REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

PRUDENTIALIFE MARKET RESOURCES CORPORATION, *Petitioner,*	**CTA EB No. 1110** (CTA Case No. 8066)
	Present:
- versus -	Del Rosario, PJ, Castañeda, Jr., Bautista, Uy, Casanova, Fabon-Victorino, Mindaro-Grulla, Cotangco-Manalastas, and Ringpis-Liban, JJ.
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: AUG 14 2015 11:50 a.m.

x- x

DECISION

COTANGCO-MANALASTAS, J.:

Before the Court *En Banc* is a Petition for Review filed by petitioner, Prudentialife Market Resources Corporation, assailing the *Decision* [1] dated August 7, 2013 and the *Resolution* [2] dated December 2, 2013 of the Special First Division of the Court denying petitioner's claim for refund or issuance of tax credit certificate (TCC) in the amount of ₱36,737,673.00, allegedly representing its unutilized creditable income taxes withheld for taxable years 2007 and 2008.

The Facts

The facts [3], as found by the Court in Division, are as follows:

[1] *Rollo*, pp. 25-42.
[2] *Rollo*, pp. 56-58.
[3] *Rollo*, pp. 25-31.

Petitioner is a domestic corporation, with principal office at 3/F Luz Building, 116 Gamboa Street, Legaspi Village, Makati City.

Respondent, on the other hand, is the Commissioner of the Bureau of Internal Revenue (BIR), vested with the authority, among others, to decide, approve and grant refunds or tax credits of erroneous or excess payments of internal revenue taxes. She may be served with summons and other legal processes at her office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

On January 13, 2009, petitioner filed its amended Annual Income Tax Return (ITR) for the year ended December 31, 2007, wherein it reported excess creditable income tax of ₱35,471,142.00, computed as follows:

Sales/Revenues/Receipts/Fees		₱182,150,935
Less: Cost of Sales		127,080,790
Gross Income from Operations		55,070,145
Add: Non-Operating and Other Income		400,817
Total Gross Income		55,470,962
Less: Deductions		55,470,962
Taxable Income		-0-
Income Tax Rate		35%
Income Tax		-0-
Minimum Corporate Income Tax		1,109,419
Aggregate Income Tax Due		1,109,419
Less: Tax Credits		
Prior year's tax credits	17,433,907	
Tax Payments for the first 3 quarters		
Creditable Taxes Withheld for first 3 Quarters	89,967	
Creditable Taxes per BIR Form No. 2307	19,056,687	36,580,561
Total Amount Payable/(Overpayment)		**(₱35,471,142)**

In the said ITR, petitioner indicated its option "To be issued a Tax Credit Certificate" for its excess creditable withholding taxes (CWT).

On September 11, 2009, petitioner filed its Annual ITR for the year ended December 31, 2008, detailed as follows:

Sales/Revenues/Receipts/Fees		₱180,991,926
Less: Cost of Sales		124,159,297
Gross Income from Operations		56,832,629

Add: Non-Operating and Other Income		7,375,740
Total Gross Income		64,208,369
Less: Deductions		64,208,369
Taxable Income		-0-
Income Tax Rate		35%
Minimum Corporate Income Tax		1,284,167
Less: Tax Credits		
Prior year's tax credits	16,324,488	
Tax Payments for the first 3 quarters		
Creditable Taxes Withheld for first 3 Quarters	4,340,711	
Creditable Taxes per BIR Form No. 2307	13,250,308	33,915,507
Total Amount Payable/(Overpayment)		**(₱32,631,340)**

Petitioner again opted "To be issued a Tax Credit Certificate" for its excess CWT by marking Line 33 of the said ITR.

On December 9, 2009, petitioner filed with the BIR Revenue District Office No. 47 a written application for refund of its excess CWT in the total amount of ₱36,737,673.00 for taxable years 2007 and 2008.

