REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus-

TEAM (PHILIPPINES) ENERGY CORP.,
Respondent.

CTA EB No. 694
(CTA Case No. 7603)

Present:

Acosta, *P.J.,*
Castañeda,Jr.,
Bautista,
Uy,
Casanova,
Palanca-Enriquez,
Fabon-Victorino,
Mindaro-Grulla, and
Cotangco-Manalastas, *JJ.*

Promulgated:
APR 1 3 2012 [illegible handwriting] 2:00 p.m.

x - x

DECISION

COTANGCO-MANALASTAS, J.:

On appeal before the Court *En Banc* is the *Decision* of the Former Second Division promulgated on April 28, 2010, which ruled as follows:

> "WHEREFORE, premises considered, the instant Petition for Review is hereby GRANTED. Accordingly, respondent is hereby ORDERED TO REFUND or TO ISSUE A TAX CREDIT CERTIFICATE in favor of petitioner in the amount of TWENTY-FIVE MILLION FIVE HUNDRED SEVENTY-ONE THOUSAND FOUR HUNDRED NINETY-FIVE AND 49/100 PESOS (P25,571,495.49), representing excess creditable taxes withheld for taxable years 2004 and 2005."[1]

---

[1] *Rollo*, C.T.A. EB Case No. 694, p. 30.

The Parties

Petitioner is the duly appointed Commissioner of Internal Revenue vested with the authority to act as such, including *inter alia*, the power to decide, approve, and grant refunds or tax credits of overpaid internal revenue taxes.[2]

Respondent is a corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines.

The Facts[3]

Originally, respondent's corporate name was Southern Energy Mobile, Inc. It was later changed to Mirant (Philippines) Mobile Corporation. On August 16, 2001, respondent again changed its name to Mirant (Philippines) Energy Corporation. Finally, on July 30, 2007, respondent's name was changed from Mirant (Philippines) Energy Corporation to its present corporate name of TeaM (Philippines) Energy Corporation.

As stated in respondent's Amended Articles of Incorporation dated October 22, 2001, its primary purpose is to develop, design, construct, erect, assemble, commission, own, operate, maintain, rehabilitate and manage facilities used in the generation of electricity, including but not limited to gas turbine and other power generating plants and related facilities under contract with the Government of the Republic of the Philippines, or any subdivision, instrumentality or agency thereof, or any government-owned or controlled corporations or any entity engaged in the development, supply or distribution of energy, or otherwise; to engage in the supply and delivery of electricity and develop, design, construct, erect, assemble, commission, own, operate, maintain, rehabilitate and manage facilities used in

---

[2] *Rollo*, p. 8.
[3] As found by the Court in Division, *Rollo*, pp. 19-23, citations omitted.

connection therewith, and/or provide facilities or services necessary or appropriate in connection with the supply or delivery of electricity to such extent and in such manner as may be permitted by applicable law.

Pursuant to its purpose, respondent entered into power generation/supply agreements with Solid Development Corporation (SDC), Republic Cement Corporation (RCC), BPC Gas Corporation (BPC) through its parent company, Consolidated Industrial Gases Incorporated, and Angeles Electric Corporation (AEC). For services rendered to SDC, RCC, BPC, and AEC, respondent received income payments which were allegedly subjected to creditable withholding tax.

In its Annual Income Tax Return for taxable year 2004, filed with the BIR on April 15, 2005, respondent's declared creditable taxes withheld for the first three quarters and the last quarter of 2004 amounted to P10,340,402.00 and P3,522,686.00, respectively, totaling P13,863,088.00. Since respondent reflected no amount of income tax liability either at the regular rate of thirty-two percent (32%) or the Minimum Corporate Income Tax (MCIT) rate of two percent (2%), it was unable to apply or utilize the creditable withholding taxes of P13,863,088.00, as shown below:

Sales /Revenue/Receipts/Fees	P 1,281,903,374.00
Less: Cost of Sales/Services	1,463,667,291.00
Gross Income from Operation	P (181,763,917.00)
Add: Non-Operating and Other Income	8,080,822.00
Total Gross Income	P (173,683,095.00)
Less: Deductions	104,064,048.00
Taxable Income	**P (277,747,143.00)**
Tax Due	P -
Less: Tax Credits	
Creditable Tax Withheld for the First Three Quarters	P 10,340,402.00
Creditable Tax Withheld for the Fourth Quarter	3,522,686.00
Total	P 13,863,088.00
Tax Overpayment	**P (13,863,088.00)**

Respondent, as indicated in the return, opted to be refunded for the unutilized creditable withholding taxes of P13,863,088.00.

