# REPUBLIC OF THE PHILIPPINES
# Court of Tax Appeals
# QUEZON CITY

## *FIRST DIVISION*

**SB EQUITIES, INC.,**
Petitioner,

- versus -

**COMMISSIONER OF INTERNAL REVENUE,**
Respondent.

**CTA Case No. 8258**

Members:

**ACOSTA,** *Chairperson*
**UY,** *and*
**FABON-VICTORINO,** *JJ.*

**Promulgated:**

NOV 20 2012, 1:00 p.m.

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# DECISION

**UY, *J*.:**

The instant Petition for Review was filed on March 31, 2011 by petitioner SB Equities, Inc. pursuant to Section 7(a)(2) of Republic Act (RA) No. 1125, as amended by RA No. 9282, in relation to Section 229 of the National Internal Revenue Code (NIRC) of 1997, seeking the refund or tax credit of its alleged erroneously paid or remitted Documentary Stamp Tax (DST) in the total amount of ₱ 5,783,527.51.

## THE FACTS

Petitioner SB Equities, Inc. is a corporation duly organized and existing under the laws of the Philippines, with principal office located at Security Bank Centre, 6776 Ayala Avenue, Makati City.[1] It is one of the trading participants of the Philippine Stock Exchange.[2]

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[1] Par. 1, Stipulation of Facts, Joint Stipulation of Facts and Issues (JSFI), Docket, p. 68.
[2] Exhibit "L", Docket, pp. 152 to 164, at 161.

Respondent is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR), empowered to perform the duties of her office, including among others, the duty to act upon and approve claims for refund or tax credit as arising under the Tax Code.[3]

On July 1, 2009, pursuant to the Memorandum of Agreement (MOA) between the Department of Finance (DOF) and the Philippine Stock Exchange, Inc. (PSE) dated March 17, 2009,[4] the PSE issued Announcement No. 2009-0333[5] relative to the refund of DST on Secondary Trading of shares of stock, to wit:

ATTENTION : TRADING PARTICIPANTS AND THE INVESTING PUBLIC
SUBJECT : REFUND OF DST ON SECONDARY TRADING
DATE : 1 JULY 2009

Please be advised that the DST law (Republic Act No. 9648), which **exempts** the sale, barter or exchange of shares of stock listed and traded through the local stock exchange from the documentary stamp tax ("DST"), retroactive to 20 March 2009, was signed by President Gloria Macapagal-Arroyo on 30 June 2009.

As provided in the 17 March 2009 Memorandum of Agreement between the Department of Finance and the Exchange ("MOA") and circularized to the authorized agent banks (AABs) under Circular Letter No. CL-2009-019 issued by the *Bangko Sentral ng Pilipinas* on 19 March 2009, the DST collected since 20 March 2009 will be refunded upon passage by Congress of the DST law.

Accordingly, please claim the refund of the DST, and interest earned thereon, from your respective AABs in accordance with the following procedures:

1. The broker-taxpayer should submit to the concerned AAB a letter claiming the DST and interest refund. Please attach a copy of this announcement to the claim for refund. In this regard, we have uploaded this announcement in the PSE website (www.pse.com.ph) for downloading and easy verification by your AAB.

2. Upon receipt of the claim for refund, the AAB shall immediately refund to the broker-taxpayers the DST and interest earned thereon.

3. Thereafter, brokers MUST immediately reimburse their clients the amount of the DST, including the interest earned thereon, collected from their clients.

For your information and guidance of all concerned parties.

(Original signed)
FRANCISCO ED. LIM
President and CEO

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[3] Par. 2, Stipulation of Facts, JSFI, Docket, pp. 68 to 69.
[4] Exhibit "C", Docket, pp. 149 to 151.
[5] Exhibit "B", Docket, p. 143.

On July 29, 2009, petitioner filed with the BIR the letter dated July 28, 2009 addressed to Ms. Elvira R. Vera, Assistant Commissioner for Collection Service (Thru: Linda Bautista – Collection Program Division), requesting for a refund of the amount of ₱ 5,837,338.51, representing DST, covering the period from March 20, 2009 to July 7, 2009;[6] pertinent portion of which reads:

> "...our company, SB Equities Inc. wrote a claim for refund of the DST, and interest earned thereon last July 7, 2009, addressed to our AAB, which is Security Bank Corporation, Head Office branch. Unfortunately, we are informed that said DST was erroneously remitted to the BIR instead of being set aside in escrow as required in the MOA between the Dept of Finance, BIR and Phil. Stock Exchange last March 20, 2009 and mandated by BSP Circular letter No. CL-2009-19. As such, we as the taxpayer of said DST, would like to formally request refund of the DST erroneously remitted by Security Bank Corp. The amount for refund is **₱ 5,837,338.51** covering period March 20, 2009 to July 7, 2009."

Subsequently, Security Bank Corporation (SBC) filed the letter dated October 2, 2009 with the BIR on October 5, 2009, requesting for a refund in the amount of ₱ 5,783,527.51, representing the DST on Secondary Trading of shares of stock paid by petitioner.[7] In the said letter, SBC informed Mr. Ricardo B. Espiritu, Revenue District Officer of Revenue District Office (RDO) No. 47, that it inadvertently remitted the said amount to SBC Main Branch.

On November 20, 2009, a Tax Verification Notice (TVN) was issued by Revenue District Officer Espiritu of RDO No. 47 to SBC, authorizing Revenue Officer Avelino P. Domaoan, Jr., to verify the supporting documents and/or pertinent records relative to SBC's claim for DST refund or tax credit covering the period of March 20, 2009 to July 7, 2009.[8]

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[6] Par. 6, Stipulation of Facts, JSFI, Docket, pp. 69. Exhibit "E", Docket, p. 120.
[7] Exhibit "F", Docket, p. 121.
[8] Exhibit "I", Docket, p. 125.

In the letter dated November 25, 2009,[9] petitioner informed Revenue District Officer Espiritu of RDO No. 47 that it has been refunded by SBC Main Branch for DST on Secondary Trading of shares of stock in the total amount of ₱ 5,839,701.68, broken down as follows:

| | |
|---|---|
| DST – Secondary Trading Remitted to BIR | ₱ 5,783,527.51 |
| DST – Secondary Trading Lodged to Temporary Account (Unremitted to BIR) | 53,811.00 |
| Interest Earned | 2,363.17 |
| TOTAL AMOUNT REFUNDED BY THE BANK | ₱ 5,839,701.68 |

Meanwhile, Ms. Geraldine S. Bermas, OIC-Chief of BIR's Revenue Accounting Division (RAD), issued the Certification (RAD-09-12-025-Cert) dated December 16, 2009[10] in favor of petitioner, wherein she certified that the collections purportedly from petitioner listed therein covering the period from April 3, 2009 to July 3, 2009 were verified and found included in the Makati Report on Daily Collection (RDC) file; and that said collections, which represent payment of DST, were remitted per Consolidated Report on Daily Collection (CRDC) and Central Bank Credit Advice (CBCA), and were not included in the list of dishonored checks on file with the RAD.

Thereafter, SBC wrote a letter dated February 1, 2010[11] addressed to Ms. Bermas, informing the latter that it has refunded the amount of ₱ 5,783,527.51, representing the erroneously paid DST on Secondary Trading of shares of stock, to petitioner.

In the letter dated April 23, 2010,[12] Ms. Erlinda A. Simple, Assistant Commissioner for Assessment Service, advised SBC that the request for refund was

[9] Exhibit "G", Docket, p. 122.
[10] Exhibit "H", Docket, pp. 123 to 124.
[11] Exhibit "J", Docket, p. 126.
[12] Exhibit "K", Docket, p. 127.

referred to the Legal Service for issuance of legal opinion or ruling on some issues affecting SBC's claim.

On March 31, 2011, petitioner filed with this Court the instant Petition for Review.

In her Answer[13] filed on May 9, 2011, respondent raised the following Special and Affirmative Defenses:

> "5. She reiterates and repleads the preceeding paragraphs of this answer as part of her Special and Affirmative Defense;
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> 6. Petitioner's claim for refund is still subject to the administrative routinary investigation/examination by the respondent's Bureau;
>
> 7. Taxes paid and collected are presumed to have been made in accordance with law and implementing regulations, hence, not refundable.
>
> 8. Petitioner failed to substantiate that the amount of P5,783,527.51, representing the alleged Documentary Stamp Tax (DST) on Secondary Trading was erroneously paid or remitted to the BIR;
>
> 9. Petitioner is estopped from claiming for refund the amount of P5,783,527.51 for the second time since the same was already refunded to it;
>
> 10. Petitioner is not entitled to the DST exemption granted under Republic Act No. 9648;
>
> 11. It is incumbent upon petitioner to show that it has complied with the provisions under ***Sections*** [sic] ***204*** *in relation to* ***Section 230 (now 229)*** *of the Tax Code.* Otherwise, its failure to prove the same is fatal to its claim for refund.
>
> 12. Claims for refund are construed strictly against herein petitioner for 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)***."

[13] Docket, pp. 47 to 49.

On June 10, 2011, this case was set for pre-trial. As directed by the Court, the parties thereafter submitted their Joint Stipulations of Facts and Issues (JSFI)[14] on July 29, 2011, and subsequently, their Supplemental Joint Stipulation of Facts and Issues[15] on August 17, 2011. In the Resolution dated August 22, 2011[16], the Court approved the parties' Joint Stipulations of Facts and Issues and Supplemental Joint Stipulations of Facts and Issues.

During trial, petitioner presented testimonial and documentary evidence to prove its entitlement to its claim for refund or issuance of tax credit certificate.

Upon the filing of "Petitioner's Formal Offer of Evidence"[17], the following Exhibits were admitted by this Court in the Resolution dated January 19, 2012[18] and Resolution dated March 20, 2012[19], to wit:

| EXHIBIT | DESCRIPTION |
|---|---|
| "A" | List of Documentary Stamp Tax for Refund |
| "B" | Letter/Announcement from Philippine Stock Exchange dated July 1, 2009 |
| "C" | Memorandum of Agreement dated March 17, 2009 |
| "D" | Email dated July 21, 2009 |
| "E" | Letter dated July 28, 2009 |
| "F" | Letter dated October 2, 2009 |
| "G" | Letter dated November 25, 2009 |
| "H" | Certification dated December 16, 2009 |
| "I" | Tax Verification Notice dated November 20, 2009 |
| "J" | Letter dated February 1, 2010 |
| "K" | Letter dated April 23, 2010 |
| "L" | PSE Directory of Trading Participants as of November 30, 2010 |

On the other hand, during the scheduled initial presentation of respondent's evidence on June 5, 2012, respondent's counsel manifested that he would no longer present evidence as the claim for refund was still pending investigation by the BIR.

[14] Docket, pp. 68 to 71.
[15] Docket, pp. 76 to 79.
[16] Docket, p. 83.
[17] Docket, pp. 108 to 111.
[18] Docket, pp. 134 to 135.
[19] Docket, p. 173.

Thus, the Court granted both parties a period of thirty (30) days from June 5, 2012 within which to file their respective Memorandum.[20]

In the Resolution dated August 10, 2012,[21] this case was submitted for decision taking into consideration petitioner's Memorandum[22] filed on July 5, 2012 and respondent's Manifestation and Motion[23] filed on July 20, 2012.

## THE ISSUES

The issues[24] stipulated by the parties for this Court's resolution are as follows:

> "1. Whether or not petitioner is entitled to a refund or tax credit in the amount of **P5,783,527.51**, representing the alleged erroneously paid Documentary Stamp Tax (DST) on Secondary Trading.
>
> 2. Whether or not petitioner was able to substantiate that the amount of P5,783,527.51, representing the alleged Documentary Stamp Tax (DST) on Secondary Trading was erroneously paid or remitted to the BIR.
>
> 3. Whether or not petitioner is estopped from claiming for refund of the amount of P5,783,527.51 after it was already refunded by the agent bank (SBC).
>
> 4. Whether or not petitioner is entitled to the DST exemption granted under Republic Act No. 9648.
>
> 5. Whether or not petitioner has complied with the requirements under Section 204 in relation to Section 229 of the 1997 Tax Code."

***Petitioner's arguments***

Petitioner alleges that it has substantially established the essential requisites for a claim of refund of its taxes which was erroneously remitted to the BIR. It argues that the fact of remittance was testified on by its witnesses, Mr. Rodel Manicat and Mr. Alex Li, who have personal knowledge of the transactions pertaining to the remittance and the receipt of the BIR of the said payments; and that the claim

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[20] Resolution dated June 5, 2012, Docket, p. 178.
[21] Resolution dated August 10, 2012, Docket, p. 203.
[22] Docket, pp. 179 to 195.
[23] Respondent Docket, pp. 199 to 200.
[24] Issues to be Tried or Resolved, JSFI, Docket, pp. 69 to 70.

for refund was filed within the two-year period prescribed under Rule 4, Section 3 of the Revised Rules of the Court of Tax Appeals in relation to Section 229 of the NIRC.

Petitioner further contends that it is entitled to refund of DST payments pursuant to RA No. 9648. It insists that it is listed as among the active members of the PSE and one of its trading participants; and thus, it is clear that it is exempt from paying DST on its secondary trading and is entitled to refund for its DST payments made on April 3, 2009 to July 9, 2009.

According to petitioner, it must be refunded or given tax credit, lest the State will run afoul the principle of *solutio indebiti.*

Lastly, petitioner is of the view that the lack of any countervailing evidence on the part of the BIR, as the taxing agency of the State, all the more strengthen petitioner's position that it is entitled for a refund as tax credit. Petitioner emphasizes that not a single piece of evidence was presented by the BIR to contradict the overwhelming pieces of evidence, both documentary and testimonial, offered and submitted by petitioner.

***Respondent's counter-arguments***

Respondent asserts that petitioner's claim for refund is still subject to the administrative routinary investigation/examination by the BIR; and that taxes paid and collected are presumed to have been made in accordance with law and implementing regulations, hence, not refundable. Thus, respondent insists that petitioner is not entitled to the DST exemption granted under RA No. 9648.

According to respondent, petitioner failed to substantiate that the amount of ₱ 5,783,527.51, representing the alleged DST on Secondary Trading was erroneously paid or remitted to the BIR; and that it is estopped from claiming for refund the said amount for the second time, since the same was already refunded to it. Furthermore, respondent submits that it is incumbent upon petitioner to show that it has complied with the provisions under Section 204 in relation to Section 229 of the NIRC of 1997. Otherwise, its failure to prove the same is fatal to its claim for refund.

Finally, respondent maintains that claims for refund are construed strictly against petitioner for the same partakes the nature of exemption from taxation, and as such, they are looked upon with disfavor.

## THE COURT'S RULING

Looking at the five (5) issues raised in the instant petition, the Court finds that the first issue is a general issue which encompasses the remaining four (4) sub-issues raised. For a complete disposition of the case however, the Court shall resolve all the sub-issues in the order of its importance to the general issue.

***Sale, Barter or Exchange of Shares of Stocks Listed and Traded Through the Local Stock Exchange is Exempt from DST.***

Under Section 199(e) of the NIRC of 1997, as amended by RA No. 9243, the sale, barter or exchange of shares of stocks listed and traded through the local stock exchange shall be exempt from DST for a period of five (5) years from the date of effectivity of RA No. 9243. Section 199(e) of the NIRC of 1997, as amended by RA No. 9243, is quoted hereunder:

> "SEC. 199. *Documents and Papers Not Subject to Stamp Tax*. – The provisions of Section 173 to the contrary notwithstanding, the following instruments, documents and papers shall be exempt from the documentary stamp tax:
>
> xxx xxx xxx

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> (e) Sale, barter or exchange of shares of stock listed and traded through the local stock exchange for a period of five (5) years from the effectivity of this Act."

RA No. 9243 took effect on March 20, 2004.[25] Correspondingly, pursuant to said law, the exemption from DST of sale, barter or exchange of shares of stock listed and traded through the local stock exchange shall be only until March 20, 2009.

Anticipating the passage of the law which will completely abolish the imposition of DST on the above-mentioned transactions, the DOF and the PSE, with conformity of the BIR, entered into a MOA on March 17, 2009. The pertinent portions of the MOA are quoted hereunder:

> "I. Collection of DST
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> From March 20, 2009 to June 30, 2009 or any earlier date of enactment by Congress of the DST law ('Period of Coverage'), the **brokers-taxpayers shall file the DST returns and remit to the Bureau of Internal Revenue** ('BIR') **through any of the authorized agent banks ('AABs') the DST** at the rate of P0.75 for every P200 or fractional part thereof of the par value **on the sale of shares listed and traded through the PSE** ('DST on Secondary Trading'). Further, in the case of stocks without par value, the amount of the DST shall be equivalent to twenty-five percent (25%) of the DST paid upon the original issue of said stock.
>
> **The total DST on Secondary Trading collected by the AABs shall be placed in a separate AAB account to be disposed of in accordance with this MOA**. The AAB and the brokers-taxpayers shall maintain a record of all the names of the brokers-taxpayers and the corresponding DST amounts that have been remitted during the Period of Coverage. The brokers-taxpayers shall agree with their respective AAB on the other terms of the separate account, including the interest that will be earned by the amount deposited therein.
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> II. Authority to Refund DST
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> In the event that by June 30, 2009, Congress does not pass a new law exempting from DST the sale of listed shares through the PSE or the law that is passed does not provide for any retroactive

[25] Section 12 of Revenue Regulations No. 13-2004.

effect, the AAB shall immediately turn over the total collections of DST on Secondary Trading to the BIR, including all interests accruing on said collections.

**In case a new law is passed on or before June 30, 2009 exempting from DST the sale of listed shares through the stock exchange with retroactive application to March 20, 2009, the AABs are hereby duly authorized to refund the DST on Secondary Trading collected during the Period of Coverage, including any interest earned, to the respective brokers-taxpayers**, as follows:

a. The PSE shall issue a circular ('PSE Circular') announcing that the new law has been passed by Congress and that pursuant to this Agreement, the brokers-taxpayers may file their claims for refund with the concerned AABs;

b. **The brokers-taxpayers shall submit a letter to the AABs to claim a refund of the DST on Secondary Trading that they remitted during the Period of Coverage**. The claim for refund shall be accompanied by a copy of the PSE Circular duly certified by the PSE;

c. Immediately upon receipt of the claim for refund, the AABs shall refund the DST on Secondary Trading, together with any interest earned thereon, to the respective brokers-taxpayers.

III. Liability for DST

In accordance with law and regulations, **the concerned broker-taxpayer shall be solidarily liable and responsible for any deficiency DST on the sale of listed shares through the PSE**." *(Emphasis supplied)*

Subsequently, on June 30, 2009, RA No. 9648 was enacted. In a nutshell, RA No. 9648 exempts the sale, barter or exchange of shares of stock listed and traded through the local stock exchange from DST retroactive to March 20, 2009. Significant parts of RA No. 9648 are quoted below:

"SECTION 1. Section 199 of the National Internal Revenue Code of 1997, as amended by Republic Act No. 9243, is hereby further amended to read as follows:

'SEC. 199. *Documents and Papers Not Subject to Stamp Tax*. — The provisions of Section 173 to the contrary notwithstanding, the following instruments, documents and papers shall be exempt from the documentary stamp tax:

xxx xxx xxx

(e) Sale, barter or exchange of shares of stock listed and traded through the local stock exchange.

xxx xxx xxx

SECTION 5. *Effectivity*. - **This Act shall take effect on March 20, 2009 or immediately upon the expiration of the five (5)-year exemption from the documentary stamp tax on the sale, barter or exchange of shares of stock listed and traded through the local stock exchange pursuant to Republic Act No. 9243**." *(Emphasis supplied)*

In view of the enactment of RA No. 9648, the sale, barter or exchange of shares of stock listed in the local stock exchange shall remain exempt from DST even after March 20, 2009.

***Petitioner is estopped or barred from claiming refund, after it was refunded by SBC.***

Based on the MOA between the DOF and the PSE, from March 20, 2009 to June 30, 2009 or any earlier date of enactment by Congress of the DST law, the brokers-taxpayers shall be responsible for the filing of the DST Returns and remittance to the BIR, through any of the AABs, of the DST on the sale of shares listed and traded through the local stock exchange. The MOA also provides that "(i)*n accordance with law and regulations, the concerned broker-taxpayer shall be solidarily liable and responsible for any deficiency DST on the sale of listed shares through the PSE"*. As one of the trading participants of the PSE, petitioner is the broker-taxpayer who is responsible for the remittance of DST on the sale of listed shares that it effected through the PSE during the period of coverage.

Pursuant to Section 204(C) of the NIRC of 1997, the person entitled to claim a tax refund is the statutory taxpayer. Said provision states:

> "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 <u>the taxpayer</u> 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." *(Emphasis supplied)*

In the case of *Commissioner of Internal Revenue vs. Procter and Gamble Philippine Manufacturing Corporation and The Court of Tax Appeals*,[26] the Supreme Court made a clarification on who should be regarded as a "party in interest" or a "person having sufficient interest to bring a suit for refund", thus:

> "A 'person liable for tax' has been held to be a 'person subject to tax' and properly considered a 'taxpayer.' The terms 'liable for tax' and 'subject to tax' both connote legal obligation or duty to pay a tax. It is very difficult, indeed conceptually impossible, to consider a person who is statutorily made 'liable for tax' as *not* 'subject to tax.' **By any reasonable standard, such a person should be regarded as a party in interest, or as a person having sufficient legal interest, to bring a suit for refund of taxes he believes were illegally collected from him.**" *(Emphasis supplied)*

In the light of the aforequoted jurisprudence, as well as the provisions of Section 204 of the NIRC and of the MOA between DOF and the PSE, petitioner, at first blush, may be deemed as the proper party to file the claim for refund or issuance of tax credit certificate, considering that petitioner is the supposed broker-taxpayer

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[26] G.R. No. L-66838, December 2, 1991.

who has the legal duty and obligation to file the DST Returns and remit the DST to the BIR, through the AABs.

However, petitioner cannot already be considered as a *"party in interest"* or a *"person having sufficient legal interest, to bring a suit for refund of taxes he believes were illegally collected from him"*, after it has been refunded by SCB.

Real party-in-interest is a concept in civil procedure and is expressly defined in the 1997 Revised Rules of Civil Procedure as the one who would be benefited or injured by the judgment, or one entitled to the avails of the suit.[27] *"Interest"* within the meaning of the rule means material interest or an interest in issue and to be affected by the decree, as distinguished from mere interest in the question involved or a mere incidental interest.[28] Otherwise put, an action shall be prosecuted in the name of the party who, by the substantive law, has the right sought to be enforced.[29]

In this case, petitioner no longer has the right to enforce against respondent when the instant Petition was filed on March 31, 2011, because it had already received the tax refund it is seeking. Consequently, petitioner cannot be considered as a party in interest, and is estopped or barred from claiming the subject refund before this Court.

***Timeliness of the Filing of the Claim for Refund cannot be determined with certainty, and Claim for Refund was not Substantiated***

Even assuming that petitioner is not barred from claiming the subject refund before this Court, nevertheless, the instant petition for review will not prosper due to

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[27] Section 2, Rule 3 of the Rules of Court.
[28] *Nazareno, et al. vs. City of Dumaguete, et al.*, G.R. No. 168484, July 12, 2007.
[29] *Adorable, et al. vs. Court of Appeals, et al.*, G.R. No. 119466, November 25, 1999.

its failure to show that the claim for tax refund or tax credit certificate was timely filed, and to substantiate the same.

Section 229 of the NIRC of 1997 provides:

> "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." *(Emphasis supplied)*

Based on the aforequoted section, a taxpayer who intends to file a claim for refund or tax credit of any tax alleged to have been erroneously paid or illegally collected, must file both the administrative claim and the judicial claim within the period of two (2) years from the date of payment of the tax sought to be refunded, regardless of any supervening cause that may arise after such payment.

In this case, petitioner alleges that from April 3, 2009 to July 3, 2009, it made over-the-counter payments of DST in the total amount of ₱ 5,783,527.51 with the SBC Main Branch.[30] This allegation, however, was not adequately substantiated. Petitioner failed to submit the DST Returns (BIR Form No. 2000) to prove the fact of remittance of the DST on Secondary Trading of shares of stock as well as the actual dates of remittance of said DST. Since petitioner failed to offer in evidence the DST

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[30] Refer to Par. 13, Statement of Facts, Petition for Review, Docket, p. 4.

Returns, this Court has no way of determining with reasonable certainty whether petitioner's claim for refund or tax credit was filed on time.

The Certification (RAD-09-12-025-Cert) dated December 16, 2009[31] issued by Ms. Geraldine S. Bermas, OIC-Chief of BIR's Revenue Accounting Division (RAD), stating certain collections of DST purportedly from petitioner covering the period from April 3, 2009 to July 3, 2009, is of no moment. This must be so because there is no indication therein that said collections are the very same DST that arose from petitioner's Secondary Trading of shares of stocks during the said period. Moreover, the dates indicated in the said Certification may be taken to mean as the dates of posting of the BIR of the said collections in its records, and not necessarily the dates when the DST was paid or remitted to the BIR, through the filing of the DST Returns.

Anent the substantiation of its claim for refund or tax credit, the testimonies of petitioner's witness as well as the documents offered by petitioner were not sufficient to establish the existence of the following:

1. petitioner engaged in Secondary Trading of shares of stock at the PSE around April 3, 2009 to July 3, 2009;

2. petitioner paid or remitted to SBC Main Branch the DST on Secondary Trading of shares of stock;

3. SBC Main Branch erroneously treated and posted petitioner's tax payments for DST for the period covering April 3, 2009 to July 3, 2009 as part of its regular BIR collection and remitted the same to the BIR or the Bureau of Treasury; and

4. the DST payments actually received or collected by the BIR from SBC Main Branch pertain to the DST on petitioner's Secondary Trading of shares of stock for the period covering April 3, 2009 to July 3, 2009.

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[31] Exhibit "H", Docket, pp. 123 to 124.

Petitioner asserts that it engaged in Secondary Trading of shares of stock around April 3, 2009 to July 2009.[32] While petitioner submitted in evidence Exhibit "L", which is the PSE Directory of Trading Participants as of November 30, 2010[33], the same only proves that petitioner is a broker or a trading participant of the PSE. Exhibit "L" does not necessarily establish the fact that petitioner actually engaged in Secondary Trading of shares of stock sometime between April 3, 2009 to July 2009, which required the payment or remittance of DST. To prove this material fact, petitioner should have submitted additional supporting documents, such as confirmations of sale, weekly declarations or reports of transactions effected through petitioner that petitioner as a broker or trading participant submits to the PSE.[34]

Petitioner offered in evidence Exhibit "A"[35], which is the List of DST Payments for Refund, to establish that the DST on its Secondary Trading of shares of stock was remitted to SBC Main Branch as AAB of the BIR. The Court finds Exhibit "A" not sufficient to prove that DST on Secondary Trading of shares of stock was remitted by petitioner to SBC Main Branch. As pointed out earlier, petitioner should have at least presented the DST Returns and the corresponding deposit slips to prove the fact of remittance of the DST.

In addition, aside from the vague testimony of Mr. Rodelio C. Manicat,[36] petitioner did not adduce documentary evidence to support its allegation that the SBC Main Branch erroneously treated and posted petitioner's tax payments for DST for the period covering April 3, 2009 to July 3, 2009 as part of its regular BIR collection and that said collected amounts were lodged to BTR-BIR Account No. 1400-100011-001 instead of the DST-Secondary Trading Account No. 1400-100020-

[32] Refer to Par. 12, Statement of Facts, Petition for Review, Docket, p. 4.
[33] November 30, 2008.
[34] Section 10 of Revenue Regulations No. 06-2008.
[35] Docket, pp. 112 to 113.
[36] Transcript of Stenographic Notes, September 13, 2011 Hearing, pp. 8 to 14

201[37], and that such DST payments were electronically remitted by SBC FINCON to the Bureau of Treasury through BSP's EFTIS.[38]

Finally, petitioner offered as evidence Exhibit "H", which is the Certification dated December 16, 2009[39] issued by the BIR-RAD, to prove that the DST on petitioner's Secondary Trading of shares of stock were received and collected by the BIR. As already observed, however, the said Certification alone is not sufficient to prove that the DST received and collected by the BIR are the very same DST that arose from petitioner's Secondary Trading of shares of stock from April 3, 2009 to July 2009. Petitioner should have presented source documents, such as DST Returns, deposit slips, abstracts of the batch control sheets, reports on daily collection of DST, and other relevant documents, in order for this Court to validate the information contained in said Certification.

It is worthy to reiterate that cases filed before this Court are litigated *de novo* and petitioner should prove every minute aspect of its case by presenting, formally offering and submitting its evidence to this Court.[40] In this case, the evidence offered and submitted by petitioner to prove its entitlement to the refund or tax credit of erroneously paid DST on Secondary Trading of shares of stock is sorely wanting.

Lastly, petitioner is of the view that the non-representation of evidence of respondent strengthens its case.

Petitioner is certainly mistaken.

In *Commissioner of Internal Revenue vs. Far East Bank & Trust Company*,[41] the Supreme Court ruled:

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[37] Refer to Par. 15, Statement of Facts, Petition for Review, Docket, p. 5.
[38] Refer to Par. 16, Statement of Facts, Petition for Review, Docket, p. 5.
[39] Docket, pp. 123 to 124.
[40] *Rafael Arsenio S. Dizon, in his capacity as the Judicial Administrator of the Estate of the deceased Jose P. Fernandez vs. Court of Tax Appeals and Commissioner of Internal Revenue*, G.R. No. 140944, April 30, 2008.
[41] G.R. No. 173854, March 15, 2010.

> "... the fact that the *[Commissioner of Internal Revenue]* failed to present any evidence or to refute the evidence presented by *[the taxpayer]* does not *ipso facto* entitle the *[taxpayer]* to a refund. **It is not the duty of the government to disprove a taxpayer's claim for refund. Rather, the burden of establishing the factual basis of a claim for a refund rests on the taxpayer.**
>
> xxx xxx xxx
>
> Hence, for failing to prove its entitlement to a tax refund, *[the taxpayer's]* claim must be denied. **Since tax refunds partake the nature of tax exemptions, which are construed *strictissimi juris* against the taxpayer, evidence in support of a claim must likewise be *strictissimi* scrutinized and duly proven**." *(Emphases supplied)*

All the foregoing considered, the Court finds that petitioner has failed to discharge the burden of proof to establish the factual basis of its claim for tax refund.

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

**SO ORDERED.**

**ERLINDA P. UY**
Associate Justice

**WE CONCUR:**

**ERNESTO D. ACOSTA**
Presiding Justice

**ESPERANZA FABON-VICTORINO**
Associate Justice

## CERTIFICATION

I hereby certify that this Decision was reached after due consultation among the members of this Division in accordance with the provisions of Section 13, Article VIII of the Constitution.

**ERNESTO D. ACOSTA**
Chairperson
Presiding Justice