Due to respondent's alleged failure to act on the said administrative claim for refund/TCC, petitioner filed with the Court in Division a Petition for Review on April 8, 2010.

In her Answer filed on June 4, 2010, respondent invoked the presumption that taxes paid and collected are made in accordance with law, hence not refundable. It is for petitioner to present evidence to prove compliance with all the requisites under the law and rules and regulations. Further, since petitioner had already exercised its option to carry-over to the succeeding taxable quarters/years the CWT subject of its claim, hence it is no longer entitled to any refund pursuant to Section 76 of the National Internal Revenue Code (NIRC), as amended.

Petitioner filed its Pre-Trial Brief on June 25, 2010, while respondent, on July 9, 2010. The parties' Joint Stipulations of Facts and Issues, subsequently filed, was approved by the Court in Division on October 6, 2010.

During trial, petitioner presented its witnesses and formally offered its evidence on December 20, 2011, January 17, 2012, and May 11, 2012 and rested its case, while respondent manifested during the hearing on September 11, 2012, that she was submitting the case for decision based on the pleadings filed.

The Special First Division, in its assailed *Decision*[4] dated August 7, 2013, denied petitioner's claim for refund/TCC because petitioner failed to sufficiently prove that it has complied with the three basic requisites for the grant of the claim for refund of excess CWT.

Petitioner's motion for reconsideration was likewise denied in the assailed *Resolution*[5] dated December 2, 2013.

Aggrieved, petitioner filed the instant *Petition for Review* on January 15, 2014.

Respondent was ordered to file her comment within ten (10) days from receipt of the Resolution[6] dated June 10, 2014. Respondent failed to file her comment.

Considering the issues raised by petitioner, the Court *En Banc* resolved to give due course to the petition and ordered the parties to submit their respective memoranda[7].

Respondent filed her Manifestation & Motion [8] on November 4, 2014 through registered mail stating that she is adopting all her arguments and affirmative defenses found in her Answer dated June 4, 2010 to petitioner's petition for review in CTA Case No. 8066, as well as the factual findings and conclusions of the Special First Division of the Court in its Decision dated August 7, 2013 and Resolution dated December 2, 2013 in CTA Case No. 8066 as part of her memorandum. Petitioner likewise filed a Manifestation [9] stating that it is adopting its petition for review as its memorandum. Thus, the above-captioned case was submitted for decision on March 26, 2015.[10]

---

[4] *Supra*, Note 1.
[5] *Supra*, Note 2.
[6] *Rollo*, pp. 70-71.
[7] *Rollo*, pp. 79-80, Resolution dated September 16, 2014.
[8] *Rollo*, pp. 91-92.
[9] *Rollo*, pp. 95-96.
[10] *Rollo*, pp. 100-101.

The Issues

The sole issue presented is whether petitioner is entitled to refund or issuance of tax credit certificate of its alleged unutilized creditable withholding taxes for years 2007 and 2008 in the aggregate amount of ₱36,737,673.00[11].

The Ruling of the Court

The Petition for Review has no merit.

As discussed in the assailed Decision, the requisites for claiming a tax credit or a refund of creditable withholding tax, are as follows:

> 1) The claim must be filed with the Commissioner of Internal Revenue (CIR) within the two-year period from the date of payment of the tax;
>
> 2) The fact of withholding must be established by a copy of a statement duly issued by the payor to the payee showing the amount paid and the amount of the tax withheld; and
>
> 3) It must be shown on the return that the income received was declared as part of the gross income.[12]

There is no dispute that the first requisite was complied with. As found by the Court in Division:

> "...Petitioner filed its original Annual Income Tax Returns for taxable years 2007 and 2008 on April 15, 2008 and April 2, 2009, respectively. Petitioner has two years from the filing of the FAR [Final Adjustment Return] within which to file a claim for refund of excess CWT, both in the administrative and judicial levels. Counting from these dates, both the administrative claim filed on December 9, 2009 and the Petition for Review filed on April 8, 2010, were seasonably filed."