On April 7, 2006, respondent filed its Annual Income Tax Return for taxable year 2005, showing creditable taxes withheld during the first three quarters and the last quarter of 2005 in the respective amounts of P9,915,508.50 and P3,063,721.31, totaling P12,979,229.81. The said amounts were applied against the MCIT liability of P1,270,821.82, leaving an excess tax credit of P11,708,407.99; which respondent marked as "To be refunded". Below is the computation of the amount of P11,708,407.99:

Sales /Revenue/Receipts/Fees	P 1,452,113,748.00
Less: Cost of Sales/Services	1,493,857,472.00
Gross Income from Operation	P (41,743,724.00)
Add: Non-Operating and Other Income	105,284,815.00
Total Gross Income	P 63,541,091.00
Less: Deductions	109,954,763.00
Taxable Income	**P (46,413,672.00)**
Minimum Corporate Income Tax Due	P 1,270,821.82
Less: Tax Credits	
Creditable Tax Withheld for the First Three Quarters	P 9,915,508.00
Creditable Tax Withheld for the Fourth Quarter	3,063,721.31
Total	P 12,979,229.81
Tax Overpayment	**P (11,708,407.99)**

On February 2, 2007, respondent filed an administrative claim for refund or issuance of tax credit certificate with the BIR in the total amount of P25,571,495.99, representing overpaid income tax or excess creditable withholding tax of respondent for taxable years 2004 and 2005, pursuant to Sections 204 and 229 of the National Internal Revenue Code (NIRC) of 1997.

Due to petitioner's inaction on its claim, respondent filed a Petition for Review before the Court in Division on April 12, 2007. Said case was subsequently decided in favor of respondent, hence this appeal by petitioner.

Issues[4]

Petitioner raises the following issues for consideration:

I. Whether petitioner was given sufficient time and facts to evaluate the administrative claim for refund.

II. Whether respondent properly identified the Certificates of Creditable Withholding Taxes.

Ruling of the Court

Petitioner raises grounds in this appeal which have either been already passed upon by the Court in Division or are being raised for the first time on appeal.

Petition for Review of the inaction on the claim for refund was timely filed

Petitioner argues that it was not given sufficient time by respondent to investigate and evaluate the administrative claim as there were only sixty-nine (69) days between the filing of the administrative claim and the judicial claim.

As has been discussed in the assailed Decision, the petition for review filed by respondent ("petitioner" in the quoted Decision) before the Court in Division was timely, to wit:

> "Anent the first requisite, Sections 204(C) and 229 of the NIRC of 1997 provide as follows:
>
> "Sec. 204. *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.* – The Commissioner may –
>
> xxxxx
>
> (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

[4] *Rollo*, p. 9.

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.**"

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."

Based on the foregoing provisions, the written claim to the Commissioner of Internal Revenue (administrative claim) and the suit (judicial claim) must be filed within two (2) years from the date of payment of the tax. In a claim for refund of excess creditable withholding tax, the two-year period shall be reckoned from the date of filing of the Annual Income Tax Return.

In the present case, petitioner filed its Annual Income Tax Returns for taxable years 2004 and 2005 on April 15, 2005 and April 7, 2006, respectively. Counting from these dates, both the administrative claim for refund filed with the BIR on February 2, 2007 and the judicial appeal filed before this Court on April 12, 2007 fall within the two-year prescriptive period."[5]

This was further reiterated in the Resolution dated September 17, 2010, denying the Motion for Reconsideration filed by herein petitioner. Thus:

"It is well-settled that when the two-year period is about to expire and the claim for refund with the Commissioner of Internal Revenue has not been acted upon, for the protection of the taxpayer, he should file a Petition for Review with this Court within the said

[5] *Rollo*, pp. 27-29, citations omitted.

