REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

TRANS PACIFIC AIR SERVICE CORPORATION, Petitioner,	CTA EB No. 1407 (CTA Case No. 8630)
	Present:
-versus-	DEL ROSARIO, *PJ*, CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN, and MANAHAN, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: SEP 28 2017 3:53 p.m.

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DECISION

FABON-VICTORINO, J.:

In this Petition for Review[1] filed on January 21, 2016, petitioner Trans Pacific Air Service Corporation is asking the Court to reverse and set aside the (1) Decision dated January 30, 2015[2] and the (2) Resolution dated December 9, 2015[3], both rendered by the Court in Division in CTA Case No. 8630, entitled Trans Pacific Air Service Corporation v. Commissioner of Internal Revenue. In the assailed Decision, the Court in Division ruled that petitioner failed to prove that

[1] *En Banc* Docket, pp. 5-25.
[2] *Ibid.*, pp. 27-47.
[3] *Ibid.*, pp. 49-56.

the income payments it received were declared as part of its gross income for 2010.

THE FACTS AND THE PROCEEDINGS

Petitioner is a domestic corporation with principal address at G/F SGV II Building, 6758 Ayala Avenue, Makati City.

Respondent Commissioner of Internal Revenue (CIR), on the other hand, is the head of the Bureau of Internal Revenue (BIR), the government agency tasked with the enforcement of revenue laws and the collection of taxes and duties.

On April 13, 2011, petitioner filed its Income Tax Return (ITR) for 2010. For alleged tax overpayment amounting to ₱2,111,354.00, petitioner opted "to be issued a Tax Credit Certificate".

On August 22, 2011, an administrative claim for refund/tax credit was filed by petitioner with the BIR for the said tax overpayment.

On April 11, 2012, petitioner filed a Petition for Review with the Court in Division claiming inaction on the part of respondent on its claim for refund/tax credit.

On June 21, 2013, petitioner filed his Answer to the Petition for Review, through registered mail, basically arguing that petitioner's claim for tax refund/tax credit is still subject to administrative investigation and that petitioner failed to demonstrate that the tax sought to be refunded was erroneously or illegally collected.

Further, under Section 76 of the National Internal Revenue Code (NIRC) of 1997, as amended, once a taxpayer chooses the option to carry-over, it shall be irrevocable for that taxable period and no application for a tax refund or tax credit certificate shall be allowed.[4] Thus, petitioner must prove that it did not carry-over its 2010 alleged unutilized creditable withholding taxes (CWTs) to the succeeding taxable quarters/years, otherwise, it is precluded from claiming cash refund/tax credit of its excess payment of CWT for the year 2010 in the amount of ₱2,111,354.00. Moreover, petitioner must first show that it is entitled to the relief sought and has complied with Section 76, in relation to Sections 204 and 229 of the NIRC of 1997, as amended, and implemented by Revenue Regulations No. 2-98, as amended.

On January 30, 2015, the Court in Division rendered the assailed Decision, the *fallo* of which reads as follows:

> "WHEREFORE, all the foregoing considered, the instant Petition for Review is hereby DENIED for lack of merit.
>
> SO ORDERED."

The Court in Division affirmed its ruling when it denied petitioner's plea for reconsideration[5] for lack of merit, in the similarly assailed Resolution of December 9, 2015.

Hence, the instant Petition for Review filed by petitioner within the extended period granted[6], raising the following arguments for the consideration of the Court, to wit:

1. Petitioner's Annual ITR shows that the income it received from respondent's withholding agents was declared as part of petitioner's gross income for 2010. The Annual ITR was accompanied by the required summary alphalist of withholding taxes (SAWT) for 2010 e-filed with and acknowledged received by the Bureau of Internal Revenue (BIR) on April 14, 2011, at 4:14 P.M.

2. Petitioner's alleged failure to present "the detailed sales schedules and reconciliation

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[4] Philam Asset Management, Inc. v. Commissioner of Internal Revenue, G.R. Nos. 156637 & 162004, December 14, 2005.
[5] *En Banc* docket, pp. 57-75.
[6] *En Banc* Docket, p. 4.

schedules of its revenue with corresponding creditable tax withheld as reported in its ITR and FS for the year 2010" is not fatal to the case because petitioner's documents and/or other entries in the documents lead to no other reasonable conclusion than that the income payments received was declared as part of its gross income for 2010.

