, and the same must be coached in clear and unmistakable terms in order that it may be applied." (84 C.J.S. pp. 659-800). More specifically stated, the general rule is that any claim for exemption from the tax statute should be strictly construed against the taxpayer *(Acting Commissioner of Customs v. Manila Electric Co. et al., 69 SCRA 469 [1977] and Commissioner of Internal Revenue v. P.J. Kiener Co. Ltd., et al., 65 SCRA 142 [1975])* ***[Luzon Stevedoring Corporation vs. Court of Tax Appeals*** *and the Honorable Commissioner of Internal Revenue, G.R. No. L-30232. July 29, 1988].*

WHEREFORE, the Court *en banc* finds no reversible error to warrant the reversal of the assailed Decision promulgated on April 23, 2004 and the Resolution dated August 20, 2004, respectively.

Accordingly, the instant Petition for Review is hereby **DENIED** and the assailed Decision and Resolution are **AFFIRMED** *in toto.*

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

(With Separate Concurring Opinion)
JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

(Concurring with the Separate Concurring Opinion of Associate Justice Castañeda, Jr.)
OLGA PALANCA-ENRIQUEZ
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the above Resolution has been reached in consultation with the members of the Court *En Banc* before the case was assigned to the writer of the opinion of this Court.

ERNESTO D. ACOSTA
Presiding Justice

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-versus-

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. EB No. 27
(C.T.A. CASE NO. 6298)

Promulgated:

OCT 07 2005

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SEPARATE CONCURRING OPINION

I concur with the dispositive portion of the Decision of the Court *en banc* denying due course to the present appeal. However, I wish to reiterate the view as expressed in my Separate Concurring Opinion in C.T.A. CASE No. 6298 dated April 23, 2004.

With all due respect to my esteemed colleagues, petitioner's exemption from "all other taxes" provided for in Section 13 of PD 1590 does not become effective only upon petitioner's payment of either the corporate income tax or the 2% franchise tax. It is clear from Section 13 of PD 1590 that the petitioner may choose either option *(a)* the basic corporate income tax or *(b)* the 2% franchise tax on its gross revenues, *whichever will result to a lower tax liability*. In the event that no basic corporate income tax is due as when petitioner incurs a net loss from its operations, it is not in any way precluded from choosing option *(a)* because it is definitely more advantageous to the petitioner rather than option *(b)* which requires payment of the 2% franchise tax on its gross revenues.

Petitioner should not be subject to the overseas communications tax since the same falls under the category of "all other taxes" from which it had been granted exemption under its franchise. This view was previously expressed in a dissenting opinion on the Resolution promulgated on January 30, 2002 in the case of PHILIPPINES AIRLINES, INC. vs. THE COMMISSIONER OF INTERNAL REVENUE, C.T.A. CASE No. 5825, involving the same issue.

When the aforementioned case was appealed to the Court of Appeals[1], the Fifth Division of said Court unanimously ruled that petitioner should not be subject to the overseas communications tax, affirming the aforementioned dissenting opinion, as follows:

> "Having said thus, what remains to be resolved is whether or not PAL is entitled to a refund of the overseas communications tax it

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[1] PHILIPPINE AIRLINES, INC. vs. HON. COURT OF TAX APPEALS and THE COMMISSIONER OF INTERNAL REVENUE, C.A. G.R. SP No. 69388, November 25, 2003.

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paid to PLDT despite the fact that PAL did not pay either the corporate income tax or the 2% franchise tax.

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A careful reading of the decision of the respondent Court in CTA Case No. 5824 reveals that its interpretation failed to consider the qualification provided in paragraph 1 of Section 13, which is that the tax liability of PAL shall be that which will result to a **lesser tax** (i.e. between the basic corporate income tax and the 2% franchise tax).

It is likewise erroneous to conclude that "it is mandatory that (the petitioner) must pay its franchise tax of two percent (2%) or to pay its corporate income tax to avail of the incentives provided under the last paragraph that the 'tax paid by the grantee under either of the above alternative shall be in lieu of all other taxes, duties, royalties, registration, license and other fees and charges x x x', regardless of whether or not it suffered a net loss during a particular taxable year". To repeat, the only qualification provided for in the law is the option given to PAL to choose between the tax which will yield the lesser liability. Nothing is said about exemption from other taxes if PAL, choosing the payment of corporate income tax, does not pay income tax at all if the lawmakers intended to provide for such a condition, then they would have included such a provision. More importantly, if We were to uphold this interpretation, this would effectively negate the rationale of the law, by stripping PAL of the right given to it by virtue of its franchise to avail of tax incentives, such as the 'in lieu of all other taxes' clause.

The possibility that PAL will incur losses was not unforeseen by the lawmakers. In fact, the last paragraph of section 13 treats of "net loss incurred in any year" and allows PAL to "carry over the same as a deduction from taxable income xxx up to five years following the year of such loss". This is inconsistent with the interpretation of the respondent Court that PAL is obliged to pay franchise tax if its corporate income tax yields zero tax liability for the taxable year. As correctly contended by the petitioner, if the intention of the law was to compel the petitioner to pay the 2% franchise tax in case of a net loss position, it would not have authorized petitioner to carry over the net loss as a deduction for the next five (5) taxable years.

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In sum, We hold that the petitioner is entitled to avail of the "in lieu of all other taxes proviso" of Section 13 of PD 1590 despite the fact that it did not pay the basic corporate income tax, having chosen such as that tax which resulted in lesser liability, or no liability at all. PAL is thus entitled to the claim of refund for the overseas communications tax it paid to PLDT."

In another case[2], the Sixth Division of the Court of Appeals ruled that petitioner is likewise not subject to the 20% final withholding tax on its interest income even if it did not pay either the corporate income tax or 2% franchise tax. In this case, the petitioner chose the first alternative under Section 13 of PD 1590 but because it suffered a net loss for the taxable period, "petitioner need not pay any corporate tax as there was nothing at all to pay because there was in fact no tax due to the government during the taxable year involved, after computations in accordance with the NIRC". The Court of Appeals aptly ruled:

> "Moreover, **that law does not say that to avail of the exemption from payment of all other taxes, there must be, after the computation, a tax due coupled with an "actual" payment thereof**. The law simply states that the petitioner-grantee must choose between the two alternatives and such choice must be that which will result in a lower tax liability. Any tax paid under either of the two alternatives shall exempt the petitioner-grantee from the payment of the other taxes as the said tax payment is considered by law "in lieu of all other taxes." In this case, as earlier stated, the petitioner availed of the right and privilege granted to it by law by opting to choose the basic corporate income tax as basis for its tax liability, which however, after considering the factors allowed by law, resulted in a zero tax liability. Such zero tax liability as a result of the exercise of its lawful privilege should not be taken against the petitioner nor deprive it of availment of the exemption granted by the law." (Emphasis supplied)

However, as in all cases of claims for refund of taxes, petitioner is required to substantiate its claim. "A claimant has the burden of proof

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[2] PHILIPPINE AIRLINES, INC. vs. HONORABLE COURT OF TAX APPEALS AND THE COMMISSIONER OF INTERNAL REVENUE, CA-G.R. SP No. 67970, SEPTEMBER 30, 2003.

to establish the factual basis of his or her claim for tax credit or refund".[3] In this regard, petitioner failed. Petitioner should have presented its Income Tax Returns as well as the documents attached thereto, to prove that:

1. petitioner elected to pay its corporate income tax under option *(a)* of Section 13 of PD 1590; and

2. the overseas communications tax was not deducted from its gross income as part of its total Communications Expense or if deducted, how much of the amount was treated in its books as actual taxes paid.

Section 14 of PD 1590 requires the filing of "a final or an adjustment return covering the operation of the grantee for the preceding calendar or fiscal year on or before the fifteenth day of the fourth month following the close of the calendar or fiscal year". Clearly, petitioner is obligated to disclose whether it has opted to be taxed under option *(a)* or *(b)* of Section 13 of PD 1590 by filing the required return, even if choosing the corporate income tax would result to no tax liability at all. Petitioner however did not offer any proof that it had chosen the corporate income tax over the franchise tax. Consequently, there being no proof that it complied with the requirements of PD 1590, petitioner cannot invoke its exemption from "all other taxes". It is not enough for the petitioner to invoke its exemption from all other taxes by virtue of its franchise without proving compliance with the provisions thereof.

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[3] Commissioner of Internal Revenue vs. Tokyo Shipping Co., Ltd., 244 SCRA 332, May 26, 1995.

I agree with the majority view on the issue of judicial notice. Likewise, that petitioner cannot simultaneously claim the cost of the overseas communications tax as a deduction from its gross income and at the same time claim for the refund of an equivalent amount, notwithstanding petitioner's argument that any amount refunded would be considered as taxable income to the petitioner. The pivotal issue in claims for refund is not the taxability of the amount that may be refunded but rather the proper substantiation of the amount claimed. Petitioner failed to prove that the total amount claimed as overseas communications tax was treated in petitioner's financial records as actual taxes paid. This could have been easily accomplished by presenting the income tax returns relevant to the claim for refund together with the audited financial statements. After all, "the grant of a refund is founded on the assumption that the tax return is valid, that is, the facts stated therein are true and correct"[4]. In addition, petitioner was not able to substantiate its claim that the overseas communications tax it paid to the Philippine Long Distance Company were remitted to the Bureau of Internal Revenue. In one refund case, the Supreme Court ruled that proof of remittance of the tax together with proof that no income tax

[4] COMMISSIONER OF INTERNAL REVENUE v. CITYTRUST BANKING CORPORATION AND COURT OF TAX APPEALS, G.R. No. 106611, July 21, 1994.

was due from the claimant were sufficient to grant the claim for refund, thus:

> "Worth emphasizing are these uncontested facts: (1) the amounts withheld were actually remitted to the BIR and (2) the final adjusted returns — which the BIR did not question — showed that, for 1979 and 1980, no income taxes from petitioner were due."[5]

With respect to the issue on the amended certificate issued by the commissioned Independent Certified Public Accountant, it appears that petitioner submitted the "amended" Final Report with the required certification on July 3, 2002 and the same is part of the records of the case (CTA Records, pages 217 – 253). However, it should be noted that petitioner's Formal Written Offer of Evidence was filed on July 2, 2002, a day ahead of the submission of the "amended" Final Report of the Independent CPA. Moreover, petitioner did not make any reference to an "amended" Final Report of the Independent CPA. The description of *Exhibit I* in petitioner's formal offer is as follows:

> "Final report, dated May 31, 2002, of Josephine H. Estomo of SGV & Co. duly commissioned by the Honorable Court, on the result of the audit and verification of the claim for refund of OCT for the billing period Oct. 1, 1996 to Nov. 30, 1999."

As can be readily seen, there was no mention of an "amended" Final Report of the Independent CPA. Furthermore, the "amended" certificate is dated May 31, 2002, the same date as the original Final Report of the commissioned Independent CPA. An amended report should be dated at

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[5] CITIBANK, N.A. vs. COURT OF APPEALS and COMMISSIONER OF INTERNAL REVENUE, G.R. No. 107434, October 10, 1997.

the time of its issuance to signify that there are some changes to the original document already issued at an earlier date. The "amended" Final Report is not the same as the original Final Report, hence, the documents should bear their respective dates of issuance.

Accordingly, in view of all the foregoing considerations, I concur with the **DENIAL** of the Petition for Review.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

I concur :

Olga Palanca Enriquez
OLGA PALANCA-ENRIQUEZ
Associate Justice

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