---

[11] *Rollo*, pp. 10-11.

[12] *CIR vs. Mirant (Philippines) Operations, Corporation*, G.R. No. 171742, June 15, 2011 and *Mirant (Philippines) Operations Corporation (Formerly: Southern Energy Asia-Pacific Operations (Phils.), Inc.) vs. CIR*, G.R. No. 176165, June 15, 2011.

As to the second requisite, *We* agree with the findings of the Court in Division that petitioner complied with the second requirement but only to the extent of ₱10,434,995.11, *to wit*:

"As regards the second requisite, ICPA Myra Celeste O. Dabalos found a discrepancy between the claimed CWT as reflected in petitioner's amended Annual Income Tax Returns for 2007 and 2008 *vis-a-vis* the CWT shown per BIR Form No. 2307 issued to petitioner for the same period, to wit:

Creditable Taxes Withheld During the Year	**2007**	**2008**	**Total**
Per BIR Form No. 2307	₱19,151,704.69	₱19,257,284.71	₱38,408,989.40
Per Income Tax Return (claimed)	19,146,654.00	17,591,019.00	36,737,673.00
Difference	**₱ 5,050.69**	**₱1,666,265.71**	**₱1,671,316.40**

A careful examination of the Details of Creditable Taxes Withheld for 2007 and 2008 and BIR Forms No. 2307 showed that the claimed CWT in the amount of ₱26,302,677.89, broken down below, should be disallowed given that the supporting BIR Forms No. 2307 were not signed by the payor's authorized representative:

		CWT		
EXHIBIT	**PAYOR**	**2007**	**2008**	**TOTAL**
DD-1	Prudentialife Plans, Inc.	₱2,690,859.85		₱2,690,859.85
DD-2	Prudentialife Plans, Inc.	3,980,843.27		3,980,843.27
DD-3	Prudentialife Plans, Inc.	3,642,290.63		3,642,290.63
DD-4	Prudentialife Plans, Inc.	2,429,556.69		2,429,556.69
EE-5	Prudentialife Plans, Inc.		₱13,559,127.45	13,559,127.45
TOTAL		**₱12,743,550.44**	**₱13,559,127.45**	**₱26,302,677.89**

Therefore, petitioner complied with the second requirement but only to the extent of ₱10,434,995.11 out of the total reported CWT of ₱36,737,673.00 for taxable years 2007 and 2008, computed as follows:

		2007	**2008**	**TOTAL**
Claimed CWT		₱19,146,654.00	₱17,591,019.00	₱36,737,673.00
Less:	Claimed CWT supported by BIR Forms No. 2307 without signature of payor's authorized representative	12,743,550.44	13,559,127.45	26,302,677.89
Claimed CWT properly supported with BIR Forms No. 2307		**₱6,403,103.56**	**₱4,031,891.55**	**₱10,434,995.11**

Petitioner points out that Exhibits "DD-1", "DD-2", "DD-3", "DD-4" and "EE-5", which were disallowed because the same were not signed by the payor's authorized representative, are BIR Form No. 2307 series of July 1999, consisting of two pages where the signature portion of the withholding agent and the payee is found on the reverse portion as page two. The front pages of these five exhibits have the markings of BIR stamp: it establishes that these CWTs were properly filed with the BIR. The omission or non-submission of page 2 of these exhibits bearing the signature portion of the petitioner as the payee is attributable to honest mistake on the part of the independent CPA as her report marked as Exhibit "AA" and its attachments including these exhibits, are voluminous consisting of over 900 pages. Petitioner prays that the Court accept these exhibits, or to re-open and remand the case to the Special First Division to allow petitioner to present the signature pages of Exhibits "DD-1", "DD-2", "DD-3", "DD-4" and "EE-5".