3. The alleged discrepancy of ₱48,458.00 between petitioner's income as per its Annual ITR and revenue as per its audited Financial Statements (FS) are due to the following:
   ₱41,798.00[7]
   6,660.00[8]
   ₱48,458.00

4. The timing difference mentioned by petitioner's witness, Maria Fe Larrosa, pertained to the discrepancy between total income payments received as per SAWT vis-à-vis income as per ITR and FS. Contrary to the CTA First Division's apparent misunderstanding, timing difference was not offered as an explanation for the discrepancy in petitioner's ITR and FS.

5. In claims for refund, being civil in nature, the quantum of proof required is only preponderance of evidence.

Despite the Court's directive[9], respondent failed to file his comment within the period granted.

On September 28, 2016, the case was submitted for decision[10] with petitioner's Memorandum filed on August 17, 2016[11] *sans* respondents' Memorandum[12].

THE RULING OF THE COURT *EN BANC*

[7] interest income subjected to final tax.
[8] non-taxable dividend income.
[9] *En Banc* Docket, pp. 95-96.
[10] *Ibid.*, pp. 196-197.
[11] *Ibid.*, pp. 101-123.
[12] Per Records Verification Report of the Judicial Records Division dated September 2, 2016, *ibid.*, p. 194.

The pivotal issue in the present appeal is whether petitioner was able to prove all the requisites to be entitled to its claim for refund of its alleged excess payment of CWT for the year 2010 in the amount of ₱2,111,354.00.

Basic is the rule that a corporation entitled to refund or tax credit of its excess or unutilized corporate income taxes paid has two options under Section 76[13] of the NIRC of 1997, as amended, to wit: (1) to carry over the excess credit to the succeeding taxable quarters/years until it is fully utilized, or (2) to file a claim for refund either in the form of cash or tax credit certificate.

Under the irrevocability rule embodied in the last sentence of the cited provision[14], the two options are alternative and the choice of one precludes the other.[15]

Evidence shows that petitioner opted to be issued a Tax Credit Certificate (TCC) for its alleged excess CWT for year 2010 in the amount of ₱2,111,354.00, having marked the option "To be issued a Tax Credit Certificate " in its 2010 Annual ITR.

As shown in petitioner's Annual ITR for the year 2010, its creditable taxes withheld during the first three quarters of 2010 amounted to ₱2,643,549.00. Petitioner also has CWT of ₱485,286.00 for the fourth quarter of 2010. Thus,

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[13] SEC. 76. Final Adjustment Return. - Every corporation liable to tax under Section 27 shall file a final adjustment return covering the total taxable 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 income of that year, the corporation shall either:

(A) Pay the balance of tax still due; or
(B) Carry over the excess credit; or
(C) Be credited or refunded with the excess amount paid, as the case may be.

In case the corporation is entitled to a tax credit or refund of the excess estimated quarterly income taxes paid, the excess amount shown on its final adjustment return may be carried over and credited against the estimated quarterly income tax liabilities for the taxable quarters of the succeeding taxable years. Once the option to carry over and apply the excess quarterly income tax against income tax due for the taxable quarters of the succeeding taxable years has been made, such option shall be considered irrevocable for that taxable period and no application for cash refund or issuance of a tax credit certificate shall be allowed therefor.

[14] Systra Philippines, Inc. v. Commissioner of Internal Revenue, G.R. No. 176290, September 21, 2007.

[15] Commissioner of Internal Revenue v. PERF Realty Corporation, G.R. No. 163345, July 04, 2008.

for the entire 2010, petitioner had a total CWT of ₱3,128,835.00.

Likewise shown in petitioner's 2010 Annual ITR was that it had an Income Tax due in the amount of ₱1,017,481.00, which it deducted from its CWT accumulated during the four quarters of 2010 in the amount of ₱3,128,835.00. Thus, petitioner's excess CWT for 2010 amounted to ₱2,111,354.00, which could be subject for refund.