> two-year period; otherwise, if the decision of the Commissioner is adverse to the taxpayer and it was made after the two-year period he can no longer appeal the same to this Court.
>
> The claim for refund with the Bureau of Internal Revenue and the subsequent appeal to the Court of Tax Appeals must be filed within the two-year prescriptive period. So if respondent takes time in deciding the claim, and the period of two years is about to end, the suit or proceeding must be started in the Court of Tax Appeals before the end of the two-year period without awaiting the decision of the respondent."[6]

Certificates of Creditable Taxes Withheld were properly identified

Petitioner argues further that respondent failed to properly identify the Certificates of Creditable Withholding Taxes considering that there was no attempt to obtain a certification from the author that such document existed.[7]

We do not agree. This Court notes that this argument is being raised for the first time on appeal and should outrightly be rejected. But to leave no doubt as to the issue on whether the certificates were properly identified, we shall discuss the same.

It has long been settled that in claims for refund of excess or unutilized creditable withholding taxes, the fact of withholding need not be established by the testimonial evidence of various payors or withholding agents.[8]

Indeed, this same issue was discussed and settled, as follows:

> "The fact of withholding is sufficiently established by a document known as CWT certificate, or specifically denominated as, "BIR Form 2307" issued by the payor primarily attesting the amount of taxes withheld from the income payments received by the payee which in this case is PNB, without the need of presenting the testimonial evidence of the person who made entries therein. The Supreme Court made this pronouncement in the case of *Banco Filipino Savings and Mortgage Bank vs. Court of Appeals, Court of Tax Appeals and Commissioner of Internal Revenues* citing the case of *Far East Bank and Trust Company vs. Court of Appeals* and holding that:

---

[6] *Rollo*, pp. 33-34.
[7] *Rollo*, p. 13.
[8] *Rollo*, p. 58.

> "In fine, the document which may be accepted as evidence of the third condition, that is the fact of withholding, must emanate from the payor itself, and not merely from the payee, and must indicate the name of the payor, the income payment basis of the tax withheld, the amount of the tax withheld and the nature of the tax paid.
>
> At the time material to this case, the requisite information regarding withholding taxes from the sale of acquired assets can be found in BIR Form No. 1743.1. As described in Section 6 Revenue Regulations No. 6-85, BIR Form No. 1743.1 is a written statement issued by the payor as withholding agent showing the income or other payments made by the said withholding agent during a quarter or year and the amount of the tax deducted and withheld therefrom. It readily identifies the payor, the income payment and the tax withheld. It is complete in the relevant details which would aid the courts in the evaluation of any claim for refund of creditable withholding taxes. (Underscoring Ours for emphasis).
>
> The figures appearing in the CWT certificates should be taken at face value since these documents are executed under the penalties of perjury, pursuant to Section 267 of the 1997 NIRC, as amended, reading:
>
> > Sec. 267. **Declaration under Penalties of Perjury**. – Any declaration, return, and other statements 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."[9]

Respondent failed to prove that the unutilized Creditable Withholding Taxes have not been carried over in the succeeding quarters

Upon reviewing the records of the case, we note that respondent failed to present its Quarterly Income Tax Returns for the succeeding calendar years 2005 and 2006. The Quarterly Income Tax Returns are essential in proving that respondent did

---

[9] *Commissioner of Internal Revenue vs. Philippine National Bank*, C.T.A. EB Case No. 285, October 1, 2007, citing G.R. No. 155682, March 27, 2007; and G.R. No. 129130, December 9, 2005.

not actually carry over any of the unutilized creditable withholding taxes in the subsequent quarters.