Unfortunately, the non-submission of the second page (signature page) of Exhibits "DD-1", "DD-2", "DD-3", "DD-4" and "EE-5" (BIR Form No. 2307, July 1999 version), which could have shown the signature of the payor/payor's authorized representative, is detrimental to petitioner's claim for refund/TCC since the non-submission of the second page creates a serious doubt as to the whether the certificates were indeed issued by the payor.

It is clearly provided in the second requisite that the fact of withholding must be established by a copy of a statement *duly issued* by the payor to the payee showing the amount paid and the amount of the tax withheld. Hence, the payor's signature in BIR Form No. 2307 (Certificate of Creditable Tax Withheld at Source) is essential. By signing BIR Form No. 2307, the payor attests to the fact that such certificate emanates from the payor itself and not merely from the payee. As held in *Banco Filipino Savings and Mortgage Bank vs. Court of Appeals, et al.*[13], "the document which may be accepted as evidence of the third condition, that is, the fact of withholding, must emanate from the payor itself, and not merely from the payee, and must indicate the name of the payor, the income payment basis of the tax withheld, the amount of the tax withheld and the nature of the tax paid."

[13] G.R. No. 155682, March 27, 2007.

Moreover, notice that the following statement is printed just above the space provided for the signature of the payor/ authorized agent signatory:

> "I declare, under the penalties of perjury, that this certificate has been made in good faith, verified by me, and to the best of my knowledge and belief, is true and correct, pursuant to the provisions of the National Internal Revenue Code, as amended, and the regulations issued under authority thereof."[14]

From the foregoing, declarations made in BIR Form No. 2307 are for all intents and purposes presumed to be made in good faith and are true and correct considering it was made and executed under penalties of perjury. [15] Hence, petitioner cannot discount the importance of the signature of the payor/payor's authorized representative.

The Court cannot likewise grant petitioner's prayer to re-open and remand the case to the Special First Division to allow petitioner to present the second (signature) page of Exhibits "DD-1", "DD-2", "DD-3", "DD-4" and "EE-5". It is too late in the day for petitioner to ask for the re-opening of the case before the Court *En Banc.* Piecemeal presentation of evidence is not in accord with orderly justice.[16]

It should be noted that in its Motion for Reconsideration before the Court in Division, petitioner's main argument was that there is no legal provision – whether under the NIRC or the withholding tax regulations – that require both payor and payee to sign on the CWT returns on income payments to make it valid and that the CWT returns for 2007 and 2008 all have the rubber stamp of BIR filing. [17] Petitioner then requested the Court in Division to confirm that the CWT returns were properly issued by the payor and were valid documents to establish its unutilized withholding taxes[18]. Petitioner never requested to re-open the case for presentation of the second (signature) page of the subject BIR Forms No. 2307. Hence, petitioner was convinced that the subject BIR Forms No. 2307, wherein only the first pages were presented in evidence, were sufficient proof that these certificates were

---

[14] BIR Form No. 2307, July 1999 version.

[15] *Paseo Realty and Development Corporation vs. CIR*, CTA Case Nos. 4693, July 29, 1993 (case applied by analogy).

[16] *Asia Traders Insurance Corporation vs. The Honorable Court of Appeals*, G.R. No. 152537, February 16, 2004 citing *Cansino and De Jesus vs. Court of Appeals, et al.*, G.R. No. 125799, August 21, 2003.

[17] *Rollo*, pp. 46-50; petitioner's Motion for Reconsideration filed on September 18, 2013, pp. 4-8.

[18] *Rollo*, p. 50; petitioner's Motion for Reconsideration filed on September 18, 2013, p. 8.

duly issued by the payor. Now, on appeal, petitioner is adopting a different position, which cannot be permitted.

Interestingly, petitioner attached copies of the first pages of the subject BIR Forms No. 2307 in the instant petition (Annexes "D" to "H") but not the second (signature) pages.