But to be entitled to refund, petitioner must establish compliance with the following requisites, namely, (1) the administrative and judicial claims for refund were filed within the mandatory[16] two-year period[17] reckoned from the filing of the final adjusted return (FAR),[18] (2) it is shown on the return of the recipient that the income payment received was declared as part of the gross income; and (3) the fact of withholding as evidenced by a copy of the statement duly issued by the payor to the payee showing the amount paid and the amount of the tax withheld.[19]

The Court *En Banc* is one with the Court in Division in its finding that both the administrative and judicial claims for refund were seasonably instituted by petitioner on August 22, 2011 and April 11, 2013, respectively. It was established that petitioner filed its ITR for the year 2010 on April 13, 2011, hence, it had until April 13, 2013 to file its claim for refund, both with respondent and with the Court.

As for the second and third conditions, the same are anchored on Section 2.58.3 (B) of Revenue Regulations No. 2-98.[20]

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[16] Commissioner of Internal Revenue v. Manila Electric Company (MERALCO), G.R. No. 181459, June 9, 2014.
[17] CBK Power Company Limited v. Commissioner of Internal Revenue, G.R. Nos. 193383-84, January 14, 2015 and Commissioner of Internal Revenue v. CBK Power Company Limited, G.R. Nos. 193407-08.
[18] Commissioner of Internal Revenue v. Primetown Property, G.R. No. 162155, August 28, 2007.
[19] CIR v. Merchant (Phil.) Operations Corporation, G.R. Nos. 171742 & 176165, June 15, 2011.
[20] Sec. 2.58.3. Claim for Tax Credit or Refund. —

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To prove the fact of withholding of its claim, petitioner submitted various Certificates of Creditable Tax Withheld at Source and SAWT, showing CWT in the total amount of ₱3,128,835.28. However, the CWT in the aggregate amount of ₱2,702.50, with corresponding related income payments in the amount of ₱54,050.04, were supported by certificates not within the taxable year 2010, but for the taxable year 2009. Thus, out of the total CWT of ₱3,128,835.28 indicated in the certificates issued in favor of petitioner, only the amount of ₱3,126,132.78 pertains to the year 2010, and out of the total income payments of ₱46,762,629.92, only the amount of ₱46,708,579.88 pertains to income payments for 2010.

Thus, petitioner's compliance with the requirement to prove the fact of withholding is only up to the extent of the amount of ₱3,126,132.78.

The controversy however springs from the finding that petitioner failed to show in its ITR for taxable year 2010 that the income payment received subjected to CWT was declared as part of its gross income resulting in the denial of its Petition for Review by the Court in Division.

On this regard, petitioner argues that its Annual ITR shows that the income it received from respondent's withholding agents were declared as part of petitioner's gross income for 2010 as appearing in the accompanying SAWT for 2010 e-filed with and received by the BIR on April 14, 2011, at 4:14 P.M.

Further, petitioner contends that its failure to present "the detailed sales schedules and reconciliation schedules of its revenue with corresponding creditable tax withheld as reported in its ITR and FS for the year 2010" is not fatal to its cause given that its documents and/or other entries in its documents lead to no other reasonable conclusion than that

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(B) Claims for tax credit or refund of any creditable income tax which was deducted and withheld on income payments shall be given due course only when it is shown that the income payment has been declared as part of the gross income and the fact of withholding is established by a copy of the withholding tax statement duly issued by the payor to the payee showing the amount paid and the amount of tax withheld therefrom.

the income payments received was declared as part of its gross income for 2010.

Lastly, petitioner explains that the alleged discrepancy of ₱48,458.00 between petitioner's income as appearing in its Annual ITR and revenue, as appearing in its audited FS is to be accounted to the interest income subjected to final tax in the amount of ₱41,798.00 and non-taxable dividend income in the amount of ₱6,660.00; while the discrepancy between total income payments received as per SAWT vis-à-vis income as per ITR and FS was due to timing difference as explained by its witness, Maria Fe Larrosa.

The Court *En Banc* is not persuaded.

For one, the foregoing arguments set forth by petitioner are but a restatement of her previous arguments before the Court in Division, which have been exhaustively considered and discussed in the assailed Decision of January 30, 2015 and Resolution of December 9, 2015.

Further, notwithstanding petitioner's contentions in the Petition that the discrepancy of ₱48,458.00 between its income, as per its Annual ITR and revenue, as per its Audited FS, is equivalent to its interest income subjected to final tax in the amount of ₱41,798.00 and non-taxable dividend income in the amount of ₱6,660.00 which totals to ₱48,458.00; that the discrepancy between the total income payments received, as per SAWT vis-à-vis income per its Annual ITR and Audited FS, was due to timing difference, such discrepancies are seriously significant for the Court to be oblivious.

As held by the Court in Division, the testimonial and documentary evidence adduced by petitioner were not sufficient to establish and trace the said discrepancies. The Court could not verify whether the income from which the CWT of ₱3,126,132.78 indeed formed part of petitioner's taxable gross income for 2010 due to petitioner's failure to present other proof, such as but not limited to the detailed sales schedules and reconciliation schedules of its revenue with corresponding creditable tax withheld as reported in its Annual ITR and Audited FS for the year 2010.

Thus, the Court cannot subscribe to petitioner's impression that the Court in Division erred in concluding that it failed to prove that the income payments it received which were subjected to CWT were declared as part of its gross income. The case of *United International Pictures AB v. Commissioner of Internal Revenue*[21] is in point, thus:

> However, records show that petitioner failed to reconcile the discrepancy between income payments per its income tax return and the certificate of creditable tax withheld.
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> A perusal of the certificate of tax withheld would reveal that petitioner earned P146,355,699.80. On the contrary, its annual income tax return reflects a gross income from film rentals in the amount of P145,381,568.00. However, despite the P974,131.80 difference, both the certificate of taxes withheld and income tax return filed by petitioner for taxable year 1999 indicate the same amount of P7,317,785.00 as creditable tax withheld. **What's more, petitioner failed to present sufficient proof to allow the Court to trace the discrepancy between the certificate of taxes withheld and the income tax return.**
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> Parenthetically, **the Office of the Solicitor General correctly pointed out that the amount of income payments in the income tax return must correspond and tally to the amount indicated in the certificate of withholding, since there is no possible and efficacious way by which the BIR can verify the precise identity of the income payments as reflected in the income tax return.**
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> **Therefore, petitioner's claim for tax refund for taxable year 1999 must be denied, since it failed to prove that the income payments subjected to withholding tax were declared as part of the gross income of the taxpayer.** (emphases supplied).

The Final Arbiter has spoken on the matter. And by tradition and in our system of judicial administration, the Supreme Court has the last word on what the law is; it is the

[21] G.R. No. 168331, October 11, 2012.

final arbiter of any justifiable controversy. There is only one Supreme Court from whose decisions all other courts should take their bearings.[22] Courts are bound by prior decisions. Once a case has been decided one way, courts, such as the Court of Tax Appeals, have no choice but to resolve subsequent cases involving the same issue in the same manner.[23]

Considering all the foregoing, the Court *En Banc* holds that petitioner failed to prove that the income payments subjected to withholding tax were declared as part of its gross income.

As regards petitioner's claim that claims for refund, being civil in nature, requires only preponderance of evidence, the ruling in *Commissioner of Internal Revenue v. Far East Bank & Trust Company*, (Now Bank of the Philippine Islands)[24], is instructive, *viz.*:

> "Entitlement to a tax refund is for the taxpayer to prove and not for the government to disprove.
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> Moreover, the fact that the petitioner [Commissioner of Internal Revenue] failed to present any evidence or to refute the evidence presented by respondent does not ipso facto entitle the respondent to a tax refund. It is not the duty of the government to disprove a taxpayer's claim for refund. Rather, **the burden of establishing the factual basis of a claim for a refund rests on the taxpayer**.
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> And while the petitioner has the power to make an examination of the returns and to assess the correct amount of tax, his failure to exercise such powers does not create a presumption in favor of the correctness of the returns. **The taxpayer must still present substantial evidence to prove his claim**

