REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

Special Third Division

PHILIPPINE NATIONAL BANK,
Petitioner,

- *versus* -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 8077

Members:
BAUTISTA, *Chairperson, and*
COTANGCO-MANALASTAS, *JJ.*

Promulgated:
NOV 19 2013
9:50 a.m.

x--x

D E C I S I O N

BAUTISTA, J.:

The Petition for Review, filed on April 14, 2010, pursuant to Sections 204[1] and 229[2] of the 1997 National Internal Revenue Code ("NIRC"), as amended, seeks for the issuance of a tax credit certificate representing excess and unutilized creditable withholding taxes for calendar year 2007, in the total amount of ₱114,051,845.00.

---

[1] SEC. 204. *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.* – The Commissioner may –

xxx xxx xxx

(C) Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two (2) years after the payment of the tax or penalty: *Provided, however,* That a return filed showing an overpayment shall be considered as a written claim for credit or refund.

[2] SEC. 229. *Recovery of Tax Erroneously or Illegally Collected.* – xxx

In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment: *Provided, however,* That the Commissioner may, even without a written claim therefore, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid.

FACTS OF THE CASE

Petitioner, Philippine National Bank, is a corporation duly organized and existing under the laws of the Republic of the Philippines, with principal office at the PNB Financial Center, President Diosdado Macapagal Boulevard, Pasay City. It is engaged in commercial banking, among others, and is a registered taxpayer in the Large Taxpayers Service of the Bureau of Internal Revenue ("BIR"), with Taxpayer Identification Number. 000-188-209-000.

On the other hand, respondent is the duly appointed Commissioner of Internal Revenue vested with the authority to carry out all the functions, duties, and responsibilities of said office, including, *inter alia*, the power to decide, approve, and grant refunds and/or tax credits of overpaid and erroneously paid or collected national revenue taxes, with office address at the 5th Floor, BIR National Office Building, BIR Road, Diliman, Quezon City.

On April 15, 2008, petitioner manually filed its Annual Income Tax Return for the calendar year ending December 31, 2007; while on April 22, 2008, it electronically filed through the BIR's Electronic Filing and Payment System ("EFPS") the same Annual Income Tax Return.

On July 4, 2008, petitioner filed an Amended Annual Income Tax Return for the calendar year 2007; and on October 8, 2009, filed another Amended Annual Income Tax Return for the calendar year ending December 31, 2007.

Petitioner filed its Quarterly Income Tax Returns for the calendar year 2008 on the following dates: (a) May 29, 2008, for the first (1st) quarter; (b) August 29, 2008, for the second (2nd) quarter; and (c) November 28, 2008, for the third (3rd) quarter.

On April 15, 2009, petitioner manually filed its Annual Income Tax Return for the calendar year 2008; while on April 30, 2009 and June 1, 2009, filed its Amended Income Tax Returns for the calendar year 2008 through the BIR's EFPS.

On November 12, 2009, petitioner filed with the BIR an administrative claim for the issuance of a tax credit certificate for its excess and unutilized creditable withholding tax for calendar year 2007, in the amount of ₱114,051,845.00.[3]

And on April 14, 2010, alleging inaction on the part of respondent, petitioner filed the present Petition for Review.[4]

On June 28, 2010, respondent filed her Answer,[5] interposing the following:

4. Petitioner's alleged claim for refund is subject to administrative routinary investigation/examination by the Bureau of Internal Revenue;

5. The amount of ₱114,051,845.00 being claimed by petitioner as alleged excess and unutilized Creditable Withholding Tax (CWT) for CY 2007 is not properly documented;

6. Petitioner must prove that it has complied with the provisions of Sections 204 and 229 of the National Internal Revenue Code of 1997 (1997 Tax Code), as amended, on the prescriptive period for claims for refund/credit of erroneously paid taxes;

7. Petitioner must prove compliance with the prescribed checklist of requirements to be submitted involving claims for refund pursuant to Revenue Memorandum Order No. 53-98, otherwise there would be no sufficient compliance with the filing of administrative claim for refund, the administrative claim thereof being pro-forma. Hence, petitioner's failure to submit proof of compliance with the above-stated requirements warrants immediate dismissal of the Petition for Review;

8. Taxes paid and collected are presumed to have been paid in accordance with law; hence, not refundable;

---

[3] *Records*, pp. 185-188.
[4] *Id.*, at pp. 1-84, with Annexes.
[5] *Id.*, at pp. 106-111.