As to the third requisite, again, *We* agree with the findings of the Court in Division that petitioner failed to establish that the income payments related to the claimed CWT for taxable years 2007 and 2008 formed part of the income declared per its Annual ITRs for 2007, 2008 or prior years, *to wit*:

> "On the third requisite, the ICPA grouped the CWT according to type of income payment, as shown hereunder:

	CWT	**INCOME PAYMENT**
2007		
Agency commissions (10%)	₱19,028,031.24	₱190,280,312.40
Payments by credit card companies (1/2 of 1%)	123,673.44	24,856,578.28
Total	**₱19,151,704.68**	**₱215,136,890.68**
2008		
Agency commissions (10%)	₱19,161,937.55	₱191,619,375.46
Payments by credit card companies (1/2 of 1%)	95,347.15	19,975,131.08
Total	**₱19,257,284.69**	**₱211,594,506.54**

> As stated earlier, petitioner's claim does not include CWT in the amounts of ₱5,050.69 and ₱1,666,265.71 for the years 2007 and 2008, respectively. The Court traced the CWT of ₱5,050.69 to the income payment made by a credit card company, *i.e.*, Banco de Oro-EPCI, Inc., in the amount of ₱1,047,304.73. On the other hand, the CWT of ₱1,666,265.71 pertains to petitioner's commission income in the amount of ₱16,662,656.92, as unveiled by the ICPA.

> It should be noted that petitioner's "Sales/Revenues/Receipts/Fees" declared in its amended 2007 and 2008 Annual Income Tax Returns pertain to its income from commissions as supported by its audited financial statements for the same taxable years.

> In the Amended Addendum to her Final Report, the ICPA compared petitioner's commission income related to the claimed CWT for taxable years 2007 and 2008 in the respective amounts of ₱19,028,031.24 and ₱17,495,671.84 as reflected per BIR Form No. 2307, with the commission

income declared per petitioner's Annual Income Tax Returns for 2007 and 2008, as shown below:

	CLAIMED CWT	INCOME PAYMENT		INCOME PER BIR FORM NO. 2307 IS UNDER (OVER)
		PER ITR	PER BIR FORM NO. 2307	
2007				
Agency commissions (10%)	19,028,031.24	182,150,935.00	190,280,312.40	(8,129,377.40)
2008				
Agency commissions (10%)	17,495,671.84	180,991,926.00	174,956,718.54	6,035,207.46

The ICPA expounded that per petitioner's AVP for Finance and Administration, Cherrie Serrano, the difference between the amounts of commission income declared per ITR and per BIR Form No. 2307 was due to the practice of petitioner's payor to withhold taxes upon payment. Thus, petitioner recorded income in its books when it was earned but claimed the corresponding withholding tax when the certificate of withholding was received from the payor.

The Court however finds the explanation of Cherrie Serrano insufficient to prove that such discrepancy in petitioner's commission income was caused by a timing difference between the actual reporting of the income by petitioner and actual withholding of the corresponding creditable income tax by petitioner's customers. It was incumbent upon petitioner to present supporting documents such as its detailed general ledger, billing invoices/statements, receipts and schedule of commissions for 2007, 2008 and prior years, Annual Income Tax Returns for prior years and any other document wherein the commission income related to the claimed CWT can be traced as forming part of the income reported in its income tax returns for 2007, 2008 or prior years. Petitioner failed in this regard.

Petitioner likewise miserably failed to prove that the income payments from credit card companies related to the following claimed CWT for taxable years 2007 and 2008 were declared in its amended Annual Income Tax Returns for the years 2007 and 2008.

	CLAIMED CWT	INCOME PAYMENT
2007		
Payments by credit card companies (1/2 of 1%)	118,622.75	23,809,273.55
2008		
Payments by credit card companies (1/2 of 1%)	95,347.15	19,975,131.08

> All stated, petitioner failed to establish that the income payments related to the claimed CWT for taxable years 2007 and 2008 in the respective amounts of ₱19,146,654.00 and ₱17,591,019.00 or in the aggregate amount of ₱36,737,673.00, formed part of the income declared per its Annual Income Tax Returns for 2007, 2008 or prior years. Note that to be entitled to a refund or issuance of tax credit certificate, the taxpayer-claimant must sufficiently establish that the three basic requisites were all duly complied with."

Petitioner argues that it was not proper for the Court in Division to disregard the explanation of Ms. Cherrie Serrano, petitioner's AVP for Finance and Administration, that the difference between the amounts of commission income declared per ITR and per BIR Form No. 2307 was due to the practice of petitioner's payor to withhold taxes upon payment. Thus, petitioner recorded income in its books when it was earned but claimed the corresponding withholding tax when the certificate of withholding was received by the payor. The Court cannot possibly substitute its own inference what could have been the case in 2007 and 2008 when its own court deputized ICPA conducted extensive interview of Ms. Serrano. Moreover, respondent did not present controverting evidence as it did not present any evidence at all.

Petitioner also contends that it was erroneous for the Court in Division to require petitioner "to present supporting documents such as its detailed general ledger, billing invoices/statements, receipts and schedule of commissions for 2007, 2008 and prior years, Annual Income Tax Returns for prior years and any other document wherein the commission income related to the claimed CWT can be traced as forming part of the income reported in its income tax returns for 2007, 2008 or prior years". Such imposition is not supported by law; the Court in Division did not cite any legal provision to support the same.

The Court is not convinced. Tax refunds are in the nature of tax exemptions, and are to be construed *strictissimi juris* against the entity claiming the same. Thus, the burden of proof rests upon the taxpayer to establish by *sufficient* and *competent evidence*, its entitlement to a claim for refund.[19] Claimants of tax refunds bear the burden of proving the *factual basis* of their claims.[20] As cases filed before this Court

---

[19] *Philippine Geothermal, Inc. vs. CIR*, G.R. No. 154028, July 29, 2005.
[20] *Philippine Phosphate Fertilizer Corporation vs. CIR*, G.R. No. 141973, June 28, 2005.

are litigated *de novo*, party litigants should prove *every minute aspect* of their cases.[21]

Hence, petitioner has the burden of proving that the income payments related to the claimed CWT formed part of the gross income declared in its ITR.

In petitioner's case, there was a discrepancy between the income payment per BIR Form No. 2307 and the income declared per ITR, allegedly due to the practice of petitioner's payor to withhold taxes upon payment while petitioner records income in its books when earned. Therefore, it was incumbent upon petitioner to prove by sufficient and competent evidence that the discrepancy was indeed caused by such practice. Mere allegation is not evidence and is not equivalent to proof.[22]

Unfortunately, *We* agree with the findings of the Court in Division that the evidence presented by petitioner is insufficient to prove its allegation that the discrepancy was caused by a timing difference between the actual reporting of the income by petitioner and actual withholding of the corresponding creditable income tax by petitioner's customers. Petitioner should have presented supporting evidence to prove that the commission income as well as the income payments from credit card companies related to the claimed CWT can be traced as forming part of the income reported in its ITRs for 2007, 2008 or prior years. Considering that petitioner failed to reconcile and provide supporting documents explaining such discrepancy, *We* cannot ascertain whether the income related to the claimed CWTs was in fact declared in its annual ITRs.

Finding no reversible error, *We* affirm the assailed *Decision* dated August 7, 2013 and the *Resolution* dated December 2, 2013 of the Special First Division.

WHEREFORE, premises considered, the instant Petition for Review is hereby **DISMISSED** for lack of merit.

SO ORDERED.

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

---

[21] *CIR vs. Manila Mining Corporation*, G.R. No. 153204, August 31, 2005.
[22] *Sps. Tagle vs. Hon. Court of Appeals, et al.*, G.R. No. 162738, July 8, 2009.

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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

(On Leave)
LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

Ma. Belen R-L
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the above Decision 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 the Court.

ROMAN G. DEL ROSARIO
Presiding Justice