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[22] Commissioner of Internal Revenue v. Michel J. Lhuillier Pawnshop, Inc., G.R. No. 150947, July 15, 2003.
[23] Silicon Philippines, Inc. (Formerly Intel Philippines Manufacturing, Inc.) v. Commissioner of Internal Revenue, G.R. Nos. 184360 & 184361; Commissioner of Internal Revenue v. Silicon Philippines, Inc. (Formerly Intel Philippines Manufacturing, Inc.), G.R. No. 184384, February 19, 2014.
[24] G.R. No. 173854, March 15, 2010.

> **for refund. As we have said, there is no automatic grant of a tax refund.**
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> **Hence, for failing to prove its entitlement to a tax refund, respondent's claim must be denied. Since tax refunds partake of the nature of tax exemptions, which are construed *strictissimi juris* against the taxpayer, evidence in support of a claim must likewise be *strictissimi* scrutinized and duly proven."** (Emphases supplied).

Additionally, substantial evidence has been construed to mean not necessarily preponderant proof as is required in ordinary civil action, but such kind of "relevant evidence as a reasonable man might accept as adequate in support of a conclusion."[25]

Be that as it may, all is not lost for petitioner. In a similar case where a claim for refund of CWT had been denied, the Supreme Court allowed to carry-over the same thus:

> The Court similarly disagrees in the declaration of the Court of Appeals that to deny the claim for refund of BPI, because of the *irrevocability rule,* would be tantamount to unjust enrichment on the part of the government. The Court addressed the very same argument in *Philam,* where it elucidated that **there would be no unjust enrichment in the event of denial of the claim for refund under such circumstances, because there would be no forfeiture of any amount in favor of the government. The amount being claimed as a refund would remain in the account of the taxpayer until utilized in succeeding taxable years, as provided in Section 76 of the NIRC of 1997. It is worthy to note that unlike the option for refund of excess income tax, which prescribes after two years from the filing of the FAR, there is no prescriptive period for the carrying over of the same.** Therefore, the excess income tax credit of BPI, which it acquired in 1998 and opted to carry over, may be repeatedly carried over to succeeding taxable years, *i.e.,* to 1999, 2000, 2001, and so on and so forth, until actually

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[25] Commissioner of Internal Revenue v. Manila Machinery and Supply Company, *et al.*, G.R. No. L-25653, February 28, 1983.

> applied or credited to a tax liability of BPI.[26] (emphases supplied).

Evident from the foregoing that once the taxpayer opts to carry-over the excess income tax against the taxes due for the succeeding taxable years, such option is irrevocable for the whole amount of the excess income tax, thus, prohibiting the taxpayer from applying for a refund for that same excess income tax in the next succeeding taxable years. The unutilized excess tax credits will remain in the taxpayer's account and will be carried over and applied against the taxpayer's income tax liabilities in the succeeding taxable years until fully utilized.[27]

All said, petitioner failed to present arguments which would warrant the modification much less the reversal of the assailed Decision and Resolution of the Court in Division.

WHEREFORE, the Petition for Review filed by Trans Pacific Air Service Corporation on January 21, 2016, is hereby **DENIED** for lack of merit. Consequently, the Decision dated January 30, 2015 and the Resolution dated December 9, 2015, both rendered by the Court in Division, are **AFFIRMED**.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

We Concur:

ROMAN G. DEL ROSARIO
Presiding Justice

[26] Commissioner of Internal Revenue v. Bank of the Philippine Islands, G.R. No. 178490, July 07, 2009.
[27] Asiaworld Properties v. Commissioner of Internal Revenue, G.R. No. 171766, July 29, 2010.

ON LEAVE
JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ON LEAVE
CIELITO N. MINDARO-GRULLA
Associate Justice

ON LEAVE
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation among the members of the Court *En Banc* before the case was assigned to the writer of the opinion of the Court *En Banc*.

ROMAN G. DEL ROSARIO
Presiding Justice