REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

STATELAND, INC., Petitioner,	CTA EB No. 1148 (CTA CASE No. 8457)
	Present:
- versus -	DEL ROSARIO, *PJ*, CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, COTANGCO-MANALASTAS, and RINGPIS-LIBAN, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: JUL 04 2016 3:12 p.m.

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DECISION

***Fabon-Victorino, J.*:**

Before the Court is the Petition for Review dated April 23, 2014, filed by petitioner Stateland, Inc. assailing the Decision dated November 28, 2013 and the Resolution dated March 20, 2014, rendered by the Court in Division, which denied petitioner's claim for refund of its alleged excess payment of creditable withholding taxes (CWT) for the year 2009 in the amount of P11,570,181.00 due to insufficiency of evidence.

Petitioner is a domestic corporation, with principal office address at the 3rd Floor, State Centre Bldg., 333 Juan Luna St., Binondo, Manila. It is primarily into real estate business for development and/or construction of subdivision, building houses, residential or commercial units, townhouses and other similar units for sale. It is registered with the Bureau of Internal Revenue (BIR) with Taxpayer Identification Number (TIN) 000-341-850-000.

Respondent, on the other hand, is the Commissioner of the BIR (CIR), with authority, among others, to act or decide on claims for refund of internal revenue taxes, fees or other charges, penalties imposed under the National Internal Revenue Code (NIRC), or other laws being administered by the BIR. She holds office at the BIR National Office Building, Diliman, Quezon City.

In 2008, petitioner had accumulated CWT in the total amount of P54,561,791.00, composed of taxes paid in 2008, and that which was carried over from prior taxable years. In 2009, petitioner paid additional CWT in the amount of P11,570,181.00 increasing its accumulated CWT to P66,131,972.00.

After deducting its 2009 income tax due in the amount of P3,328,323.00, petitioner was left with a balance of P62,803,649.00 CWT at the end of said year.

On July 21, 2010, petitioner filed an administrative claim for refund of a portion of its excess and unutilized CWT for the year ending December 31, 2009 in the amount of P11,570,181.00.

Petitioner's request for refund resulted in respondent's issuance of a Letter of Authority (LOA) dated August 26, 2010 and subsequent examination of petitioner's account. The examination yielded no adverse effect on petitioner's claim for refund of excess CWT. Nevertheless, respondent failed to act on the request prompting petitioner to elevate the matter to the Court in Division via a Petition for Review on April 11, 2012.

On November 28, 2013, the Court in Division promulgated the assailed Decision, the *fallo* of which reads as follows:

> "WHEREFORE, the instant Petition for Review is hereby DENIED for insufficiency of evidence.
>
> SO ORDERED."

The denial was based on the Court's finding that while petitioner was able to meet the two requisites for entitlement to refund, namely, the timeliness of the filing of both its administrative and judicial claims for refund and the fact of withholding of taxes by the payor, it was unable to satisfy the requisite that the income from which the subject taxes were withheld were included in petitioner's ITR for the year 2009. The Court in Division ruled that petitioner failed to account for the discrepancy in the amount of P129,928,217.22 after it compared petitioner's income payments indicated in the Certificates of Tax Withheld with those appearing in its 2009 ITR. Petitioner's income as shown in the Certificates of Tax Withheld amounted to P296,344,363.22, while its income reported in its ITR for 2009 amounted to P166,416,146.00, thus, a difference or a discrepancy of P129,928,217.22.

Not convinced, petitioner filed a Motion for Reconsideration which the Court in Division denied for lack of merit in the Resolution dated March 20, 2014.

Hence, this appeal before the Court *En Banc*.

Petitioner insists that there is no discrepancy between the income payments in its Certificates of Withholding and its income indicated in its 2009 ITR. It argues that as an entity engaged in the realty business, it employs, for accounting purposes, the Percentage of Completion Method in accordance with Section 2.57.2 of Revenue Regulation No. 2-98, in which its income from sales of property on installment basis were recognized in 2009 but the withholding taxes were paid only after the last installment. But with regard to sales on cash basis, the full amount of income payments were booked and recognized on the year of the sale but the withholding of income tax was made on the first installment.

Thus, it was the gross sales that were reported in the 2009 ITR and not the gross income, net of cost of sales. For the year 2009, the withholding tax totaling P11,571,816.18 arose from sales in the amount of P296,344,363.62 which was not comparable to the total gross income per 2009 ITR of P166,416,146.00 as the latter was only a portion of the former.