9. Petitioner must likewise prove that it has fully complied with the requisites to sustain a claim for refund or tax credit of unutilized creditable withholding tax as ruled by the Supreme Court in ***F. Jacinto Group, Inc. vs. CIR (CTA Case No. 4971, April 5, 1995)*** and ***Citibank, N.A. vs. Court of Appeals, et al., 345 Phil. 695 (1997)***, which are as follows:

   a) that the claim for refund was filed within the two-year period;
   b) that the fact of withholding is established by a copy of a statement duly issued by the payor (withholding agent) to the payee showing the amount paid and the amount of tax withheld therefrom; and
   c) that the income upon which the taxes were withheld is shown in the return of the recipient.

10. In an action for refund/tax credit, the ***onus probandi*** is on the taxpayer to establish its right to refund/tax credit, and failure to sustain the burden is fatal to its claim for refund/tax credit **(ASIATIC PETROLEUM CO. VS. LLANES, 49 PHIL. 466, cited in COLLECTOR OF INTERNAL REVENUE VS. MANILA JOCKEY CLUB, INC., 98 PHIL. 670)**; and

11. Claims for refund are construed in ***strictissimi juris*** against the claimant for the same partake the nature of exemption from taxation **(COMMISSIONER OF INTERNAL REVENUE VS. LEDESMA, 31 SCRA 95)** and as such, they are looked upon with disfavor **(WESTERN MINOLCO CO[RP]. VS. COMMISSIONER OF INTERNAL REVENUE, 124 SCRA 1211)**. Corollary to this principle, therefore, he who alleges must prove and not he who denies ***(Ei incumbit probation qui dicit, non qui negat)***.[6]

On February 21, 2011, the parties filed their Joint Stipulation of Facts and Issues.[7]

---

[6] *Id.*, at pp. 107-109.
[7] *Id.*, at pp. 185-189.

Trial ensued. Petitioner presented and offered its documentary and testimonial evidence;[8] while respondent submitted the case for decision without presenting any evidence.[9]

On January 31, 2013,[10] the case was submitted for decision, taking into consideration the Memoranda filed by petitioner[11] and respondent.[12]

Hence, this Decision.

ISSUES

As stipulated upon by the parties, the following are the issues for this Court's consideration:

1. WHETHER OR NOT PETITIONER IS ENTITLED TO A REFUND/TAX CREDIT IN THE AMOUNT OF ₱114,051,845.00 REPRESENTING ITS UNUTILIZED [CREDITABLE WITHHOLDING TAX] FOR [CALENDAR YEAR] 2007;

2. WHETHER OR NOT PETITIONER'S [CREDITABLE WITHHOLDING TAX] FOR [CALENDAR YEAR] 2007 IN THE AMOUNT OF ₱114,051,845.00 ARE DULY SUBSTANTIATED BY DOCUMENTARY EVIDENCE;

3. WHETHER OR NOT THE INCOME FROM WHICH THE [CREDITABLE WITHHOLDING TAXES] BEING CLAIMED FOR REFUND WERE WITHHELD WERE REPORTED AS PART OF PETITIONER'S REVENUES FOR INCOME TAX PURPOSES;

4. WHETHER OR NOT PETITIONER CARRIED OVER AND APPLIED ITS EXCESS [CREDITABLE WITHHOLDING TAXES] FOR [CALENDAR YEAR] 2007 AGAINST ITS

---

[8] *Id.*, at pp. 449-450.
[9] *Id.*, at p. 464.
[10] *Id.*, at p. 519.
[11] *Id.*, at pp. 478-501.
[12] *Id.*, at pp. 502-517.

INCOME TAX LIABILITY FOR THE SUCCEEDING TAXABLE YEAR;

5. WHETHER OR NOT PETITIONER FILED ITS ADMINISTRATIVE CLAIM FOR REFUND OF OR ISSUANCE OF [TAX CREDIT CERTIFICATE] FOR ITS EXCESS AND UNUTILIZED [CREDITABLE WITHHOLDING TAX] FOR [CALENDAR YEAR] 2007 WITHIN THE TWO-YEAR PERIOD PRESCRIBED UNDER SECTION 204(C) OF THE TAX CODE; and

6. WHETHER OR NOT PETITIONER FILED ITS JUDICIAL CLAIM FOR REFUND OF OR ISSUANCE OF [TAX CREDIT CERTIFICATE] WITHIN THE TWO-YEAR PERIOD AS PROVIDED UNDER SECTION 229 OF THE TAX CODE.[13]

To summarize, the issue to be resolved by the Court is essentially on petitioner's entitlement to its claim for issuance of a tax credit certificate of its unutilized creditable withholding tax for the calendar year 2007 in the total amount of ₱114,051,845.00.

RULING OF THE COURT

The Court finds the Petition for Review bereft of merit.

Section 76 of the 1997 National Internal Revenue Code ("NIRC"), as amended, provides as follows:

> 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

---

[13] *Id.*, at p. 188.

(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.

Based on the afore-cited provision, in case of overpayment of income taxes, a taxable corporation has two options: (1) it may file a claim for refund (either in the form of cash or issuance of a tax credit certificate); or (2) it may carry over the same to the succeeding taxable quarters/years until it is fully utilized. However, once the carry over option is taken actually or constructively it becomes irrevocable for that taxable period.[14] And the phrase *"for that taxable period"* refers to the taxable year when the excess income tax, subject of the option, was acquired by the taxpayer.[15]

Records show that petitioner manually filed with the BIR its 2007 Annual Income Tax Return on April 15, 2008, reflecting therein an income tax overpayment of ₱162,860,277.00 and marked the option *"To be issued a Tax Credit Certificate"*;[16] it also filed the same return through the BIR's EFPS on April 22, 2008.[17] Petitioner subsequently filed an Amended Annual Income Tax Return for the calendar year 2007 through EFPS on July 4, 2008, reflecting an increased income tax overpayment in the amount of ₱188,562,398.60.[18] Petitioner then filed its second and final Amended Annual Income Tax Return for the year 2007 on October 8, 2009, reporting additional creditable withholding

---

[14] Philam Asset Management, Inc., *v.* Commissioner of Internal Revenue, G.R. Nos. 156637/162004, December 14, 2005, 477 SCRA 76; Systra Philippines, Inc., *v.* Commissioner of Internal Revenue, G.R. No. 176290, September 21, 2007, 533 SCRA 776.
[15] Commissioner of Internal Revenue *v.* Bank of the Philippine Islands, G.R. No. 178490, July 7, 2009, 592 SCRA 219.
[16] *Exhibits "C," "C-1"* and *"C-2."*
[17] *Exhibits "D"* and *"D-1."*
[18] *Exhibits "E"* and *"E-1."*

taxes in the amount of ₱11,060,739.00, and consequently a higher income tax overpayment in the amount of ₱199,623,137.60.[19]

Records further show that petitioner has consistently marked the option "*To be issued a Tax Credit Certificate*" on its manual and electronic filings of its Annual Income Tax Return, as well as its subsequent amendments thereto.

A perusal of petitioner's second and final Amended Income Tax Return for taxable year 2007 reveals that the income tax overpayment of ₱199,623,137.60 consisted of the following:[20]

Prior year's (2006) excess credits	₱112,194,616.00
Tax payments	10,000,000.00
Creditable tax withheld during the year (2007)	114,051,845.00
Total tax credits/payments	₱236,246,461.00
Less: MCIT for 2007	(36,623,323.40)
Income tax overpayment	**₱199,623,137.60**

And the subject claim consists of creditable taxes withheld for the year 2007 as declared in petitioner's second and final Amended Annual Income Tax Return, to wit:

Creditable tax withheld for the first three quarters	₱26,196,927.00
Creditable tax withheld for the fourth quarter	87,854,918.00
Claim for refund	**₱114,051,845.00**

An examination of its subsequent Quarterly and Annual Returns for the year 2008,[21] shows that only the amount of ₱85,571,293.00, as computed hereafter, was carried over to the subsequent taxable periods:[22]

Prior year's excess credits	₱112,194,616.00
Add: Tax payments	10,000,000.00
Less: MCIT for 2007	(36,623,323.00)
Tax credits carried over to 2008	**₱85,571,293.00**

[19] *Exhibits "F"* to *"F-4."*
[20] *Exhibit "F-3."*
[21] *Exhibits "G"* to *"L."*
[22] *Exhibits "J-1," "K-1," "L-1," "H-1"* and *"I-1."*

Thus, the claimed creditable withholding taxes for year 2007 in the amount of ₱114,051,845.00 were clearly not carried over and applied against any income tax liability. Consequently, the same may be a proper subject of refund or tax credit pursuant to the earlier quoted Section 76 of the 1997 NIRC, as amended.

The Supreme Court has already set forth in the case of *Citibank, N.A. v. Court of Appeals and Commissioner of Internal Revenue,*[23] the basic requirements in order to validly avail the refund of excess creditable withholding taxes, *viz.*:

1. The claim for refund must be filed within the two (2)-year prescriptive period provided under Section 204(C), in relation to Section 229 of the 1997 National Internal Revenue Code, as amended;

2. The fact of withholding is established by a copy of a statement issued by the payor (withholding agent) to the payee, showing the amount paid and the amount of tax withheld therefrom; and

3. The income upon which the taxes had been withheld were included in the return of the recipient.[24]

First requisite. The two (2)-year prescriptive period for filing a claim for refund of excess income tax paid/withheld commences from the date of filing of the relevant final adjustment return.[25]

In the case at bench, the subject claim for excess creditable withholding taxes covers calendar year 2007 for which petitioner originally filed its Annual Income Tax Return on April 15, 2008.[26] Counting from said date, petitioner had until April 15, 2010 within which to file its claim both in the administrative and judicial levels. Clearly, petitioner's administrative claim filed on November 12, 2009,[27]

---

[23] G.R. No. 107434, October 10, 1997, 280 SCRA 459.
[24] Section 2.58.3(B) of Revenue Regulations No. 2-98.
[25] ACCRA Investments Corporation *v.* Court of Appeals, G.R. No. 96322, December 20, 1991, 204 SCRA 957.
[26] *Exhibit "C-2."*
[27] *Records*, p. 186; *Exhibit "M."*

and the present Petition for Review filed before this Court on April 14, 2010, were both within the two (2)-year prescriptive period.

Second and Third requisites. The Court-commissioned Independent Certified Public Accountant ("CPA"), Manabat Delgado Amper & Co., through its Partner, Atty. Fredieric B. Landicho, noted the following findings in two separate Reports dated August 15, 2011,[28] and October 5, 2011,[29] summarized, thus:

Findings	Exhibit	CWT	
a) CWT supported with original CWTs, Transaction Tickets/Input Sheets and Deed of Sale dated 2007 with income reported in 2007.	*"CC"*	₱70,028,460.94	
	"NN"	12,623,964.57	₱82,652,425.51
b) CWT supported with original CWTs, Transaction Tickets/Input Sheets and Deed of Sale dated 2007 with loss or no income recognized in 2007.	*"DD"*	1,554,122.70	
	"OO"	1,284,936.00	2,839,058.70
c) CWT supported with original CWTs, Transaction Tickets/Input Sheets and certified true copy of Deed of Sale dated 2007 with income reported in 2007.	*"EE"*	1,229,302.80	
	"PP"	279,246.60	1,508,549.40
d) CWT supported with original CWT and original/certified true copy of Deed of Sale dated 2007 and original/certified true copy of Transaction Tickets/Input Sheets dated outside 2007 with income reported outside 2007.	*"QQ"*		24,120,831.21
e) CWT supported with original CWT and Transaction Tickets/Input Sheets dated outside 2007 and original Deed of Sale dated 2007 with income reported outside 2007.	*"RR"*		31,800.00
f) CWT supported with original CWT and Transaction Tickets/Input Sheets dated outside 2007 and certified true copy of Deed of Sale dated outside 2007 with income reported outside 2007.	*"SS"*		1,860,000.00
g) CWT supported with original/photocopy CWTs, Transaction Tickets/Input Sheets and Deed of Sale were not yet provided for verification.	*"TT"*		1,039,180.46
TOTAL			**₱114,051,845.28**

Moreover, in his supplemental and final Report dated October 5, 2011, the Court-commissioned Independent CPA made the following comments:[30]

a) Our examination reveals that the claim for the issuance of a tax credit certificate or tax refund for creditable withholding

[28] *Exhibit "AA,"* pp. 5-6.
[29] *Exhibit "MM,"* pp. 4-5.
[30] *Exhibit "MM,"* pp. 5-7.

taxes amounting to ₱12,623,964.57 were duly corroborated with original copies of BIR Form No. 2307, transaction tickets/input sheets and Deed of Sale dated 2007.

Out of the total amount of creditable withholding taxes of ₱12,623,964.57, ₱9,826,039.96 were installment sales, ₱40,800.00 were UPASE transactions and the remaining ₱2,757,124.61 relates to other income payments such as Rental Income, Commissions and Interest Income.

We have ascertained that the related income of ₱5,613,606.70 creditable withholding taxes for installments, all UPASE transactions and all other income payments were properly reported to and formed part of the gross income of the Company for the taxable period 2007 as reported in its Audited Financial Statements and Annual Income Tax Return.

However, we were not able to trace the related income on installment sales from which the creditable withholding taxes in the amount of ₱4,212,433.26 were withheld in the Company's Annual Income Tax Return.

b) The claim for the issuance of a tax credit certificate or tax refund for creditable withholding taxes amounting to ₱1,284,936.00 were substantiated with original copies of BIR Form No. 2307, transaction tickets/input sheets and Deed of Sale dated 2007. However, there were loss or no income recognized from the transactions since the selling price is less than or equal to the book value of the properties sold. The non-recognition of income or loss does not affect the Company's application for issuance of tax credit certificate or refund for excess creditable withholding taxes because the basis on which the taxes are withheld is either the gross selling price/total amount of consideration or the fair market value, whichever is higher, pursuant to Revenue Regulations No. 6-01.

c) The creditable withholding taxes amounting to ₱279,246.60 were duly supported with original copies of BIR Form No. 2307 and transaction tickets/input sheets and certified true copies of Deed of Sale dated 2007.

Included in the total amount of creditable withholding taxes of ₱279,246.60, were ₱72,474.60 installment sales, ₱9,600.00 UPASE transactions and the remaining ₱197,172.00 relates to other income payments such as Rental Income, Commissions and Interest Income.

We have ascertained that the related income for all UPASE transactions of ₱9,600.00 plus the ₱197,172.00 other income payments were properly reported to and formed part of the gross income of the Company for the taxable period 2007 as reported in its Audited Financial Statements and Annual Income Tax Return. Conversely, we were not able to trace the related income on installment sales from which the creditable withholding taxes in the amount of ₱72,474.60 were withheld in the Company's Annual Income Tax Return.

d) The creditable withholding taxes amounting to ₱24,120,831.21 were supported with original copies of BIR Form No. 2307 and original/certified true copies of Deed of Sale dated 2007. The supporting original/certified true copies of transaction tickets/input sheets were dated other than 2007.

Out of the total amount of creditable withholding taxes amounting to ₱24,120,831.21, ₱1,790,196.00 were installment sales, ₱13,046,860.66 were UPASE transactions and the remaining ₱9,283,774.55 relates to other income payments such as Rental Income, Commissions and Interest Income.

We have verified that income relating to the ₱1,481,736.00, ₱13,022,311.60 and ₱9,283,774.55 CWTs for installment sales, UPASE and other income, respectively, formed part of the gross income of the Company for the taxable period other than 2007 as reported in its Audited Financial Statements and Annual Income Tax Return. Related income pertaining to the balances of the ₱308,460.00 for installment sales and ₱24,549.06 for UPASE were verified to be included in the Company's books. However, we were not able to trace if the same were reported in the Company's Annual Income Tax Return.

e) Taxes withheld amounting to ₱31,800.00 was substantiated with original certificates of creditable tax withheld and transaction tickets/input sheets dated outside 2007 supported with Deed of Sale executed during 2007. Upon perusal of the document provided, we have verified that the late remittance of creditable withholding tax was due to the delayed booking of income.

f) The claim for issuance of a tax credit certificate or tax refund for creditable withholding taxes amounting to ₱1,860,000.00 were substantiated with original BIR Form No. 2307, transaction tickets/input sheets dated outside 2007 and certified true copy of Deed of Sale dated outside 2007. We were not able to trace if the income related to the transaction was reported in its Audited Financial Statements and Annual Income Tax Return for taxable year 2007.

g) Taxes withheld amounting to ₱1,039,180.46 was substantiated with certificates of creditable tax withheld, except for one transaction which amounts to ₱57,000.00. Further, out of the total amount of creditable withholding taxes with certificates amounting to ₱982,180.46, all were supported with original BIR Form No. 2307 except for one certificate which was supported with a photocopy of the BIR Form No. 2307. In addition, all certificates are dated 2007 except for one that is undated amounting to ₱342,000.00.

However, the related transaction tickets/input sheets and Deed of Sale supporting were not provided for our examination. Hence we were not able to trace if the income related to the transaction was reported in its Audited Financial Statements and Annual Income Tax Return for the taxable year 2007.

Based on the foregoing, the creditable withholding tax in the amount of ₱7,548,897.38, as itemized below, is hereby disallowed for failing to meet the second and third requirements, *viz.*:

	Findings	CWT Amount
a)	Related income payments were not traced in the petitioner's 2007 Annual ITR	₱4,212,433.26
c)	Related income payments were not traced in the petitioner's 2007 Annual ITR	72,474.60
d)	Related income payments were not traced in the petitioner's 2007 Annual ITR	308,460.00
		24,549.06
e)	Supporting documents were dated outside the period of claim	31,800.00
f)	Supporting documents were dated outside the period of claim and the income payments were not traced in the petitioner's 2007 Audited FS and Annual ITR	1,860,000.00

g)	Income payments were not traced in the petitioner's 2007 Audited FS and Annual ITR	1,039,180.46
	TOTAL	**₱7,548,897.38**

Upon further scrutiny, the amount of ₱5,393,071.01 should also be disallowed, as presented below:

Exhibit	Withholding Agent	Income Payments	CWT
1. No indication of period covered in the certificate of withholding			
"JJ-5126"	Antonio L. Anastacio	₱1,800,000.00	₱108,000.00
"JJ-5152"	Teodora M. Villanueva	3,162,000.00	189,720.00
"JJ-5161"	Emmanuel S. Montarde	335,000.00	20,100.00
"JJ-5172"	Janet Ontal	400,000.00	24,000.00
"JJ-5188"	Primitivo B. Julito, Jr.	299,000.00	17,940.00
"JJ-5190"	Jermy S. Celis	540,540.00	32,432.40
"JJ-5198"	Rejoice Employment Intl. Corp.	8,520,000.00	511,200.00
"JJ-5204"	Nancy D. Quimpo	3,100,000.00	186,000.00
"JJ-5214"	Indanan M. Bansao	7,700,000.00	462,000.00
"JJ-5222"	Reuben P. dela Cruz	2,720,000.00	163,200.00
"JJ-5228"	Salvador S. de Jesus	710,000.00	42,600.00
"JJ-5239"	Mirza C. Merza-Crisaldo	3,600,000.00	216,000.00
"JJ-5250"	Vicente M. Mendoza, Jr.	935,000.00	56,100.00
"JJ-5257"	Sps. Metodio G. / Maria Rita F. Gran	670,800.00	40,248.00
"JJ-5268"	Corazon M. Palileo	300,000.00	18,000.00
"JJ-5275"	Rosy M. Andres	855,900.00	51,354.00
"JJ-5283"	Fausto Antonio T. & Rhodora A. Tibi	950,000.00	57,000.00
"JJ-5291"	Gloria Mariano Young	506,800.00	30,408.00
"JJ-5633"	Cherry Mae Acedo	648,000.00	38,880.00
"ZZ-931"	La Paloma Holdings Corporation	12,175,000.00	730,500.00
"ZZ-939"	Iris M. Beltran	268,000.00	16,080.00
"ZZ-950"	Kristine R. Tumlos	1,123,200.00	67,392.00
"ZZ-1289"	Sps. Joselito P. / Decena J. Diokno	1,100,000.00	66,000.00
"ZZ-1297"	Mary O. Ong	3,000,000.00	180,000.00
"BBB-25"	Cherry J. Rojano	160,000.00	9,600.00
"CCC-1479"	Emmanuel M. Calanog	4,100,000.00	246,000.00
"CCC-1493"	Ma. Christina A. Galura	3,300,000.00	198,000.00
"CCC-1542"	Leonida V. Ramos	290,000.00	25,770.00
"CCC-2152"	Ferdinand L. Ventura	225,000.00	13,500.00
	Sub-total	*63,494,240.00*	*3,818,024.40*
2. Certificate of withholding bears no signature of authorized representative			
"JJ-694"	Toyota Financial Services Philippines Corporation	8,431,800.00	168,636.00
"JJ-3788"	Andres Marcelo Padernal Guerrero & Paras Law Offices	586,328.20	29,316.41
"JJ-3795"	Andres Marcelo Padernal Guerrero & Paras Law Offices	592,430.76	29,621.53
"JJ-4146"	Greenfield Freight Services ,Inc.	121,990.74	6,099.54
"JJ-6115"	Macondray Plastics, Inc.	4,647.98	92.96
"ZZ-184"	Andres Marcelo Padernal Guerrero & Paras Law Offices	580,405.11	29,020.26
"ZZ-1165"	Robinland ,Inc	3,000,000.00	1,238,202.00
	Sub-total	*13,317,602.79*	*1,500,988.70*

3. ***No supporting documents***				
	Maria Celeste G. Leonen			41,040.00
	Sub-total		-	*41,040.00*
4. ***Certificate of withholding is dated outside the of period of claim***		**Period Covered**		
"ZZ-1"	International Container Terminal Services, Inc.	12/28/06 to 1/03/07	159,895.56	3,197.91
"CCC-2118"	Isagani T. Talavera	1/1/09 to 3/31/09	306,000.00	18,360.00
	Sub-total		*465,895.56*	*21,557.91*
5. ***Certificate of withholding with erasure on the period covered but with no counter-signature***				
"CCC-2183"	Valerio P. Matildo		191,000.00	11,460.00
	Sub-total		*191,000.00*	*11,460.00*
	TOTAL		**₱77,468,738.35**	**₱5,393,071.01**

With this, from the total claimed creditable withholding taxes of ₱114,051,845.00, only the remaining amount of ₱101,109,876.61 appears to be a valid claim, computed as follows:

Claimed creditable withholding taxes		₱114,051,845.00
Less: Disallowances		
Per ICPA Reports	₱7,548,897.38	
Per this Court's Findings	5,393,071.01	12,941,968.39
Valid Creditable withholding taxes		**₱101,109,876.61**

However, while the Court-commissioned Independent CPA had ascertained that the income from which the creditable withholding tax in the amount of ₱101,109,876.61 had been withheld were included as part of the gross income of petitioner by tracing them in the Transaction Tickets/Input Sheets to the Audited Financial Statements and Annual Income Tax Return,[31] petitioner failed to submit a breakdown or detailed schedules of its revenue with the corresponding creditable withholding taxes it reported in its Audited Financial Statements and Annual Income Tax Return for the year 2007. Petitioner should have presented its detailed general ledger or any other supporting documents whereby the Court can trace and determine with certainty that the income payments related to the claimed creditable withholding taxes indeed formed part of its gross taxable income in its 2007 Annual ITR. Failure to do so is fatal its claim.

Noteworthy of emphasis is that the Court is not bound by the findings of the Independent CPA. The Report submitted is but a tool or guide to aid the Court in the resolution of the case. The determination

[31] *Exhibits "AA,"* p. 5; and *"MM,"* p. 3.

of the merit or the probative value of such Report is still within the province of the Court. Thus, the Court is free to adapt or disregard, completely or partially, the findings of the Independent CPA. It can even make its own audit and evaluation of the documents pertinent to the case presented during the trial in order to intelligently resolve the conflict brought before it.[32]

It also bears stressing that a claimant has the burden of proof to establish the factual basis of its claim for tax credit or refund.[33] Tax refunds are in the nature of tax exemptions. As such, they are regarded as in derogation of sovereign authority and to be construed *strictissimi juris* against the person or entity claiming the refund.

In sum, the Court has no recourse but to deny petitioner's claim for refund of its excess and unutilized creditable withholding taxes for the year 2007.

WHEREFORE, the Petition for Review is hereby **DENIED** for insufficiency of evidence.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

I CONCUR:

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

---

[32] First Lepanto Taisho Insurance Corporation *v.* Commissioner of Internal Revenue, CTA EB Case No. 563, (CTA Case No. 6200) March 1, 2011.
[33] Citibank, N.A. *v.* Court of Appeals and the Commissioner of Internal Revenue, G.R. No. 107434, October 10, 1997, 280 SCRA 459.

ATTESTATION

I attest that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

LOVELL R. BAUTISTA
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13 of Article VIII of the Constitution and the Division Chairperson's Attestation, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ROMAN G. DEL ROSARIO
Presiding Justice