REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-versus-

RCD REALTY MARKETING CORP.,
Respondent.

CTA EB No. 1136
(CTA Case No. 8271)

Present:
Del Rosario, *PJ*,
Castañeda, Jr.,
Bautista,
Uy,
Casanova,
Fabon-Victorino,
Mindaro-Grulla,
Cotangco-Manalastas, and
Ringpis-Liban, *JJ.*

Promulgated:

JAN 07 2016 2:15 p.m.

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DECISION

CASTAÑEDA, JR., *J.* :

Before us is an appeal by petitioner Commissioner of Internal Revenue ("CIR" for brevity; respondent in the division case) of the November 18, 2013 Decision[1] and February 24, 2014 Resolution[2] of the Special First Division of the Court of Tax Appeals in CTA Case No. 8271[3], entitled "*RCD Realty Marketing Corp. v. Commissioner of Internal Revenue*". CIR prays that the assailed Decision and Resolution be set aside and another one be rendered denying the claim for refund of respondent RCD Realty Marketing Corp. ("RCD" for brevity; petitioner in the division case).

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[1] *Rollo*, pp. 17-42.
[2] *Id.*, pp. 44-49.
[3] Decision and Resolution penned by Associate Justice Esperanza R. Fabon-Victorino and concurred in by Associate Justice Erlinda P. Uy.

The dispositive portion of the assailed Decision states:

> **WHEREFORE,** the instant Petition for Review is **PARTIALLY GRANTED.** Consequently, respondent Commissioner of Internal Revenue is hereby **DIRECTED TO REFUND** or **ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner RCD Realty Marketing Corporation in the amount of P3,696,086.43, representing its unutilized creditable income taxes withheld for the taxable year 2008.
>
> **SO ORDERED.**

The dispositive portion of the assailed Resolution reads:

> **WHEREFORE,** respondent's Motion for Reconsideration posted on December 26, 2013 is hereby **DENIED,** for lack of merit.
>
> **SO ORDERED.**

THE FACTS

The facts of the case as found by the CTA Special First Division as stated in the assailed Decision:[4]

> "Petitioner [Respondent, in the CTA *En Banc* case] RCD Realty Marketing Corporation is a duly organized domestic corporation, with principal place of business at 2nd Floor, EGI Condominium, corner P. Medina Street, Pio Del Pilar, Makati City. It is engaged in real estate marketing and brokerage and/or acts as agent to any person or corporation, domestic or foreign, for and in transaction relative to the acquisition, sale, lease, exchange, mortgage, disposition or administration and management of real estate of all kinds.
>
> Petitioner [RCD] is registered with the Bureau of Internal Revenue (BIR) as evidenced by Certificate of Registration No. OCN 9RC0000201035 dated July 19, 2006 with Tax Identification No. 006-342-258-000.
>
> xxx xxx xxx

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[4] *Rollo*, pp. 17-24; Footnotes Omitted.

On April 15, 2009, petitioner [RCD] filed with the BIR its Annual Income Tax Return (ITR) (BIR Form No. 1702) for taxable year 2008, reporting a taxable income of P335,955.43 with tax liability of P117,584.40.

On April 24, 2009, petitioner [RCD] amended its Annual ITR for taxable year 2008, reflecting the same taxable income of P335,955.43 and tax liability of P117,584.40.

In its amended 2008 Annual ITR, petitioner [RCD] reported a total tax credit/payment for 2008 in the amount of P3,873,748.70, broken down as follows:

Creditable Tax Withheld for the First Three Quarters	P 2,905,311.53
Plus: Creditable Tax Withheld for the Fourth Quarter	P 968,437.18
Total Tax Credits/Payments	P 3,873,748.70

After deducting its 2008 income tax liability from its creditable tax withheld at source for 2008, petitioner [RCD] still had unutilized CWT of P3,756,164.30, computed as follows:

Total CWT	P3,873,748.70
Less: Income Tax Due 2008	P 117,584.40
Excess/Unutilized CWT	P3,756,164.30

Petitioner [RCD] however did not indicate how it would utilize its 2008 excess CWT of P3,756,164.30 in its ITR for 2008.

On July 27, 2009, respondent [CIR] issued Letter of Authority (LOA) No. 200800034514 requesting petitioner [RCD] to submit certain documents for examination.

On August 6, 2009, petitioner [RCD] filed an application for refund of its remaining excess CWT with RDO No. 48 of the BIR.

In compliance with the LOA No. 200800034514 issued against it, petitioner [RCD] submitted the documents requested which were received by respondent [CIR] as evidenced by a Transmittal Receipt dated March 7, 2011.

On April 14, 2011, petitioner [RCD] filed the instant Petition for Review citing inaction of respondent [CIR] on its claim for refund.

In her Amended Answer posted on August 1, 2011, respondent [CIR] interposed the following special and affirmative defenses:

> 13. Taxes paid and collected are presumed to have been made in accordance with law, hence, not refundable.
>
> 14. Petitioner's claim for refund or issuance of tax credit certificate in the amount of Php3,756,164.30 as alleged unutilized creditable tax for the year 2008, were not fully substantiated by proper documents, such sales invoices, official receipts and others pursuant to Revenue Regulations No. 7-95 in relation to Section[s] 113 and 237 of the 1997 Tax Code.
>
> 15. In an action for refund/credit, the burden of proof is on the petitioner to establish its right to claimed refund and failure to adduce sufficient proof is fatal to the claim for tax refund/credit.
>
> 16. It is incumbent upon the latter to show that it has complied with the provisions under Section 204(c) in relation to Section 229 of the Tax Code. Otherwise, its failure to prove the same is fatal to its claim for refund.
>
> 17. Claims for refund are construed strictly against herein petitioner since the same partakes 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 Corp. vs. Commissioner of Internal Revenue, 124 SCRA 1211).***

After pre-trial, the parties submitted their Joint Stipulation of Facts and Issues, which the Court approved on October 12, 2011.

In support of its petition, petitioner[RCD] presented its Accounting Head, Maricel Relosa and its President, Arvin B. Francisco.

Witness Maricel Relosa executed a Judicial Affidavit, and testified that as petitioner's [RCD's] Accounting Head, she prepares its Financial Statements and reviews its ITRs and Financial Statements in coordination with its external auditors and then General Manager (GM) and Chief Operations Officer (COO), Arvin Francisco. Allegedly, petitioner [RCD] is engaged in the business of real estate marketing and brokerage and/or acts as agents to any person, corporation, domestic or foreign, for and in transaction relative to the acquisition, sale, lease, exchange, mortgage, disposition of administration and management of real estate of all kinds. As broker, petitioner's [RCD's] creditable taxes were based on its gross commissions pursuant to Revenue Regulations No. (R.R. No.) 2-98, as amended, which amounted to P38,737,487.00 for the year 2008.

On April 24, 2009, petitioner [RCD] filed its Annual ITR and amended it on April 24, 2009 reflecting its CWT for 2008 in the amount of P3,873,748.70 as indicated in the Schedule of Creditable Tax Withheld at Source and the Certificates of Creditable Tax Withheld at Source issued by its various customers for the first to the fourth quarter of 2008. The said amount consists of: 1) the creditable tax withheld at source for the first three quarters in the aggregate amount of P2,905,311.53; and 2) the creditable tax withheld at source for the fourth quarter in the amount of P968,437.18.

After deducting its 2008 income tax liability of P117,584.40 from its CWT for the same year in the amount of P3,873,748.70, P3,756,164.30 CWT remained which was not carried-over to the succeeding year 2009 as shown in petitioner's [RCD's] 2009 Quarterly ITRs and Annual ITR for taxable year 2009.

On August 6, 2009, then petitioner's [RCD's] GM and COO Arvin B. Francisco wrote the BIR RDO No. 48, Makati City, requesting for issuance of TCC on its unutilized CWT for 2008 of P3,756,164.30, attaching thereto BIR Form No. 1914. In response, the BIR issued LOA No. 200800034514 dated July 27, 2009 with a formal request for submission of certain documents for examination.

On February 17, 2011, petitioner [RCD] received a First Notice for Presentation of Records from BIR RDO No. 48. Petitioner [RCD] complied on March 7, 2011 by submitting the requested documents as evidenced by a Transmittal Receipt, which was duly received by BIR RDO No. 48 on the same date. There being no action taken by respondent [CIR] despite compliance, petitioner [RCD] filed the instant Petition for Review on April 14, 2011.

Witness Relosa clarified that the CWT subject of the claim for refund came from petitioner's [RCD's] sale of real estate services. Petitioner [RCD] sells houses and lots from which it gets commission. She admitted that although the Certificates of Creditable Tax Withheld at Source, marked as Exhibits "K-63" to "K-69," were issued to Roland C. Delantar, they were part of the claim as they were its transactions. Rolando C. Delantar merely acted as broker who did not even get any commission from them. Rolando C. Delantar is petitioner's [RCD's] former president and RCD stands for his name.

Witness Arvin B. Francisco, through his Judicial Affidavit, testified that he is the current President of RCD Realty Marketing Corporation. He was its General (GM) Manager from June 1, 2003 to July 31, 2011 and was in charge of the entire operation — both administrative and financial. He regularly met with the Accounting Department to review the financial condition of the company. He likewise reviewed and signed its tax returns.

Petitioner [RCD] is into real estate business. It acts as broker or agent to any person, corporation, domestic or foreign, in transactions concerning the acquisition, sale, lease, exchange, mortgage, disposition, administration or management of real estate of all kinds.

Petitioner [RCD] filed a claim for refund of its excess CWT for the year 2008 in the amount of P3,756,164.30, as reflected in its 2008 ITR which indicated an income tax liability of only P117,584.42. The said income tax liability was paid by applying the CWT for the year 2008 which amounted to P3,873,748.71.

He noted the letter for refund signed by petitioner's Accounting supervisor, Maricel Relosa but he signed the BIR Form No. 1914.

Petitioner [RCD] did not offset the excess CWT with other tax liabilities in view of the information that automatic off-setting was not allowed. Petitioner [RCD] did not also carry over the said amount as shown in its Annual and Quarterly ITRs for the year 2009. *ge*

The same witness further testified that petitioner's [RCD's] ITR and Financial Statement for the year ended December 31, 2008 filed with the BIR, reflected a total revenue of P38,737,487.00 for sale of services. The amount of P3,873,748.70 represented the total CWT by petitioner's [RCD's] customers. He declared that Maricel Relosa failed to include another Certificate of Creditable Tax Withheld at Source issued by Malate Construction & Development Corporation for the amount of P103,720.46.

About three (3) of petitioner's [RCD's] customers, namely, Earth Style Corporation, Earth Prosper Corporation and Filinvest Land, Inc., issued Certificates of Creditable Tax Withheld at Source in the name of petitioner's [RCD's] previous President, Rolando C. Delantar. Since they were already submitted to the BIR, they could no longer be replaced by new certificates in the name of petitioner [RCD]. However, both the Certificate of Registration issued by the HLURB and the Real Estate License Certificate issued by the DTI show that RCD Realty Marketing Corporation acts through Rolando C. Delantar.

Finally, petitioner [RCD] sought judicial intervention on April 15, 2011 since it did not receive any report from the BIR pertaining to its administrative claim for refund.

After petitioner [RCD] rested its case, counsel for respondent [CIR] manifested that the latter would no longer present evidence in the absence of final report from the revenue examiner regarding petitioner's [RCD's] claim for refund.

Despite the Court's directive, only petitioner [RCD] filed a memorandum on November 26, 2012."

On November 18, 2013, the CTA Special First Division partially granted RCD's Petition for Review and ordered CIR to refund or issue a tax credit certificate in favor of RCD in the amount of P3,696,086.43, representing its unutilized creditable income taxes withheld for the taxable year 2008.

On December 26, 2013, CIR filed a Motion for Reconsideration. On February 24, 2014, this motion was denied for lack of merit. *gr*

On March 20, 2014, the Court *En Banc* granted CIR's "Motion for Extension of Time to File Petition for Review." On March 27, 2014, CIR filed the Petition for Review.

On June 9, 2014, the Court *En Banc* noted CIR's "Compliance" submitting the certified true copy of Revenue Delegation Authority Order No. 2-2007.

On July 9, 2014, this Court ordered RCD to file its Comment. RCD's Comment was filed on August 14, 2014.

On September 25, 2014, this Court ordered the parties to file their Memoranda.

On March 5, 2015, this Court submitted this case for decision. The Court *En Banc* considered RCD's Manifestation filed on November 17, 2014 that it is adopting the arguments raised in its Comment as its Memorandum. On the other hand, CIR failed to file Memorandum.

Hence, this Decision.

ISSUE

WHETHER THE HONORABLE COURT OF TAX APPEALS (SPECIAL FIRST DIVISION) ERRED WHEN IT PARTIALLY GRANTED THE REFUND/ISSUANCE OF TAX CREDIT CERTIFICATE IN FAVOR OF RESPONDENT RCD REALTY MARKETING CORPORATION IN THE AMOUNT OF P3,696,086.43, REPRESENTING ITS UNUTILIZED CREDITABLE INCOME TAXES WITHHELD FOR THE TAXABLE YEAR 2008.

THIS COURT'S RULING

The petition is denied.

After a careful review of the assailed Decision and Resolution as well as the records of this case, the Court *En Banc* finds that the issue and arguments raised by CIR have already been considered by the Special 1st Division in its assailed Decision and Resolution. Be that as it may, pertinent issues need to be emphasized.

"The Court recognizes, as it always has, that the burden of proof to establish entitlement to refund is on the claimant taxpayer. Being in the nature of a claim for exemption, refund is construed in *strictissimi juris* against the entity claiming the refund and in favor of the taxing power."[5]

As correctly discussed by the Special 1st Division, there are requisites in order for RCD to be entitled to the relief [refund of its excess/unutilized creditable withholding taxes], as follows:

1. The claim for refund was filed within the two-year prescriptive period as provided under Section 204 (C)[6] in relation to Section 229[7] of the NIRC of 1997, as amended;

2. 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;

3. That the income upon which the taxes were withheld was included in the return of the recipient.[8]

There is no dispute that RCD has complied with the first requisite when it filed its claim for refund within the prescriptive period. We reiterate the following: ℊ

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[5] *Winebrenner & Iñigo Insurance Brokers, Inc. v. Commissioner of Internal Revenue*, G.R. No. 206526, January 28, 2015.

[6] 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.

[7] *Sec. 229. Recovery of Tax Erroneously or Illegally Collected.* — No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax penalty, or sum has been paid under protest or duress.

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 therefor, 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.

[8] Section 2.58, Revenue Regulations No. 2-98, as amended; *Citibank N.A. v. Court of Appeals, et al.*, G.R. No. 107434, October 10, 1997, 280 SCRA 475; *ACCRA Investments Corporation v. The Honorable Court of Appeals*, G.R. No. 96322, December 20, 1991, 204 SCRA 963.

> "Evidence shows that petitioner filed its Annual ITR for the year 2008 on April 15, 2009. Counting from the said date, petitioner had until April 15, 2011, within which to file both its administrative and judicial claims for refund/TCC. Clearly, petitioner's administrative claim for refund filed on August 6, 2009 and judicial claim via the instant Petition for Review filed on April 14, 2011 were within the two-year prescriptive limit."[9]

Anent the second requisite, RCD "presented Certificates of Creditable Tax Withheld at Source (BIR Form No. 2307) duly issued to it by various withholding agents/payors showing CWT in the total amount of P3,875,649.05."[10] However, only the amount of P3,873,748.71 CWT was reported by RCD.[11] In this case, RCD is claiming for refund the excess/unutilized CWT in the amount of P3,756,164.30 for taxable year 2008. However, the Special 1st Division disallowed the CWT in the amount of P60,077.87 supported by BIR Forms No. 2307 issued in the name of its President and not in the name of the claimant-taxpayer. [12]

RCD is not required to present proof of actual remittance by the withholding agent (payor) to the BIR nor to present testimonial evidence of the payors/withholding agents

CIR alleges that proof of actual remittance to the BIR of the withheld taxes and testimonial evidence of the payors and withholding agents are required. On the other hand, RCD contends that the proof of actual remittance of the creditable taxes withheld at source and the testimonial evidence of the withholding agents of such remittance is not essential in a claim for refund of unutilized creditable taxes withheld at source.

CIR's contention is untenable.

In *Commissioner of Internal Revenue v. Philippine National Bank,*[13] the Supreme Court reiterates the ruling in *Commissioner of Internal Revenue v. Asian Transmission Corporation,*[14] which is instructive:

> "... **proof of actual remittance by the respondent is not needed in order to prove withholding and remittance of taxes to petitioner. Section 2.58.3 (B) of Revenue Regulation No. 2-98 clearly provides that proof of remittance is the**

[9] Assailed Decision, p. 15; *Rollo*, p. 31.
[10] *Id.*
[11] Assailed Decision, p. 20; *Rollo*, p. 36.
[12] Assailed Decision, p. 23; *Rollo*, p. 39.
[13] G.R. No. 180290, September 29, 2014, 736 SCRA 609.
[14] G.R. No. 179617, January 19, 2011, 640 SCRA 189.

> **responsibility of the withholding agent and not of the taxpayer-refund claimant.** It should be borne in mind by the petitioner that **payors of withholding taxes are by themselves constituted as withholding agents of the BIR.** The taxes they withhold are held in trust for the government. In the event that the withholding agents commit fraud against the government by not remitting the taxes so withheld, such act should not prejudice herein respondent who has been duly withheld taxes by the withholding agents acting under government authority. Moreover, pursuant to **Sections 57 and 58 of the NIRC of 1997,** as amended, **the withholding of income tax and the remittance thereof to the BIR is the responsibility of the payor and not the payee.** Therefore, respondent, . . . has no control over the remittance of the taxes withheld from its income by the withholding agent or payor who is the agent of the petitioner. **The Certificates of Creditable Tax Withheld at Source issued by the withholding agents of the government are prima facie proof of actual payment by herein respondent-payee to the government itself through said agents.**" *(Emphases Supplied)*

Clearly, "[p]roof of actual remittance is not a condition to claim for a refund of unutilized tax credits. Under Sections 57[15] and 58[16] of the 1997 National Internal Revenue Code, as amended, it is the payor-withholding agent, and not the payee-refund claimant such as respondent, who is vested with the responsibility of withholding and remitting income taxes."[17]

Testimonial evidence of various payors or withholding agents is also not required to establish the fact of withholding because "the certificate of creditable tax withheld at source is the competent proof to establish the fact that taxes are withheld. It is not necessary for the person who executed and prepared the certificate of creditable tax withheld at source to be presented and to testify personally to prove the authenticity of the certificates."[18]

In this case, the various Certificates of Creditable Tax Withheld at Source (BIR Form No. 2307) issued by the payors/ withholding agents to payee RCD are sufficient proof of the fact of withholding. "The probative value of BIR Form 2307, which is basically a statement showing the amount paid for the subject transaction and the amount of tax withheld therefrom, is to establish only the fact of withholding of the claimed creditable withholding tax."[19] Moreover, "the figures appearing in the withholding tax certificates can be taken at face value since these documents were executed

[15] SEC.57. *Withholding of Tax at Source.*
[16] SEC. 58. *Returns and Payment of Taxes Withheld at Source.*
[17] *Commissioner of Internal Revenue v. Philippine National Bank, Supra,* Note 13.
[18] *Id.*
[19] *Philippine National Bank v. Commissioner of Internal Revenue*, G.R. No. 206019, March 18, 2015.

under the penalties of perjury."[20] Section 267 of the 1997 NIRC, as amended, provides:

> SEC. 267. *Declaration under Penalties of Perjury.* — Any declaration, return and other statement required under this Code, shall, in lieu of an oath, contain a written statement that they are made under the penalties of perjury. Any person who willfully files a declaration, return or statement containing information which is not true and correct as to every material matter shall, upon conviction, be subject to the penalties prescribed for perjury under the Revised Penal Code.

In *Commissioner of Internal Revenue v. Philippine National Bank,*[21] the Supreme Court also ruled that "upon presentation of a withholding tax certificate complete in its relevant details and with a written statement that it was made under the penalties of perjury, the burden of evidence then shifts to the Commissioner of Internal Revenue to prove that (1) the certificate is not complete; (2) it is false; or (3) it was not issued regularly." In this case, however, the CIR did not present any evidence to prove that the certificates were incomplete, false, or not issued regularly.

Considering the foregoing and after careful evaluation of the records of this case, We agree that RCD's claim was supported by BIR Forms No. 2307 except the total amount of P60,077.87. This Court reiterates with approval the findings and ruling of the Special 1st Division as follows:

> "BIR Forms No. 2307 issued in the name of its President, Rolando C. Delantar, representing CWT in the total amount of P60,077.87 was filed with flawed content since the payee in the said BIR Forms was an individual; while the one claiming to be the real party in interest is a corporation, the herein petitioner. The said infirmity or defect in the entry should have been rectified through amendment prior to the filing of the claim for refund. Further, under the 'Doctrine of Separate Corporate Personality', a corporation has a distinct and separate legal personality from its officials."[22]

Income upon which the taxes were withheld was included in the return of the recipient

CIR alleges that RCD failed to present the necessary documents whereby the income payments related to the claimed creditable withholding

[20] *Supra*, Note 17.
[21] *Id.*
[22] Assailed Decision, pp. 23-24; *Rollo*, pp. 39-40.

taxes may be traced and confirmed as forming part of the taxable gross income in the Income Tax Return. On the other hand, RCD argues that it discharged its burden of proving that the income payments related to the creditable taxes withheld subject of the claim for refund formed part of the taxable gross income reported in its annual income tax return for the year ended December 31, 2008.

CIR's contentions are bereft of merit.

Based on the records and as discussed in the assailed Decision, this Court agrees with the findings of the CTA Special 1st Division as follows:

> "Clear from petitioner's Quarterly ITRs for 2008 and its original and amended Annual ITRs for 2008 that the revenues received by petitioner from which the creditable taxes were withheld were declared part of its gross income for the year 2008.
>
> **The certificates prove that the claimed CWT in the amount of P3,873,748.71 was withheld on income payments in the amount of P38,737,487.02, the very same figure indicated as 'Sales/Revenues/Receipts/Fees' by petitioner in its amended Annual ITR for taxable year 2008.** Thus, petitioner had properly declared the income related to the reported CWT of P3,873,748.71."[23] *(Emphasis Supplied)*

No prior year's excess credits in its succeeding Quarterly and Annual ITRs for taxable year 2009

CIR argues that the presentation of RCD's Quarterly Income Tax Returns for the year 2009 is vital. CIR alleges that RCD failed to present and offer as evidence its Quarterly Income Tax Returns for the year 2009. In its Comment, RCD counter-argues that it presented its 2009 Quarterly and Annual Income Tax Returns to prove that it did not carry-over the amount subject of the instant claim for refund to the next taxable period.

"[T]hose who claim must not only prove its entitlement to the excess credits, but likewise must prove that no carry-over has been made in cases where refund is sought."[24]

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[23] Assailed Decision, p. 24; *Rollo*, p. 40.
[24] *Supra*, Note 5.

Upon careful examination of the records, this Court finds that RCD indeed presented its 2009 Quarterly and Annual Income Tax Returns to prove that the amount of CWT being claimed for refund for taxable year 2008 was not carried over to the next taxable period, thus, the contention of CIR has no basis. Upon examination of Line 30A of Exhibits "Q", "R, and "S" [Quarterly ITRs for taxable year 2009], and Line 27A of Exhibit "P [Annual ITR for taxable year 2009], We find no entry to the line *"prior year's excess credits,"* thus, this Court reiterates pertinent portions of the assailed Decision, as follows:

> "An examination of petitioner's original and amended Annual ITRs for taxable year 2008 revealed that it did not mark any of the three (3) option boxes in line 31 thereof. However, it filed a claim for refund with the BIR clearly indicating its intention to be refunded of its excess CWT in the amount of P3,756,164.30. Inasmuch as petitioner did not indicate any amount of prior year's excess credits in its succeeding Quarterly[25] and Annual ITRs[26] for taxable year 2009, the excess CWT of P3,756,164.30 for taxable year 2008 may be a subject of a claim for refund under Section 76[27] of the NIRC of 1997, as amended."[28]

Based on the foregoing discussions, the CTA *En Banc* finds no cogent reason to disturb the assailed Decision and Resolution of the CTA Special 1st Division.

We agree that RCD is entitled to the refund of its excess creditable taxes withheld at source for the year 2008 in the reduced amount of P3,696,086.43 as computed below:

Amount of Claimed Excess CWT	P3,756,164.30
Less: CWT supported by BIR Forms No. 2307 not in the name of petitioner	60,077.87
Refundable Excess CWT	P3,696,086.43

[25] Exhibits "Q", "R, and "S", Line 30A.
[26] Exhibit "P", Line 27A.
[27] 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.
[28] Assailed Decision, p. 12; *Rollo*, p. 28.

WHEREFORE, premises considered, the petition is **DENIED** for lack of merit. The November 18, 2013 Decision and February 24, 2014 Resolution of the CTA Special First Division in CTA Case No. 8271 are **AFFIRMED.**

SO ORDERED.

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

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

Ma. Belen R-L
MA. BELEN 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