Petitioner also points out that both the BIR and the ICPA did not take cognizance of the discrepancy observed by the Court in the assailed Decision. The respondent in her Answer and Memorandum also did not question petitioner's compliance with the requisites for the grant of its claim for refund.

Petitioner further claims that contrary to the Court's ruling, it was able to prove that the income payments upon which the taxes were withheld were included in its ITR. Its 2009 ITR indicated the CWT in the amount of P11,570,181.00 as testified to by petitioner's witness, Bienvenido S. Uy and corroborated by the ICPA. The ICPA Report also indicated that the income payments were declared as part of petitioner's gross income and reported in its ITR. Likewise based on jurisprudence, when the CWT being refunded is the same as the figure reflected in the ITR, the claimant is deemed to have properly declared the income related to the reported CWT.

While it is a truism that the Court is not bound by the findings of the ICPA, petitioner suggests that the Court should not ignore such findings since the ICPA, as an agent of the Court was primarily commissioned to verify the voluminous books and records of petitioner.

Additionally, petitioner avers that together with its Motion for Reconsideration it submitted to the Court in Division a document denominated as Schedule of Sales Subjected to Creditable Withholding Tax in taxable year 2009 and Corresponding Gross Profit Realized in 2009 and In Prior and Succeeding Years ITR. In the said document, petitioner's income based on the Certificates of Tax Withheld in the amount of P298,603,532.22 was reconciled with its income as reported in its 2009 ITR in the amount of P166,416,145.58. This was the income from which the CWT in the amount of P11,871,816.17 was withheld.

Petitioner also complains the alleged need for other supporting documents to prove its compliance with the requisites for the grant of the refund sought. The said requirement, according to petitioner, was more for accounting process of reconciliation which had been addressed in the Schedule submitted together with its Motion for Reconsideration filed with the Court in Division, and through the ICPA Report. For petitioner, it had even exceeded the quantum of evidence required to prove entitlement to a claim for refund in light that proceedings in this Court are not governed strictly by technical rules of evidence.

Further, petitioner had submitted all that it could as its older documents had been destroyed or already disposed of. This according to petitioner is in accord with the law requiring taxpayers to preserve its accounting books and records only for a period of three (3) years from the last entry in its books.

Even assuming that petitioner indeed failed to prove entitlement to the claim for refund in its entirety, it should have been granted at least a partial refund which is not legally prohibited provided it is substantiated. In particular, petitioner refers to the portion of its CWT pertaining to its sales on cash basis. The income derived from such sales can be easily traced to have been realized and reported in the 2009 ITR through examination of petitioner's books.

Assuming finally that it is not entitled to the refund sought, petitioner prays that its unutilized CWT should not be forfeited but should be allowed to be carried over to the succeeding years.

Respondent, on the other hand, agrees with the ruling of the Court in Division giving premium to the tenet that claims for refund are strictly construed against the claimant. She elaborated that mere allegations without substantiation do not automatically merit the grant of refund. In the present case, petitioner allegedly failed to establish that the income from which the subject taxes were withheld had been reported in the pertinent ITR. This requirement is essential to establish petitioner's entitlement to the refund of excess CWT and failure to satisfy the same is fatal.

For her stance, respondent relies heavily on the ruling that the amount of Income payments in the ITR must correspond and tally with the income from all the Certificates of Withholding for the same year, as there is no efficient way by which the BIR can verify the precise identity of the income payments as reflected in the ITR. And petitioner, according to respondent, failed to establish this requisite.

The critical issue in the present appeal is whether petitioner was able to prove all the requisites provided to be entitled to its claim for refund of its alleged excess payment of CWT for the year 2009 in the amount of P11,570,181.00.

Basic is the rule that a corporation entitled to refund or tax credit of its excess estimated quarterly income taxes has two options under Section 76,[1] of the National Internal Revenue Code of 1997, as amended, to wit: (1) to carry over the excess credit to the succeeding taxable quarters/years until it is fully utilized, or (2) file a claim for refund either in the form of cash or tax credit certificate.

Under the irrevocability rule embodied in the last sentence of the cited provision,[2] the two options are alternative and the choice of one precludes the other.[3]

Evidence shows that petitioner opted to be refunded its alleged excess CWT for year 2009 in the amount of P11,570,181.00 having marked the option "To be refunded"[4] in its 2009 ITR.

As shown in petitioner's ITR for the year 2009[5], petitioner had a total creditable withholding tax of

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[1] SEC. 76. Final Adjustment Return. - Every corporation liable to tax under Section 27 shall file a final adjustment return covering the total taxable income for the preceding calendar or fiscal year. If the sum of the quarterly tax payments made during the said taxable year is not equal to the total tax due on the entire taxable income of that year, the corporation shall either:

(A) Pay the balance of tax still due; or
(B) Carry over the excess credit; or
(C) Be credited or refunded with the excess amount paid, as the case may be.

In case the corporation is entitled to a tax credit or refund of the excess estimated quarterly income taxes paid, the excess amount shown on its final adjustment return may be carried over and credited against the estimated quarterly income tax liabilities for the taxable quarters of the succeeding taxable years. Once the option to carry over and apply the excess quarterly income tax against income tax due for the taxable quarters of the succeeding taxable years has been made, such option shall be considered irrevocable for that taxable period and no application for cash refund or issuance of a tax credit certificate shall be allowed therefor.

[2] Systra Philippines, Inc. vs. Commissioner of Internal Revenue, G.R. No. 176290, September 21, 2007

[3] Commissioner of Internal Revenue vs. PERF Realty Corporation, G.R. No. 163345, July 04, 2008

[4] Exhibit D, Line 31

[5] Exhibit D

P66,131,972.00 coming from its prior year's excess credits amounting to P54,561,791.00 and creditable taxes withheld during the first three quarters of year 2009 in the amount of P8,248,481.00. Petitioner also has CWT of P3,321,700.00 for the fourth quarter of 2009. Thus, for the entire 2009, petitioner had a total CWT of P11,570,181.00 (P8,248,481.00 + P3,321,700.00).

Per petitioner, it used a portion of its prior year's excess credits of P54,561,791.00 to pay its income tax due for the year 2009 in the amount of P3,328,322.92, leaving a balance of P51,233,468.08[6] (P54,561,791.00-P3,328,322.92) which it carried over to the subsequent quarters/year 2010.

Thus, as of December 31, 2009, petitioner had excess creditable taxes withheld in the year 2009 in the amount of P11,570,181.00, which could be subject for refund.

However, to be entitled to refund, petitioner must establish compliance with the following requisites, to wit: (1) the administrative and judicial claims for refund were filed within the mandatory[7] two-year period[8] reckoned from the filing of the final adjusted return (FAR)[9], (2) it is shown on the return of the recipient that the income payment received was declared as part of the gross income; and (3) the fact of withholding as evidenced by a copy of the statement duly issued by the payor to the payee showing the amount paid and the amount of the tax withheld.[10] The *second* and *third* conditions are anchored on Section 2.58.3(B) of Revenue Regulations No. 2-98.[11]

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[6] Exhibit H, Line 30A

[7] Commissioner of Internal Revenue vs. Manila Electric Company (MERALCO), G.R. No. 181459, June 9, 2014

[8] CBK Power Company Limited vs. Commissioner of Internal Revenue, G.R. Nos. 193383-84, January 14, 2015 and Commissioner of Internal Revenue, vs. CBK Power Company Limited, G.R. Nos. 193407-08

[9] Commissioner of Internal Revenue vs. Primetown Property, G.R. No. 162155, August 28, 2007

[10] CIR v. Merchant (Phil.) Operations Corporation, G.R. No. 171742 & 176165, June 15, 2011.

[11] *Sec. 2.58.3. Claim for Tax Credit or Refund*

x x x x

(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**

The Court *En Banc* agrees with the Court in Division that both the administrative and judicial claims for refund were seasonably instituted by petitioner on July 21, 2010 and April 11, 2012, respectively. It was established that petitioner filed its ITR for the year 2009 on April 15, 2010, hence, it had until April 15, 2012 to file its claim for refund, both with respondent and with the Court.

For the second requisite, petitioner presented various Certificates of Creditable Tax Withheld at Source (BIR Form) 2307)[12] and Withholding Tax Remittance Returns (BIR Form 1606)[13] issued to it by various withholding agents for the year 2009 in the amount of P11,571,816.18. The same amount was reflected in the ICPA Report dated September 17, 2012 which tallied with the Court's own findings after its examination of the subject CWT Certificates.[14] In fine, petitioner was able to satisfy the second requisite by establishing the fact of withholding of the amount of P11,571,816.18.

The controversy however springs from the finding by the Court in Division that petitioner failed to show in its ITR for the year 2009 that the income payment received subjected to CWT was declared as part of its gross income resulting in the denial of its Petition for Review.