Thus, the Court held in *Millennium Business Services, Inc. vs. Commissioner of Internal Revenue*:[10]

> "Since the burden of proof is upon the claimant to show that the amount claimed was not utilized or carried over to the succeeding taxable quarters, the presentation of the succeeding quarterly income tax return and final adjustment return is indispensable to prove that it did not carry over or utilize the claimed excess creditable withholding taxes. Absent thereof, there will be no basis for a taxpayer's claim for refund since there will be no evidence that the taxpayer did not carry over or utilize the claimed excess creditable withholding taxes to the succeeding taxable quarters.
>
> Significantly, a taxpayer may amend its quarterly income tax return or annual Income tax return or Final Adjustment Return which in any case may modify the previous intention to carry-over, apply as tax credit certificate or refund, as the case may be. But the option to carry-over in the succeeding taxable quarters under the irrevocable rule cannot be modified in its final adjustment return.
>
> xxxxx
>
> Concomitantly, the presentation of the quarterly income tax return and the annual income tax return to prove the fact that excess creditable withholding tax was not utilized or carried over or opted to be utilized and carried over to the 1st, 2nd, 3rd quarters and final adjustment return of the succeeding taxable year is not only for convenience to facilitate the tax administration process but it is part of the requisites to establish the claim for refund. Section 76 of the NIRC of 1997 provides that if the taxpayer claimant carries-over and applies the excess quarterly income tax against the income tax due for the taxable quarters of the succeeding taxable years, the same is irrevocable and no application for cash refund or issuance of a tax credit certificate shall be allowed."

Without the quarterly tax returns for the succeeding taxable quarters for calendar years 2005 and 2006, this Court cannot fully ascertain whether respondent did not carry over the unutilized creditable withholding taxes to the subsequent

[10] C.T.A. EB Case No. 510 (C.T.A. Case No. 7441), September 28, 2010.

quarters. As such, respondent failed to fully prove its entitlement to the claimed refund.

WHEREFORE, premises considered, the instant Petition for Review is hereby **GRANTED.** The Decision of the Former Second Division dated April 28, 2010 and the Resolution dated September 17, 2010 are hereby **REVERSED** and **SET ASIDE**. The claim for refund/tax credit of respondent's unutilized creditable income taxes withheld for the years 2004 and 2005 are hereby **DENIED** for insufficiency of evidence.

SO ORDERED.

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

WE CONCUR:

(On Leave)
ERNESTO D. ACOSTA
Presiding Justice

Juanito C. Castañeda, Jr.
(with Dissenting Opinion)
JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

(concurs with the Dissenting Opinion of Justice Juanito C. Castañeda, Jr.)
CAESAR A. CASANOVA
Associate Justice

(concurs with the Dissenting Opinion of Justice Juanito C. Castañeda, Jr.)
OLGA PALANCA-ENRIQUEZ
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

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

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Acting Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE
Petitioner,

CTA EB No. 694
(CTA Case No. 7603)

-versus-

Members:

Acosta, *P.J.*,
Castañeda, Jr.,
Bautista,
Uy,
Casanova,
Palanca-Enriquez,
Fabon-Victorino,
Mindaro-Grulla, and
Cotangco-Manalastas, *JJ.*

TEAM (PHILIPPINES) ENERGY CORPORATION,
Respondent.

Promulgated:
APR 13 2012 ArApolinario 2:00 p.m.

x- -x

DISSENTING OPINION

CASTAÑEDA, JR., J.:

In the Decision dated April 28, 2010, the former Second Division ordered the Bureau of Internal Revenue ("BIR") to refund or to issue tax credit certificate ("TCC") in favor of Team Philippines Energy Corporation's ("TPEC") 2004 and 2005 excess creditable withholding tax ("CWT") in the amount of P25,571,495.49. The Second Division reasoned that all the three requirements for claiming a refund of excess creditable withholding taxes were all present, namely: 1) refund claim was filed within the prescriptive period; 2) the fact of withholding was duly established; and 3) the income upon which taxes were withheld were included in the return of the recipient. Thus, TCEP is entitled to the refund claim.[1]

Acting upon the Commissioner of Internal Revenue's ("CIR") Motion for Reconsideration of the assailed Decision, the former Second Division issued a Resolution dated September 17, 2010 denying the Motion for lack of merit.

On appeal with the Court *en banc,* the majority ruled to reverse and set aside the former Second Division's Decision dated April 28, 2010 and the Resolution dated September 17, 2010 which in effect denied the refund claim due to insufficiency of evidence, specifically TPEC's failure to present quarterly income tax returns for the succeeding taxable years 2005 and 2006.

I disagree with the majority on the following grounds:

I. **THE SUPREME COURT'S RULINGS IN PHILAM, STATE LAND, MIRANT AND PERF CASES ARE BINDING UPON THIS COURT.**

II. **IN A REFUND CLAIM OF EXCESS CREDITABLE WITHOLDING TAXES, THE SUPREME COURT HAS CONSISTENTLY RULED THAT THE SUBMISSION OF RETURNS FOR THE SUBSEQUENT YEARS IS UNNECESSARY.** Jc

---

[1] Penned by Associate Justice Juanito C. Castañeda, Jr. with Justice Olga Palanca-Enriquez concurring.

THE SUPREME COURT'S RULINGS IN THE PHILAM, STATE LAND, MIRANT AND PERF CASES ARE BINDING UPON THIS COURT.

The Supreme Court, by tradition and in our system of judicial administration, has the last word on what the law is. It is the final arbiter of any justiciable controversy.[2] In the case of *Systra Philippines, Inc. v. Commissioner of Internal Revenue*[3] penned by Chief Justice Renato C. Corona, it was emphasized that "**All courts must take their bearings from the decisions of this Court".**

Maintaining stability in jurisprudence is of paramount importance under the principle of *stare decisis et non quieta movere* which simply means follow past precedents and do not disturb what has been settled. Where the same questions relating to the same event have been put forward by parties similarly situated as in a previous case litigated and decided by a competent court, the rule of *stare decisis* is a bar to any attempt to relitigate the same issue.[4] That decision becomes a judicial precedent to be followed in subsequent cases by all courts in the land.[5] The doctrine of *stare decisis* explains why the cases of ***Commissioner of Internal Revenue v. Mirant (Philippines) Operations, Corporation***[6]***, Philam Asset Management,***

---

[2] *Dante Nacuray, et al. v. National Labor Relations Commission*, G.R. Nos. 114924-27, March 18, 1997, 270 SCRA 9.

[3] *Systra Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 176290, Resolution dated September 21, 2007, 533 SCRA 776, 781 citing *Republic of the Philippines v. Maj. Gen. Garcia, G.R. No. 167741, 17 July 2007.*

[4] *Negros Navigation Co., Inc.., v. Court of Appeals, et al.*, G.R. No. 110398, November 7, 1997, 281 SCRA 534.

[5] *Gregorio Castillo v. Sandiganbayan*, G.R. No. 138231, February 21, 2002, 377 SCRA 509 citing *Tala Realty Services Corp. v. Banco Filipino Savings and Mortgage Bank*, June 20, 2000, 334 SCRA 114.

[6] G.R. Nos. 171742 and 176165, June 15, 2011.

Inc. v. Commissioner of Internal Revenue[7]***, State Land Investment Corporation v. Commissioner of Internal Revenue***[8] **and** ***Commissioner of Internal Revenue v. PERF Realty Corporation***[9] are binding upon this Court. Clearly, there is no justifiable reason to reverse and set-aside the Decision dated April 28, 2010 and the Resolution dated September 17, 2010 issued by the former Second Division all in consonance with the law and existing jurisprudence.

IN A REFUND CLAIM OF EXCESS CREDITABLE WITHOLDING TAXES, THE SUPREME COURT HAS CONSISTENTLY RULED THAT THE SUBMISSION OF RETURNS FOR THE SUBSEQUENT YEARS IS UNNECESSARY.

In the case of *Philam Asset Management, Inc. v. Commissioner of Internal Revenue,*[10] the Supreme Court exhaustively discussed the reasons why the Income Tax Return (ITR) or the Final Adjustment Return (FAR) of the succeeding year is no longer necessary when a taxpayer requests for a tax refund. It categorically ruled that the said requirement has no basis in law and jurisprudence. The Supreme Court held:

> **Requiring that the ITR or the FAR of the *succeeding* year be presented to the BIR in requesting a *tax refund* has no basis in law and jurisprudence.**

[7] *Philam Asset Management, Inc. v. Commissioner of Internal Revenue*, G.R. No. 156637/162004, December 14, 2005, 477 SCRA 761.
[8] *State Land Investment Corporation v. Commissioner of Internal Revenue,* G.R. No. 171956, January 18, 2008, 542 SCRA 114.
[9] *Commissioner of Internal Revenue v. PERF Realty Corporation, 163345,* July 4, 2008, 557 SCRA 165.
[10] *Philam Asset Management, Inc. vs. Commissioner of Internal Revenue,supra.*

> xxx **Section 76 of the Tax Code does not mandate it. The law merely requires the filing of the FAR for the *preceding* -- not the succeeding -- taxable year.** Indeed, any refundable amount indicated in the FAR of the preceding taxable year may be credited against the estimated income tax liabilities for the taxable quarters of the succeeding taxable year. However, nowhere is there even a tinge of a hint in any of the provisions of the Tax Code that the FAR of the taxable year following the period to which the *tax credits* are originally being applied should also be presented to the BIR. (Emphasis ours)

Citing the case of *Philam Asset Management, Inc. v. Commissioner of Internal Revenue*, the Supreme Court made a similar ruling in the case of *State Land Investment Corporation v. Commissioner of Internal Revenue*[11] attesting as unnecessary the presentation of the final adjustment return for the subsequent year as follows:

> As previously mentioned, after paying P4,187,523.00 as income tax due in 1998, there remained an unutilized tax credit of P9,742,270.51. **It was not necessary on the part of petitioner to file with the BIR its income tax return for 1999. In *Philam Asset Management, Inc. v. Commissioner of Internal Revenue*, we held that the Tax Code merely requires the filing of the final adjustment return for the preceding — not the succeeding — taxable year.** Indeed, any refundable amount indicated therein corresponding to the preceding taxable year may be credited against the estimated income tax liabilities for the taxable quarters of the succeeding taxable year. **Requiring that the income tax return or the final adjustment return of the succeeding year be presented to the BIR in requesting a tax refund has no basis in law and jurisprudence.** (Emphasis ours.)

In the recent case of *The Commissioner of Internal Revenue v. Mirant (Philippines) Operations, Corporation,*[12] the Supreme Court mentioned that a tax credit or refund of creditable withholding tax requires compliance with only three (3) requisites as follows:

---

[11] *State Land Investment Corporation v. Commissioner of Internal Revenue, supra.*
[12] The *Commissioner of Internal Revenue vs. Mirant (Philippines) Operations, Corp., supra.*

1) The claim must be filed with the CIR within the two-year period from the date of payment of the tax;

2) It must be shown on the return that the income received was declared as part of the gross income; and

3) The fact of withholding must be established by a copy of a statement duly issued by the payor to the payee showing the amount paid and the amount of the tax withheld.[13]

In the said case, the Court granted the refund claim without requiring the submission of the original quarterly income tax returns of the subsequent year upon showing that the claimant opted to refund its excess CWT and has complied with the above legal requisites.

The presentation of subsequent ITRs is a mere superfluity as declared by the Supreme Court in the case of *Commissioner of Internal Revenue v. PERF Realty Corporation*,[14] *viz*:

xxx xxx xxx

> **Further, We sustain the CA that there is no need to rule on the issue of the admissibility of the 1998 ITR since the CTA ruled that PERF already complied with the requisites of applying for a tax refund.** (Emphasis ours.)

Considering that in the cases of *Philam*, *State Land*, *Mirant* and *PERF*, the Supreme Court explicitly stated that the submission of FAR of the succeeding taxable year is not required under the law to prove the claimant's entitlement to excess or unutilized creditable withholding tax; logically, the submission of quarterly income tax returns for the subsequent taxable period

---

[13] See *Commissioner of Internal Revenue v. FAR EAST BANK AND TRUST COMPANY (NOW BANK OF THE PHILIPPINE ISLANDS)*, G.R. No. 173854, March 15, 2010, 615 SCRA 417 and *Banco Filipino v. Court of Appeals*, March 27, 2007, G.R. No. 155682, 519 SCRA 93.

[14] *Commissioner of Internal Revenue v. PERF Realty Corporation, supra.*

is unnecessary. To put it succinctly, there is no justifiable reason to deviate from the existing rulings of the Supreme Court.

I vote to affirm the Decision dated April 28, 2010 and the Resolution dated September 17, 2010 issued by the former Second Division.

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

WE CONCUR:

CAESAR A. CASANOVA
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice