REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

PHILIPPINE BANK OF COMMUNICATIONS,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. EB No. 560
(C.T.A. CASE NO. 7435)

x-----------------------------x

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus -

PHILIPPINE BANK OF COMMUNICATIONS,
Respondent.

C.T.A. EB No. 586
(C.T.A. CASE NO. 7435)

Members:
ACOSTA, *PJ*
CASTAÑEDA, JR.
BAUTISTA,
UY,
CASANOVA,
PALANCA-ENRIQUEZ,
FABON-VICTORINO,
MINDARO-GRULLA, and
COTANGCO-MANALASTAS, *JJ.*

Promulgated:
JUN 01 2011 Apolinario 10:00 a.m.

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DECISION

FABON-VICTORINO, J.:

At bar are the Petitions for Review filed by Philippine Bank of Commerce (PBCom) and the Commissioner of Internal Revenue (CIR) on November 19, 2009 and February 15, 2010, respectively, challenging the Amended Decision of the Court in Division dated October 29, 2009 in CTA Case No. 7435. Aside from the Amended Decision, the CIR also assails the Resolution dated January 8, 2011, denying its Motion for Reconsideration, effectively upholding the Amended Decision.

THE FACTS AND THE PROCEEDINGS

PBCOM is a duly organized local commercial bank with office at PBCOM Tower, 6795 Ayala Avenue corner Herrera Street, Makati City.

The CIR, on the other hand, is the duly appointed government official with the authority to refund unutilized excess creditable withholding taxes with office address at BIR National Office Building, Agham Road, Diliman, Quezon City,

On different occasions in 2003, PBCom entered into various business transactions which included among others leases and sales of properties for which the other parties withheld corresponding creditable withholding tax due therefrom.

On April 15, 2004, PBCom filed its Corporate Annual Income Tax Return (ITR) for calendar year ended December 31, 2003. Based on the said ITR, PBCom incurred a net loss of P1,388,875,427.00 for calendar year ended December 31, 2003.

On April 07, 2006, PBCOM filed an administrative claim for refund or issuance of a tax credit certificate with the Bureau of Internal Revenue (BIR).

About four days thereafter or on April 11, 2006, PBCom filed a Petition for Review with the Court in Division invoking the CIR's inaction on its claim for refund.

In the Answer filed on August 16, 2006, the CIR stated the following:

> 1. He admits the allegations in the first and second paragraphs under the heading 'THE PARTIES,' and in paragraph 2 under the 'MATERIAL DATES' of the petition.
>
> 2. He denies all the allegations made under the headings 'NATURE OF THE PETITION,' and 'STATEMENT OF ALLEGATIONS'; those made in paragraph 1 under the heading 'DISCUSSION' of the Petition because he has no knowledge or information sufficient to form a belief as to the truth thereof.

> 3. He denies the allegation in the first sentence of paragraph 3 under the heading 'MATERIAL DATES' because he has no knowledge or information sufficient to form a belief as to the truth thereof. He denies the allegation in the second sentence of the same paragraph and in paragraph 4 under the same heading for being erroneous conclusions of fact and law, the truth being that of the amount of P17,578,318.00 claimed for refund or issuance of a tax credit certificate, only the amount of P2,926,538.95 were supported with certificates of creditable taxes withheld at source as stated in the Memorandum of the OIC-Large Taxpayers Service dated May 9, 2006.

Trial ensued during which PBCom and the CIR raised the lone issue of whether PBCOM is entitled to a refund or issuance of a tax credit certificate in the amount of P17,578,318.00, representing the excess and/or unutilized creditable withholding taxes for the taxable year ending December 31, 2003.

On August 10, 2009, the Court in Division disposed the Petition for Review as follows:

> "**WHEREFORE**, premises considered, the instant Petition for Review is hereby **DENIED DUE COURSE**, and, accordingly **DISMISSED** for lack of merit.
>
> **SO ORDERED**."

Not giving up, PBCOM seasonably filed a Motion for Reconsideration insisting the validity of its claim to a refund or issuance of tax credit in the amount of PHP17,578,318.00, representing its excess and/or unutilized creditable withholding taxes for the taxable year ending December 31, 2003.

On October 29, 2009, the Court in Division partially reversed itself and ordered a refund in favor of PBCom albeit in the reduced amount of **FIVE MILLION SEVEN HUNDRED NINETY NINE THOUSAND TWO HUNDRED TWENTY ONE PESOS AND 42/100 (P5,799,221.42).** The decretal portion of the Amended Decision reads:

> "**WHEREFORE**, premises considered, respondent Commissioner of Internal Revenue is hereby **ORDERED TO REFUND OR TO ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner the reduced amount of **FIVE MILLION SEVEN HUNDRED NINETY NINE THOUSAND TWO HUNDRED TWENTY ONE PESOS AND 42/100 (P5,799,221.42)**, representing unutilized creditable withholding taxes for taxable year 2003.
>
> **SO ORDERED**."

Aggrieved by the Court's apparent change of heart, the CIR moved for a reconsideration of the foregoing Amended Decision on

November 20, 2009, to which PBCOM filed a Comment on December 10, 2009.

On January 08, 2010, the Court in Division stood firm on its decision and denied the CIR's Motion for Reconsideration dated November 18, 2009, for lack of merit.

Hence, these two Petitions for Review consecutively filed on December 04, 2009 by PBCOM docketed as C.T.A. EB No. 560 and on February 15, 2010 by the CIR docketed as C.T.A. EB No. 586.

On March 11, 2010, the two Petitions for Review were consolidated in accordance with Section 1, Rule 31 of the Revised Rules of Court.

In its Petition for Review, PBCom claims that the Court in Division erred in ruling that it is entitled to a refund or tax credit of only P5,799,221.42. Allegedly, the disallowed amount of P1,084,200.00 should be included in the adjudged excess or unutilized creditable withholding tax payments albeit erroneous use of Capital Gains Tax Returns (CGTR) which reflect the amount of taxes withheld and paid.

PBCom believes that it has complied with all the requirements for a valid claim for refund or tax credit of excess and unused creditable withholding tax payments. It seasonably filed its administrative and judicial claims for refund on April 7, and April 11, 2006, respectively, or within two years from the time it filed its ITR on April 15, 2005. The CGTRs it presented in Court show that taxes due from its transactions in 2003 were withheld. Per the ICPA Report, its Income Tax Return (ITR) filed in 2004 shows that the income upon which the taxes were withheld was included as part of PBCom's gross income. Finally, the excess creditable withholding taxes subject of the present claim for refund or tax credit have not been carried over and utilized in the subsequent years.

The CIR however takes a different stance. She argues that PBCOM failed to fully comply with the requirements mandated in Section 2.58.3 of Revenue Regulations No. 2-98 (RR No. 2-98), otherwise known as the Withholding Tax Regulations, to wit:

> 1) That the claim for refund was filed within the two (2) year reglementary period, prescribed under Section 204 (c), in relation to Section 229 of the National Internal Revenue Code (NIRC) of 1997, as amended;

2) That the fact of withholding is established by a copy of the statement duly issued by the payor (withholding agent) to the payee (BIR Form No. 1743-A), showing the amount paid and the amount of tax withheld therefrom; and

3) That it is shown on the return of the recipient that the income payment received was declared as part of the gross income declared in the income tax return of the recipient (Citibank NA v. CA, 280 SCRA 459).

While the CIR admits that the application for refund was seasonably filed in accordance with law, she posits that no sufficient documents were submitted in the administrative level indicating that the claim involves refund of creditable withholding tax payments. PBCom also erroneously used CGTRs to substantiate its claim for refund of creditable withholding taxes which is fatal to its application and inexcusable for a large commercial bank such as it.

Further, PBCom did not accord her sufficient time to evaluate and process its application for refund in violation of the rules. The judicial action was taken barely three (sic) days from the filing of the application for refund with the CIR. And only before the Court in Division that PBCom submitted relevant documents relative to its claim for refund. Given the ruling in *Atlas Consolidated Mining* *and Development Corporation v. CIR,* G.R. No. 145526, March 26, 2007, it is imperative upon PBCom to submit all relevant documents to substantiate its administrative claim for refund for her to be able to assess the validity of the same. The CIR points out that without an adverse decision or inaction on her part, appeal before the CTA is unavailing. Also well-established is the principle that issues not raised in the administrative level cannot be raised for the first time on appeal before the CTA.

Moreover, in an action for refund, the burden of proof is on the taxpayer, but PBCom utterly failed to discharge this burden. Neither testimonial nor documentary evidence was adduced to prove the fact of withholding. PBCom also failed to establish that the income from which the taxes were withheld was declared as part of its gross income. Worse, it erroneously presented CGTRs to support its claim for refund of creditable withholding tax payments.

The CIR, on the other hand, pursues the same line of arguments as the above in its own Petition for Review docketed as CTA EB No. 586. She practically lifted the arguments from her Comment and Memorandum filed in CTA EB No. 560 and squeezed them into her initiatory pleading to justify her prayer to deny

PBCom's claim for refund in its entirety. She insists that since PBCom's failed to fully substantiate its claim in the administrative level, there is no reason and rhyme for the Court in Division to entertain the appeal.

The Court in Division cannot also sweepingly invoke the case of *Philippine Asset Management, Inc. vs. CIR,*[1] in partially granting PBCom's claim for refund simply because it is not applicable. In the cited case, only the Final Adjusted Return (FAR) of the preceding year was required without need to submit that of the succeeding years. But the withholding tax statements of therein taxpayer was not doubtful, in stark contrast with the instant case where there is insufficient documentation warranting PBCom's presentation of its FAR for the succeeding years.

Finally, it was erroneous for the Court in Division to require the CIR to present PBCom's 1st, 2nd, and 3rd quarterly income tax returns for the succeeding years alleged to be in her possession to disprove the subject claim for refund. The burden of proving entitlement to refund rests on the taxpayer and not the other way around.

[1] G.R. No. 156637 and 162004.

In rejecting this petition filed by the CIR, PBCOM asseverates that the Court in Division can receive evidence not presented in the administrative level as well as entertain new matters on appeal. The hearing before the Court in Division is deemed trial *de novo* and the Court is authorized to receive evidence to determine the validity of the respective claims of the stakeholders. Besides, no new matter was raised by PBCom before the Court in Division. At the onset, PBCom has consistently implored for a refund of its excess or unutilized creditable withholding tax payments for the taxable year ending December 31, 2003.

As to the CIR's claim that she was not given sufficient time to process the claim, PBCOM contends that a taxpayer need not wait for her decision before seeking relief from the Court especially when the two-year prescriptive period for filing the claim for refund under Section 229 of the NIRC is about to lapse, lest the remedy of appeal will no longer be available.

It is likewise incorrect for the CIR to interpret the Amended Decision as requiring her to present evidence to dispute PBCOM's entitlement to refund. The Court in Division merely ruled that PBCom is not mandated to prove that its claimed tax credits had not been carried over to the succeeding taxable years provided that it had established that its entitlement to the refund sought for the particular year. This simply means that since the 1st, 2nd, and 3rd quarterly income tax returns and the FAR for the succeeding year of PBCom were filed and were in the custody of the CIR, the latter could have presented them with ease on rebuttal to show that contrary to its claim, PBCom had utilized the claimed tax credits to the succeeding years, thereby disentitling it to the refund sought.

In addition, the Court in Division did not merely rely on *Philippine Asset Management, Inc. vs. CIR.*[2] It examined the 1st, 2nd, and 3rd quarterly ITRs of PBCom for the succeeding years and came up with the observation that the claimed excess tax credits were indeed not utilized in succeeding years.

THE RULING OF THE COURT

In its Petition for Review docketed as CTA EB No. 560, PBCom no longer insists that it is entitled to its total claim of P17,578,318.00, allegedly representing its excess and unutilized creditable withholding tax payments in 2003. However it maintains that the amount of P1,084,200.00 was erroneously

[2] G.R. No. 156637 and 162004.

disallowed by the Court in Division solely only the ground that it is evidenced by CGTRs, which after all reflect the amount of taxes withheld and paid to the government.

On the other hand the CIR, in her own Petition for Review docketed as CTA EB No. 586, says that PBCom is not entitled to any refund, even in the reduced amount of P5,799,221.42 awarded in the assailed Amended Decision.

With the foregoing stance, the Court *En Banc* is confronted with practically only two issues for resolution and they are as follows:

1. Whether the Court in Division erred in granting PBCom's Petition for Review albeit partially in the reduced amount of P5,799,221.42; and
2. Whether the Court in Division erred in disallowing the refund of P1,084,200.00, evidenced by CGTRs presented during the trial.

To be entitled to refund or issuance of a tax credit certificate of excess creditable withholding tax at source, the taxpayer must prove full compliance with the requisites mandated in Section

2.58.3 of Revenue Regulations No. 2-98, otherwise known as the Withholding Tax Regulations, which for ready reference is hereby reproduced as follows:

> Sec. 2.58.3. ***Claim for tax credit or refund.***
>
> (A) The amount of creditable tax withheld shall be allowed as a tax credit against the income tax liability of the payee in the quarter of the taxable year in which income was earned or received.
>
> (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.
>
> Proof of remittance is the responsibility of the withholding agent.
>
> (C) Excess Credits – An individual or corporate taxpayer's excess expanded withholding tax credits for the taxable quarter/year shall automatically be allowed as a credit against his income tax due for the taxable quarters/years immediately succeeding the taxable quarters/years in which the excess credit arose, provided he submits with his income tax return, a copy of the first page of his income tax return for the previous taxable period showing the amount of his excess withholding tax credits, and on which return he has not opted for a cash refund or tax credit certificate.
>
> (1) If in lieu of the automatic application of his excess credit, the taxpayer wants a cash refund or a tax credit certificate for use in

> payment of his other national internal revenue tax liabilities, he shall make a written request therefor, within two years after the payment of the tax (Ref. Secs. 204(c) and 229 of the Code), provided however, that if the taxpayer has indicated in his income tax return his option for either a cash refund or a tax credit certificate, such indication shall be considered sufficient for the purpose. Upon filing of his request, the taxpayer's income tax return showing the excess expanded withholding tax credits shall be examined. The excess expanded withholding tax so determined, shall be refunded/credited to the taxpayer. x x x

Thus, claims for refund of income taxes deducted and withheld from income payments shall be given due course only:

> (1) when it is shown on the ITR that the income payment received is being declared part of the taxpayer's gross income; and
>
> (2) when 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 income tax withheld from that amount.[3]

In addition, the claim for refund must be filed within the two (2) year period prescribed under Sections 204 and 229 of the National Internal Revenue Code (NIRC), which reads as follows:

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

[3] Philam Asset Management vs. CIR, G.R. Nos. 156637/162004, December 14, 2005.

(A) x x x
(B) x x x
(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. <u>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</u>: *Provided, however,* That a return filed showing an overpayment shall be considered as a written claim for credit or refund.

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.

<u>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</u>; *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. *(underscoring ours)*

The two-year prescriptive period is reckoned from the filing of the Final Adjusted Return (FAR).[4] There is no dispute that PBCom filed its Annual ITR for taxable year 2003 on April 15, 2004.[5] And that both its administrative and judicial claims for refund were seasonably filed on April 07, 2006[6] and April 11, 2006, or before the two-year prescriptive period expired on April 15, 2006.

The fact of withholding was established through the withholding tax statement duly issued by the payor to PBCom, showing the amount paid and the income tax withheld therefrom. This is clear from the Reports dated December 03, and 18, 2007[7] submitted by the Court-Commissioned Independent Certified Public Accountant (ICPA) Jerome Antonio B. Constantino of the Constantino Guadalquiver & Co. An extract from his findings is as follows:

Findings	Annex Ref.	Amount of CWT
A. Creditable withholding tax payments properly supported by original Withholding Tax Remittance Returns (BIR Form 1606), Capital Gains Tax Remittance (BIR Form 1706), Certificates of Creditable Tax Withheld at Source (BIR Form 2307), CAR-BIR Returns, PVS and other documents evidencing remittance of taxes withheld (remittance receipt).		
Sale of Property		
1. Creditable withholding tax payments supported by BIR Returns stamped as "Received" by the BIR agent and other documents evidencing	Annexes 1 and 8	P13,001,191.27

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[4] CIR vs. Primetown Property, G.R. No. 162155, August 28, 2007.
[5] Exhibit "A".
[6] Exhibit "B".
[7] Exhibit "YYY," pp. 3 to 5 and Exhibit "YYY-15," p. 1.

remittance such as Bank Validated Deposit Slip or Bank Official Receipt		
2. Creditable withholding tax payments supported by BIR Returns not stamped as "Received" by the BIR agent but with other documents evidencing remittance such as Bank Validated Deposit Slip or Bank Official Receipt	Annex 2	171,000.00
3. Creditable withholding tax payments supported by Certified True Copy of BIR Returns stamped as "Received" by the BIR Agent and other documents evidencing remittance such as Bank Validated Deposit Slip or Bank Official Receipt	Annex 3	173,400.00
4. Creditable withholding tax payments supported by Certified True Copy of BIR Returns not stamped as "Received" by the BIR agent but with other documents evidencing remittance such as Bank Validated Deposit Slip or Bank Official Receipt	Annex 4	54,000.00
5. Creditable withholding tax payments supported by CAR and PVS	Annex 5	1,776,000.00
6. Creditable withholding tax payments supported by CAR and Bank Validated Deposit Slip or Bank Official Receipt	Annex 6	52,488.00
<u>*Lease of Office Space*</u>		
1. Creditable withholding tax payments supported by Certificate of Creditable Tax Withheld at Source (BIR From 2307)	Annex 7	758,964.11
Sub total		**P15,987,043.38**
B. Other Findings		
<u>*Sale of Property*</u>		
1. Creditable withholding tax payments without available supporting documents	Annex 9	1,590,824.62
<u>*Lease of Office Space*</u>		
1. Creditable withholding tax payments without available supporting documents	Annex 10	450.00
Sub total		**P 1,591,274.62**
TOTAL		**P17,578,318.00**

But as to the third requisite requiring proof that the income payments received have been declared as part of the taxpayer's gross income as shown in the ITR for the relevant period, the

Court *En Banc* cannot agree more with the Court in Division in its finding, to wit:

> "As regards the third requisite, this Court finds that in petitioner's (PBCOM) Annual Income Tax Return for taxable year 2003, petitioner reflected a gross income amount of P1,401,140,111.00 (*Exhibit "A", Line 14C).* However, as regards the substantiation to prove that the income withheld was declared as part of petitioner's gross income, the ICPA found that the amount of P10,496,972.58 was not duly supported, and it cannot be determined whether it was declared as part of petitioner's Annual ITR and in the Audited FS, thus:

Findings	Annex Ref.	Amount of CWT
A. Creditable withholding tax payments with related income included in the Company's Annual Income Tax Return		
Sale of Property		
1. Creditable withholding tax payments with related income included in the Company's Annual ITR as traced to Deed of Absolute Sale, Ticket, Subsidiary Ledger, Company-prepared Reconciliation of PLASE, Audited FS, Annual ITR, and Official Receipt	Annexes 11	P4,309,980.00
2. Creditable withholding tax payments with related income included in the company's Annual ITR as traced to Deed of Absolute Sale, Ticket, Subsidiary Ledger, Company-prepared Reconciliation of PLASE, Audited FS, and Annual ITR	Annex 12	695,880.00
3. Creditable withholding tax payments with related income included in the Company's Annual ITR as traced to Deed of Absolute Sale, Subsidiary Ledger, Company-prepared Reconciliation of PLASE, Audited FS, Annual ITR and Official Receipt	Annex 13	18,000.00
4. Creditable withholding tax payments with related income included in the company's Annual ITR as traced to Ticket, Subsidiary Ledger, Company-prepared Reconciliation of PLASE, Audited FS, Annual ITR and Official Receipt	Annex 14	1,713,000.00

<u>*Lease of Office Space*</u>		
1. Creditable withholding tax payments with related income included in the Company's Annual ITR as traced to Contract of Lease for Office Space, BIR Form 2307, Official Receipt, Partial Subsidiary Ledger, Company-prepared Reconciliation of Miscellaneous Income Rental, Audited FS, and Annual ITR	Annex 15	344,485.42
Sub total		**P7,081,345.42**
B. Other Findings		
<u>*Sale of Property*</u>		
1. Creditable withholding tax payments with related income traced to Deed of Absolute Sale, Ticket, and official Receipt	Annex 16	P36,000.00
2. Creditable withholding tax payments with related income traced to Deed of Absolute Sale and Ticket	Annex 17	579,000.00
3. Creditable withholding tax payments with related income traced to Ticket	Annex 18	12,000.00
4. Creditable withholding tax payments with related income traced to Deed of Absolute Sale and Official Receipt	Annex 19	715,428.00
5. Creditable withholding tax payments with related income traced to Deed of Absolute Sale and incomplete Official Receipt	Annex 20	3,888.00
6. Creditable withholding tax payments with related income traced to Deed of Absolute Sale	Annex 21	690,048.00
7. Creditable withholding tax payments with related income traced to Official Receipt	Annex 22	383,277.00
8. Creditable withholding tax payments without available supporting document to trace the related income to the Company's Annual ITR	Annex 23	7,662,402.89
<u>*Lease of Office Space*</u>		
1. Creditable withholding tax payments with related income traced to Contract of Lease for Office Space, Certificate of Creditable Tax Withheld at Source (BIR Form 2307), and Official Receipt	Annex 24	127,499.48
2. Creditable withholding tax payments with related income traced to Contract of Lease for Office Space, Certificate of Creditable Tax Withheld at Source (BIR Form 2307), and incomplete Official Receipt	Annex 25	93,859.14
3. Creditable withholding tax payments		

without available supporting document to trace the related income to the Company's Annual ITR except for the Certificate of Creditable Tax Withheld at Source (BIR Form 2307)	Annex 26	193,570.07
Sub total		**P10,496,972.58**
TOTAL		**P17,578,318.00**

The creditable withholding tax payment with related income traced to the Company's Annual ITR amounted to P7,081,345.42 x x x. However, out of the total amount of P7,081,345.42, only P6,805,421.42 were properly supported with BIR Returns and other documents evidencing remittance of creditable tax withheld. We were not able to check whether the related income of the withholding tax payments amounting to P10,496,972.58 were included in the Company's Audited FS and Annual IR because the related documents were not available for examination as of the date of our report. x x x" (*Exhibit "YYY", pp. 7 to 9*)

A further scrutiny of the records shows that the amount of P7,081,345.42 is broken down as follows:

	Payor		CWT
1	Abdulhamid Aleen Imran	P	54,000.00
2	Ang, Bernardo		90,000.00
3	Callao, Loreto		36,000.00
4	Cantomayor, Dorothy A.		44,280.00
5	Carpio, Daisy		12,000.00
6	Erce, Elma-Marilao Branch		48,000.00
7	GGO Summit Corp.		1,020,000.00
8	Hobitton, Inc.		780,000.00
9	KS Haulers Inc.		78,000.00
10	Lim, Ma. Michaela Diamzon Magtoto		180,000.00
11	Lu, Joaquin		600,000.00
12	Mangilet, Marilyn		48,000.00
13	Murphy, Celeste M.		67,500.00
14	Pasibalo, Roberto/Josephine		90,000.00
15	Potot, Jeffrey		4,200.00
16	Saavedra, Felix U.		78,000.00
17	Shogun Properties Holding Corp.		420,000.00
18	Teh, Maricon and Ronald		198,000.00
19	Urutia Marianne Borguyan		72,000.00
20	Villodres, Roberto & Venus		90,000.00
21	Yu, Edward		300,000.00
22	Chua, Charlie/Shi Shan Ling		480,000.00
23	Chua, Joselito Calipana		104,880.00
24	Tiu, Elena		60,000.00
25	Trillanes, Isabelita Hernandez		51,000.00
26	Faeldonia, Josephine		18,000.00
27	Gusa Realty & Development Corp		1,635,000.00
28	Tubupan, Editha		78,000.00
29	La Farge Cement Service Inc.		100,931.70
30	La Farge Cement Service Inc.		100,931.70
31	La Farge Cement Service Inc.		107,028.82

32 LG System Philippines	450.00
33 LG System Philippines	450.00
34 LG System Philippines	17,346.60
35 LG System Philippines	17,346.60
TOTAL	**P7,081,345.42**

Exhibit "YYY", Annexes 11 to 15

This Court, however, finds that as regards the creditable withholding tax payments with related income traced to petitioner's Annual ITR amounting to P7,081,345.42, the same must be reduced, as follows:

Exhibit	**Payor**			
1. Discrepancy in amount claimed				
		Claim	**BIR Form 1606**	**Difference**
YYYY-3.46	Shogun Properties Holding Corp.	P420,000.00	P390,526.00	P29,474.00
	Sub total			**P29,747.00**
2. Supported with BIR Form 1706 Capital Gains Tax Return				
YYYY-3.55	Ang, Bernardo			P90,000.00
YYYY-3.60	Lu, Joaquin			600,000.00
YYYY-3.64	Potot, Jeffrey			4,200.00
YYYY-3.67	Villodres, Roberto & Venus			90,000.00
YYYY-3.68	Yu, Edward			300,000.00
	Sub total			**P1,084,200.00**
3. Without supporting documents				
	Abdulhamid Aleen Imran	Included in Annex 9 of CPA Report		P54,000.00
	Erce, Elma-Marilao Branch	Included in Annex 9 of CPA Report		48,000.00
	Mangilet, Marilyn	Included in Annex 9 of CPA Report		48,000.00
	Faeldonia, Josephine	Included in Annex 9 of CPA Report		18,000.00
	LG System Philippines	Included in Annex 10 of CPA Report		450.00
	Sub total			**P168,450.00**
	TOTAL			**P1,282,124.00**

Even though the related income pertaining to the amount of P1,084,200.00 (under item 2) was verified by the ICPA to have been reported as part of petitioner's income, the same should be disallowed as the supporting documents show that said amount pertained to capital gains tax and not to creditable withholding tax.

Thus, this Court holds that the claimed creditable withholding taxes in the amount of P7,081,345.42, the related income of which was verified by the Independent CPA to have been reported in petitioner's 2003 Annual ITR, should be reduced by P1,282,124, in accordance with the above-findings.

In sum, petitioner has sufficiently complied with the first, second and third requisites, but only to the extent of P5,799,221.42 out of the total claimed creditable withholding taxes of P17,578,318.00, computed as follows:

Amount of claimed creditable withholding taxes		P17,578,318.00
Less: Disallowances		
a. Creditable withholding taxes the related income of which was not verified to have been included in Petitioner's annual income tax return for 2003	P10,496,972.58	
b. Creditable withholding taxes not duly supported by valid proofs of withholding	1,282,124.00	11,779,096.58
Refundable creditable withholding taxes		**P5,799,221.42**

In fine, the Court in Division did not err in partially granting PBCom's claim for refund or tax credit in the reduced amount of P5,799,221.42, the amount properly supported by BIR returns and other documents evidencing remittance of creditable tax withheld.

Insofar as the amount of P1,084,200.00 is concerned, while it may be conceded that the same had been reported as part of PBCom's income in the ITR, the same should be disallowed as the documents in support thereof pertain to capital gains tax and not creditable withholding tax. Notably, no other evidence was adduced to justify inclusion of this amount to creditable withholding tax payments that could be subject to refund.

Consequently, the creditable withholding tax payments with related income traced to petitioner's Annual ITR had been reduced from P7,081,345.42 to only P5,799,221.42.

The importance of complying with the substantiation requirement for claiming refund in accordance with the relevant law cannot be overemphasized. A CGTR is certainly not the required document for PBCom's purpose. As correctly pointed out by the CIR, PBCOM is a large banking institution which has been in operation for many years and is therefore expected to be well versed in whatever comes with the territory. Indeed, it is inconceivable for it to insist that CGTRs could be used to justify its claim for refund of the disallowed amount simply because they contain the amount of tax withheld and paid.

In this regard, the case of *Banco Filipino vs. Court of Appeals*,[8] where the claim for refund was disallowed due to the use of the wrong form, is instructive, thus:

> "Petititioner argues that its Exhibit "II" and Exhibits "C" through "Z" should be accorded the same probative value as a BIR Form No. 1743.1, for said documents are also official BIR forms and they reflect the fact that taxes were actually withheld and remitted. It appeals for liberality considering that its annual return clearly shows that it is entitled to creditable withholding tax.

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

The Court rejected a similar plea for liberality just recently in *Far East Bank and Trust Company v. Court of Appeals*. In that case, Far East Bank and Trust Company (FEBTC), acting as the surviving entity from a merger with Cavite Development Bank (CDB), filed a claim for refund of creditable taxes withheld by CDB from the sale of its acquired assets. FEBTC attached to its claim: a) confirmation receipts, payment orders and official receipts issued by the Central Bank and the BIR; b) Income Tax Returns supported by financial statements filed by FEBTC with the BIR; and c) a schedule prepared by FEBTC Accounting Department of the creditable withholding taxes of CDB. FEBTC did not, however, attach any BIR Form No. 1743.1. The CTA and CA disallowed FEBTC's claim for refund. The Court affirmed the CTA and CA, thus:

> As mentioned, petitioner relies heavily on the confirmation receipts with the corresponding official receipts and payment orders to support its case. ***Standing alone, however, these documents only establish that CDB withheld certain amounts in 1990 and 1991. It does not follow that the payments reflected in the confirmation receipts relate to the creditable withholding taxes arising from the sale of the acquired properties.*** The claim that CDB had excess creditable withholding taxes can only be upheld if it were clearly and positively shown that the amounts on the various confirmation receipts were the amounts withheld by virtue of the sale of the acquired assets. On this point, the CA correctly pronounced:
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>> The confirmation receipts alone, by themselves, will not suffice to prove that the taxes reflected in the income tax returns are the same taxes withheld from CDB's income payments from the sale of its acquired assets. ***This is because a cursory examination of the said Confirmation Receipts, Payment Orders and Official Receipts will show that what are reflected therein are merely the names of the payors and the amount of tax. The nature of the tax paid, or at the very least, the income payments from which the taxes paid were withheld are not reflected therein.*** If these are the only entries that are found on these proferred documents, We cannot begrudge the Respondent Court from

> nurturing veritable doubts on the nature and identity of the taxes withheld, when it declared, in part, in its Decision (*Annex "A" of the Petition)* that, "It can not well be said that the amounts paid and remitted to the BIR were for CDB's account and not for the other possible payees of withholding taxes which CDB may also be liable to remit as a withholding agent x x x".
>
> x x x x x x x x x
>
> For all its deficiencies, therefore, petitioner's Exhibits "C" through "Z" cannot take the place of BIR Form No. 1743.1 and its Exhibit "II," of BIR Form No. 1743-750. Petitioner cannot fault the CA and CTA for finding said evidence insufficient to support its claim for tax refund. Such finding of both courts, obviously grounded on evidence, will not be so lightly discarded by this Court, not even on a plea for liberality of which petitioner, by its own negligence, is undeserving."

Anent the CIR's claim that the Court in Division erred in holding that PBCOM need not submit its ITR for the 1st, 2nd, and 3rd quarters of taxable year 2004, suffice it to say that these documents have been attached to PBCom's Motion for Reconsideration filed on August 28, 2009, and they became part of the record of the cases. These documents, as well as all the previous evidence presented, were evaluated and re-evaluated by the Court in Division in arriving at the Amended Decision, thus allaying any misgivings that the CIR might have regarding the non-presentation of these documents.

Time and again, it has been ruled that tax refunds are in the nature of tax exemptions which are construed *strictissimi juris* against the taxpayer and liberally in favor of the government. Strict interpretation against the taxpayer means in close conformity with the relevant revenue laws, rules and regulations, lest the claim must fail. Since tax refunds involve a return of much needed revenue from the government, the claimant must indubitably show the specific provision of the law from which the right arises. It cannot be allowed to exist upon mere vague implication or uncertain or indefinite inference nor can it be extended beyond the ordinary and reasonable intendment of the language actually used by the legislature in granting the refund. To repeat, strict compliance with the conditions or requirements imposed for the return of revenue collected is a doctrine consistently applied in this jurisdiction.[9] It is therefore incumbent on the taxpayer to prove every minute aspect of its case, to the details.

Precisely, there is no merit in the CIR's claim that PBCom is precluded from presenting supporting evidence on appeal before the Court in Division as it failed to submit sufficient documentation in the administrative level. Non-submission of supporting

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[9] Atlas Consolidated Mining vs. CIR, G.R. No. 159490, February 18, 2008; CIR v. Rosemarie Acosta, G.R. No. 1540681, August 3, 2007.

documents in the administrative level is not fatal to a claim for refund. Judicial claims are litigated *de novo* and decided based on what has been presented and formally offered by the parties during the trial. In the case of *CIR vs. Manila Mining Corporation*,[10] it was explained that "Under Section 8 of RA 1125, the CTA is described as a court of record. As cases filed before it are litigated *de novo*, party litigants should prove every minute aspect of their cases." Finally, pieces of evidence submitted in the administrative proceeding have no evidentiary value unless presented and formally offered before the Court.

WHEREFORE, the Petition for Review dated December 03, 2009, filed by Philippine Bank of Communications and the Petition for Review dated February 10, 2010, filed by the Commissioner of Internal Revenue are hereby **DENIED,** for lack of merit.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

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[10] G.R. No. 153204, August 31, 2005.

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

(On Leave)
ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
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.

ERNESTO D. ACOSTA
Presiding Justice