Based on the Certificates of Creditable Tax Withheld for 2009, the amount of P11,571,816.18 was withheld from the income payments of P296,344,363.22, from which petitioner was able to realize a gross profit of P93,367,759.11. In contrast, petitioner, in its 2009 ITR, indicated the amount of P166,416,146.00 as its income or revenues from sale of goods/properties, interest, and other income, as follows:

Sale of Goods/Properties		P 122,005,289.00
Less: Sales Returns/Discounts		828,446.00
Net Sales		P 121,176,843.00
Interest Income	P 31,788,695.00	
Other Income	13,450,608.00	45,239,303.00
TOTAL INCOME		P 166,416,146.00

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statement duly issued by the payor to the payee showing the amount paid and the amount of tax withheld therefrom.[11]

[12] Exhibits N to N-256
[13] Exhibits O to O-256
[14] See Table of CWT, Division Decision dated November 28, 2013, pp. 10-21

In sum, petitioner's income in 2009 based on the Certificates of Tax Withheld amounted to P296,344,363.22, while its income for the same year as reported in its ITR is much lower amounting only to P166,416,146.00. To be sure, the difference is seriously significant that the Court cannot ignore. The discrepancy in the amount of P129,928,217.22 between petitioner's income based on the Certificates of Creditable Tax Withheld and the income declared in its ITR, is shown in the following table:

Income per Certificates	P 296,344,363.22
Income per 2009 Annual ITR	166,416,146.00
Discrepancy	**P 129,928,217.22**

Not even the self-serving testimony of witness Bienvenido S. Uy that petitioner included in its ITR the gross income subjected to CWT can save the day for petitioner there being no document to substantiate the same.

The ICPA Report stating that "the income payments received were declared as part of petitioner's gross income and reported in its returns either on cash basis, on deferred payment plan or on installment basis" is as well of no moment for there is nothing in the record to back it up.

Further, the Court is not bound by the findings of the ICPA. The ICPA Report is but a tool or guide to aid the Court in the resolution of the case. The determination of the merit or the probative value of such report is still within the province of the Court. In addition, the Court is free to adopt or disregard, completely or partially, the findings of the ICPA. It can even make its own audit and evaluation of the documents pertinent to the case presented during the trial in order to intelligently resolve the conflict brought before it,[15] as it did in the present case.

Therefore, petitioner's impression that the Court in Division erred in concluding that it failed to prove that the income payment received which was subjected to CWT was declared as part of its gross income is incorrect. This is a point made clear by no less than the Supreme Court in the

[15] First Lepanto Taisho Insurance Corporation vs. Commissioner of Internal Revenue, CTA EB Case No. 563, March 1, 2011

case of *United International Pictures AB v. Commissioner of Internal Revenue*[16], thus:

> **However, records show that petitioner failed to reconcile the discrepancy between income payments per its income tax return and the certificate of creditable tax withheld.**
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> A perusal of the certificate of tax withheld would reveal that petitioner earned P146,355,699.80. On the contrary, its annual income tax return reflects a gross income from film rentals in the amount of P145,381,568.00. However, despite the P974,131.80 difference, both the certificate of taxes withheld and income tax return filed by petitioner for taxable year 1999 indicate the same amount of P7,317,785.00 as creditable tax withheld. What's more, petitioner failed to present sufficient proof to allow the Court to trace the discrepancy between the certificate of taxes withheld and the income tax return.
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> **Parenthetically, the Office of the Solicitor General correctly pointed out that the amount of income payments in the income tax return must correspond and tally to the amount indicated in the certificate of withholding**, since there is no possible and efficacious way by which the BIR can verify the precise identity of the income payments as reflected in the income tax return.
>
> **Therefore, petitioner's claim for tax refund for taxable year 1999 must be denied, since it failed to prove that the income payments subjected to withholding tax were declared as part of the gross income of the taxpayer.** (emphasis ours)

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 justifiable controversy. There is only one Supreme Court from whose decisions all other courts should take their bearings.[17] Courts are bound by prior decisions. Once a case has been decided one way, courts, such as the Court of Tax Appeals, have no choice but to resolve subsequent cases involving the same issue in the same manner.[18]

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[16] United International Pictures AB vs. Commissioner of Internal Revenue, G.R. No. 168331, October 11, 2012

[17] Commissioner of Internal Revenue vs. Michel J. Lhuillier Pawnshop, Inc., G.R. No. 150947, July 15, 2003

[18] Silicon Philippines, Inc. (Formerly Intel Philippines Manufacturing, Inc.) vs. Commissioner of Internal Revenue, G.R. Nos. 184360 & 184361; Commissioner of Internal Revenue vs. Silicon

Applying the cited jurisprudence, the Court holds that petitioner failed to prove that the income payments subjected to withholding tax were declared as part of its gross income.

On petitioner's claim that there would be no discrepancy if only the Court considered the time difference in its accounting and recording system for withholding of taxes in instalment and cash sales, suffice it to say that this argument had been resolved by the Court in Division in the similarly assailed Resolution of March 20, 2014.

Anent, the document denominated as Schedule of Sales Subjected to Creditable Withholding Tax in taxable year 2009 and Corresponding Gross Profit Realized in 2009 and In Prior and Succeeding Years ITR (Schedule), which petitioner attached to its Motion for Reconsideration filed with the Court in Division, note that it was submitted without authentication and formal offer and only after the assailed Decision has been rendered. In other words, it cannot be considered evidence without violating the rules.[19] To rule otherwise is to open the floodgates to endless review of decisions, whether through a motion for reconsideration or for a new trial, in the guise of new found evidence[20], which in the first place is not true under the circumstances. Moreover the said document is but a mere computer print-out prepared by petitioner itself, hence, self-serving and of no probative value.

It is also irrelevant that the BIR in its audit failed to note the discrepancy found by the Court. In the first place, it is not the duty of the government to disprove petitioner's allegations. The burden of proof lies upon petitioner who must present substantial evidence to prove his claim for refund.[21] Further, tax refunds, like tax exemptions, are construed strictly against the taxpayer.[22]

Philippines, Inc. (Formerly Intel Philippines Manufacturing, Inc.), G.R. No. 184384, February 19, 2014

[19] Robert F. Mallilin vs. Luz G. Jamesolamin and the Republic of the Philippines, G.R. No. 192718, February 18, 2015

[20] Office of the Ombudsman, Represented By Hon. Simeon V. Marcelo vs. Carmencita D. Coronel, G.R. No. 164460, June 27, 2006

[21] Commissioner of Internal Revenue vs. Far East Bank, G.R. No. 173854, March 16, 2010

[22] Accenture, Inc. vs. Commissioner of Internal Revenue, G.R. No. 190102, July 11, 2012 citing Paseo Realty & Development Corporation v. Court of Tax Appeals, et al., 483 Phil. 254 (2004)

Finally, all is not lost for petitioner. In a similar case where a claim for refund of CWT had been denied, the Supreme Court allowed to carry-over the same in the following manner:

> The Court similarly disagrees in the declaration of the Court of Appeals that to deny the claim for refund of BPI, because of the *irrevocability rule*, would be tantamount to unjust enrichment on the part of the government. The Court addressed the very same argument in *Philam*, where it elucidated that there would be no unjust enrichment in the event of denial of the claim for refund under such circumstances, because there would be no forfeiture of any amount in favor of the government. The amount being claimed as a refund would remain in the account of the taxpayer until utilized in succeeding taxable years, as provided in Section 76 of the NIRC of 1997. It is worthy to note that unlike the option for refund of excess income tax, which prescribes after two years from the filing of the FAR, there is no prescriptive period for the carrying over of the same. Therefore, the excess income tax credit of BPI, which it acquired in 1998 and opted to carry over, may be repeatedly carried over to succeeding taxable years, *i.e.*, to 1999, 2000, 2001, and so on and so forth, until actually applied or credited to a tax liability of BPI.[23]

Evident from the foregoing that once the taxpayer opts to carry-over the excess income tax against the taxes due for the succeeding taxable years, such option is irrevocable for the whole amount of the excess income tax, thus, prohibiting the taxpayer from applying for a refund for that same excess income tax in the next succeeding taxable years. The unutilized excess tax credits will remain in the taxpayer's account and will be carried over and applied against the taxpayer's income tax liabilities in the succeeding taxable years until fully utilized.[24]

WHEREFORE, the Petition For Review dated April 23, 2014 filed by petitioner Stateland, Inc., is hereby **DENIED,** for lack of merit.

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[23] Commissioner of Internal Revenue vs. Bank of the Philippine Islands, G.R. No. 178490, July 07, 2009

[24] Asiaworld Properties vs. Commissioner of Internal Revenue, G.R. No. 171766, July 29, 2010

Consequently, the Decision dated November 28, 2013 and the Resolution dated March 20, 2014, both rendered by the Court in Division, are **AFFIRMED**.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

We Concur:

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTANEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ON LEAVE
CIELITO N. MINDARO-GRULLA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the above Decision has been reached in consultation with the members of the Court *En Banc* before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice