Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

EN BANC

JARDINE LLOYD THOMPSON INSURANCE BROKERS INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB Case No. 861
(CTA Case No. 7916)

Present:
DEL ROSARIO, *PJ.*
CASTAÑEDA, JR.
BAUTISTA
UY
CASANOVA
FABON-VICTORINO
MINDARO-GRULLA
COTANGCO-MANALASTAS,
LIBAN, *JJ.*

Promulgated:

JUN 05 2013

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D E C I S I O N

MINDARO-GRULLA, J.:

Submitted for decision is a Petition for Review for the Court *En Banc* under *Section 2(a)(1), Rule 4,* in relation to *Section 4(b), Rule 8 of the 2005 Revised Rules of the Court of Tax Appeals (RRCTA),*[1] *as amended,* of the Decision dated

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[1] Rule 4, SEC. 2. *Cases within the jurisdiction of the Court en banc.* – The Court *en banc* shall exercise exclusive appellate jurisdiction to review by appeal the following:

(a) Decisions or resolutions on motions for reconsideration or new trial of the Court in Divisions in the exercise of its exclusive appellate jurisdiction over:

(1) Cases arising from administrative agencies – Bureau of Internal Revenue, Bureau of Customs, Department

September 23, 2011[2] and the Resolution dated December 26, 2011[3] rendered by the Third Division of this Court, the dispositive portions of which, respectively, read as follows:

Decision dated September 23, 2011:

"WHEREFORE, premises considered, petitioner's claim for refund or issuance of tax credit certificate is hereby **DENIED** due to insufficiency of evidence.

SO ORDERED."

Resolution dated December 26, 2011:

"WHEREFORE, premises considered, petitioner's Motion for Reconsideration is hereby **DENIED** for lack of merit.

SO ORDERED."

In the deliberation of the instant case, Associate Justice Lovell R. Bautista, Associate Justice Erlinda P. Uy, and Associate Justice Amelia R. Cotangco-Manalastas concurred with the opinion of the ponente that the assailed Decision and Resolution of the Court in Division should be affirmed.

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of Finance, Department of Trade and Industry, Department of Agriculture;

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Rule 8, SEC. 4. *Where to appeal; mode of appeal.* – x x x

(b) An appeal from a decision or resolution of the Court in Division on a motion for reconsideration or new trial shall be taken to the Court by petition for review as provided in Rule 43 of the Rules of Court. The Court *en banc* shall act on the appeal.

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[2] Penned by Associate Justice Amelia R. Cotangco-Manalastas, concurred in by Associate Justice Lovell R. Bautista and Associate Justice Olga Palanca-Enriquez, the latter with Separate Concurring and Dissenting Opinion, *En Banc* Docket, pp. 40-59.

[3] Penned by Associate Justice Amelia R. Cotangco-Manalastas, concurred in by Associate Justice Lovell R. Bautista and Associate Justice Olga Palanca-Enriquez, the latter maintaining her Separate Concurring and Dissenting Opinion in the Decision, *En Banc* Docket, pp. 61-64.

However, Presiding Justice Roman G. del Rosario, Associate Justice Juanito C. Castañeda, Jr., Associate Justice Caesar A. Casanova and Associate Justice Esperanza R. Fabon-Victorino voted to dismiss the Petition for Review.

Section 2 of Republic Act No. 1125, as amended by Republic Act No. 9503, provides:

> "SEC. 2. *Sitting En Banc or Division; Quorum; Proceedings.* –
> xx x x x x x x x
>
> **The affirmative votes of five (5) members of the Court *en banc* shall be necessary to reverse a decision of a Division** but a simple majority of the Justices present necessary to promulgate a resolution or decision in all other cases or two (2) members of a Division, as the case may be, shall be necessary for the rendition of a decision or resolution in the Division level.

Likewise, Section 3, Rule 2 of the 2005 Revised Rules of the CTA, as amended, states that the presence at the deliberation and the affirmative vote of five (5) members of the Court *en banc shall be necessary* ***to reverse*** *a decision of a Division* but only a simple majority of the justices present to promulgate a resolution or decision in all other cases. *Where the necessary majority vote cannot be had in appealed cases, the judgment or order appealed from shall stand affirmed,* thus:

> "Sec. 3. *Court en banc; quorum and voting.* - The presiding justice or, if absent, the most senior justice in attendance shall preside over the sessions of the Court *en banc*. The attendance of five (5) justices of the Court shall constitute a quorum for its session *en banc*. **The presence at the deliberation and the affirmative vote of five (5) members of the Court *en banc* shall be necessary to *reverse* a decision of a Division but only a simple majority of the justices present to promulgate a resolution or decision in all other cases. Where the necessary majority vote cannot be had, the petition shall be dismissed; in appealed cases, the judgment or order appealed from shall stand affirmed; and on all incidental matters, the petition or motion shall be denied.** [Emphasis supplied.]

Considering that the required affirmative votes of five (5) members of the Court *en banc* was not obtained in the instant case, pursuant to Section 2 of Republic Act No. 1125, as amended by Republic Act No. 9503 in relation to Section 3 of Rule 2 of the Revised Rules of the Court of Tax Appeals (RRCTA), the appealed Decision and Resolution shall stand AFFIRMED.

The facts of the case as recited by the Third Division in its Decision[4] read as follows:

> Petitioner (JLTIBI) is a corporation duly organized and existing under and by virtue of the laws of the Philippines, with principal place of business at 25/F, Philamlife Tower, 8767 Paseo de Roxas, Makati City.
>
> Respondent is the Commissioner of the Bureau of Internal Revenue (BIR), the government agency tasked, among others, to collect national internal revenue taxes. She holds office at the BIR National Office Building, Diliman, Quezon City.
>
> On April 16, 2007, petitioner filed its Annual Income Tax Return for taxable year 2006, but subsequently filed an amended Annual Income Tax Return on April 26, 2007, showing the following details:

Total Gross Income	₱61,324,266.00
Less: Deductions	61,324,266.00
Taxable Income	0
Minimum Corporate Income Tax (MCIT)/ Aggregate Income Tax Due	1,226,485.32
Less: Prior Year's Excess Credits	43,596,570.00
Creditable Tax Withheld for the year	8,021,037.00
Total	51,617,607.00
Tax Payable (Overpayment)	**₱ (50,391,121.68)**

> On April 3, 2009, petitioner filed with the Large Taxpayers Audit and Investigation Division of the Bureau of Internal Revenue a claim for refund of its purported unutilized creditable tax withheld for the year 2006 in the amount of ₱8,021,037.00.

[4] *Supra* note 2.

Alleging inaction on the part of respondent on its claim for refund and in order to preserve its right to file a refund claim, petitioner filed before this Court the instant Petition for Review on April 15, 2009.

On May 22, 2009, respondent filed her Answer and raised the following arguments:

> "6. Petitioner's alleged claim for refund is subject to administrative routinary investigation/examination by the Bureau of Internal Revenue (BIR).
>
> 7. Petitioner miserably failed to show that the amount of ₱8,021,037.00 being claimed by petitioner as alleged unutilized creditable tax withheld for taxable year 2006 was erroneously or illegally collected, or that the same was properly documented.
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> 8. Taxes paid and collected are presumed to have been paid in accordance with law; hence, not refundable.
>
> 9. Petitioner must show that it has fully complied with the requisites to sustain a claim for refund or tax credit of unutilized creditable tax credits as ruled by the Honorable Supreme Court in *F. Jacinto Group, Inc. vs. CIR and Citibank N.A. vs. Court of Appeals, et al.* These requisites are as follows:
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> > a.) That the claim for refund was filed within the two-year period;
> > b.) That the fact of withholding is established by a copy of a statement duly issued by the payor (withholding agent) to the payee showing the amount paid and the amount of tax withheld therefrom; and
> > c.) That the income upon which the taxes were withheld in the return of the recipient.
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> 10. In an action for refund/credit, the burden of proof is on the taxpayer to establish its right to refund, and failure to sustain the burden is fatal to the claim for refund/credit **(Asiatic Petroleum Co. vs. Llanes, 49 Phil.**

466 cited in Collector of Internal Revenue v. Manila Jockey Club, Inc., 98 Phil. 670)."

During trial, the Court commissioned the services of Ms. Ma. Milagros Padernal, as Independent Auditor, to examine and verify petitioner's voluminous documents.

On August 5, 2010, petitioner presented its documentary and testimonial evidence; which were admitted via Resolutions dated October 28, 2010 and December 23, 2010.

On the other hand, respondent manifested that she will not present any evidence and rested her case on March 28, 2011.

The case was submitted for decision on May 24, 2011, considering the "Memorandum for Petitioner" and the "Amended Memorandum for Petitioner", respectively filed on April 26, 2011 and May 2, 2011, and respondent's "Manifestation" filed on May 17, 2011, stating that she intends to adopt the declaration in her Answer as her Memorandum.

On September 23, 2011, the Third Division issued the assailed Decision[5] denying petitioner's claim for refund on the ground that it failed to present its 2007 quarterly income tax returns to prove that it did not carry over and/or apply its alleged 2006 excess creditable withholding taxes to the taxable quarters of 2007, in order for it to be qualified for the grant of refund under Section 76[6] of the National

[5] *Ibid.*

[6] 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***

Internal Revenue Code (NIRC) of 1997; and also, that it was not able to substantiate its 2005 excess credit amounting to ₱43,596,570.00 within which its 2006 Minimum Corporate Income Tax was deducted.

The three (3) requisites for a tax refund are stated as follows:

1. That the claim for refund was filed within the two-year prescriptive period prescribed under Section 204(C), in relation to Section 229 of the NIRC of 1997, as amended;
2. That the fact of withholding is established by a copy of a statement duly issued by the payor (withholding agent) to the payee, showing the amount paid and the amount of tax withheld therefrom; and
3. **That it is shown on the return of the recipient that the income payment received was declared as part of the gross income.**[7] [emphasis supplied]

Petitioner was not able to satisfy the above-stated third requisite.

Hence, petitioner's Motion for Reconsideration was denied for lack of merit.[8]

On January 18, 2012, petitioner filed a Petition for Review[9] before this Court *En Banc* seeking for the annulment and reversal of the assailed Decision and Resolution.

application for cash refund or issuance of a tax credit certificate shall be allowed therefor. [emphasis supplied]

[7] Section 2.58, Revenue Regulations No. 2-98, as amended; *ACCRA Investments Corporation vs. The Honorable Court of Appeals, et. al.*, G.R. No. 96322, December 20, 1991.
[8] *Supra* note 3.
[9] *En Banc Docket,* pp. 1-38.

The core issue is whether petitioner is entitled to a refund of its alleged unutilized creditable withholding taxes for the taxable year 2006.

We rule in negative.

We agree with petitioner that the 2005 excess credit amounting to ₱43,596,570 is not in issue for the claim for refund of its 2006 alleged unutilized creditable withholding taxes. Also, we can even assume *arguendo* that it was able to satisfy all the requisites for a tax refund. Nevertheless, this Court denies petitioner's claim because it was not able to prove that it did not utilize the 2006 creditable withholding tax to the succeeding quarters of 2007. The reason is simple: As construed from the provisions of Section 76 of the 1997 NIRC, the fact that there is no carry-over of the excess and unutilized creditable withholding taxes is a *condition sine qua non* for the taxpayer to qualify for a tax refund. Stated differently, ***before a refund for unutilized creditable withholding tax is granted, it is essential to prove first that the said unutilized creditable withholding taxes were not carried over to the succeeding taxable quarters***. Petitioner failed to do so.

Thus, even if the claim for refund was filed within the 2-year prescriptive period, the fact of withholding of creditable taxes by the withholding agents was proven and the income upon which the withholding taxes were withheld were included as part of the gross income and were reflected in the preceding income tax return, nonetheless, the taxpayer should prove first that the excess creditable withholding tax has not been carried over to the taxable quarters of the succeeding taxable years to qualify for a tax refund.[10]

In the instant case, petitioner seeks for a refund of its alleged unutilized creditable withholding taxes for the

[10] *UPSI Management. Inc., vs. Commissioner of Internal Revenue,* CTA EB Case No. 670 (CTA Case No. 7762) October 19, 2011.

taxable year 2006. Thus, it is crucial for petitioner to prove that it neither carried over, nor elected to utilize and carry over the claimed amount against the succeeding taxable quarters of 2007. The vital evidence to substantiate if claimant was able to conform to the *condition sine qua non* set by Section 76 of the NIRC is actually the petitioner's quarterly income tax returns because Section 76 is explicit in stating that "once the option to carry-over has been made, no application for refund or issuance of tax credit certificate shall be allowed therefor."

The records show that petitioner failed to present its 2007 quarterly income tax returns. While petitioner offered as evidence its 2007 annual income tax return wherein it appears that it did not carry over its claimed unutilized creditable withholding taxes of ₱8,021,037.00 to the succeeding taxable quarters of 2007, nonetheless, the annual income tax return would not suffice to prove that petitioner did not credit the said unutilized creditable withholding taxes against the income tax due for the first three quarters of 2007.

Petitioner insists that its presentation of the 2007 quarterly income tax returns is not needed for a tax refund, citing the case of *Philam Asset Management Inc., vs. Commissioner of Internal Revenue*[11] *(the "Philam Asset Case").* However, the issue in the said case involved the presentation of the **final adjustment return (FAR)** of the succeeding year, and not of the quarterly income tax returns, to wit:

> 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.
>
> *First*, 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

[11] *Philam Asset Management Inc., vs. Commissioner of Internal Revenue,* G.R. Nos. 156637/162004, December 14, 2005.

> 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.

Contrary to petitioner's argument, *Philam Asset Case* actually recognizes the necessity of presenting the quarterly income tax returns in a claim for refund, to wit:

> The established procedure is that a taxpayer that wants a cash refund shall make a written request for it, and the ITR showing the excess expanded withholding tax credits shall then be examined by the BIR. For the grant of refund, RRs 12-94 and 6-85 state that all pertinent accounting records should be submitted by the taxpayer. These records, however, actually refer only to (1) the withholding tax statements; *(2) the ITR of the **present quarter** to which the excess withholding tax credits are being applied; and (3) the ITR of the quarter for the previous taxable year in which the excess credits arose*. xxx [emphasis supplied]

It was simple for petitioner to comply in presenting its quarterly income tax returns but it did not do so. Suffice it to say that this Court is not barred from considering undisputed facts to arrive at a just determination of a controversy.[12] This Court is not precluded from requiring other evidence which will once and for all erase doubts to the claim for refund. Where the taxpayer claims a refund, this Court, as a court of record, is required to conduct a formal trial (trial *de novo*) to prove every minute aspect of the claim.[13]

The quarterly income tax returns are needed to show that there was no carry-over against the tax liabilities of the succeeding taxable quarters in 2007. Simply because petitioner alleges an excess amount having been paid, it

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[12] *BPI-Family Savings Bank, Inc. vs. Court of Appeals*, G.R. No. 122480, April 12, 2000.
[13] *Kepco Philippines Corporation vs. Commissioner of Internal Revenue,* G.R. No. 179356, December 14, 2009.

does not automatically mean that it is entitled to its claim for refund. It must be proven first that the same was not carried over against the estimated quarterly income tax due for the taxable quarters of the succeeding taxable year. The presentation of quarterly income tax returns for the succeeding quarters of 2007 are necessary to establish that petitioner, undeniably, did not exercise its option to carry-over excess and unutilized creditable withholding tax.[14]

As we have explained this situation in the case of *UPSI Management, Inc., vs. Commissioner of Internal Revenue*[15] *(the "UPSI Case"),* thus:

> Incidentally, a taxpayer may have indicated the intention to refund the excess creditable withholding taxes but nevertheless may have ACTUALLY CARRIED IT OVER TO THE TAXABLE QUARTERS OF THE SUCCEEDING TAXABLE YEAR which may or may not be utilized. However, a taxpayer cannot get a tax refund or a tax credit and carry over at the same time for the same excess income taxes paid. Apparently, a taxpayer who has indicated the intention to refund the excess creditable withholding taxes but nevertheless carried them over and utilized the same in the TAXABLE QUARTERS OF THE SUCCEEDING TAXABLE YEAR is not entitled to refund. In the same vein, a taxpayer who has indicated the intention to refund the excess creditable withholding taxes but nevertheless carry them over but was not able to utilize the same in the TAXABLE QUARTERS OF THE SUCCEEDING TAXABLE YEAR is likewise not entitled to refund. <u>Indeed, a taxpayer may amend its quarterly income tax return or annual Income tax return which in either case may modify the previous intention to carry-over, apply as tax credit certificate or refund, as the case may be. But the exercise of the option to carry-over in the succeeding taxable quarters under the irrevocable rule cannot be modified in its final adjustment return.</u> [underlining supplied]

Therefore, petitioner must first establish the fact that there was indeed no carry-over that took place regarding its 2006 alleged excess and unutilized creditable withholding

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[14] *Commissioner of Internal Revenue vs. Sonoma Services Incorporated,* CTA EB Case No. 697 (CTA Case No. 7613), April 20, 2012.
[15] *Supra* note 10.

taxes, for it to be granted refund of the same. To verify if there was really no carry-over, the best evidence to prove it is not the FAR or annual income tax return, which may easily be amended at the end of the taxable year, but the quarterly income tax returns where the exercise to carry-over actually takes place, by virtue of Section 76 of the 1997 NIRC.

It must be noted that Section 76 of the 1997 NIRC states that the option to carry-over is exercised against the *quarterly income taxes* to the *taxable quarters* of the succeeding taxable years. The exercise of the option to carry-over is *ergo* realized upon the *quarterly income tax returns*. It is against the quarterly income taxes stated in the quarterly income tax returns that the option to carry-over is exercised, hence, the need to present these quarterly income tax returns, to wit:

> SEC. 76. Final Adjustment Return. –
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> xxx
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> 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 <u>carried over and credited against the estimated **quarterly income tax liabilities** for the **taxable quarters** of the succeeding taxable years</u>. xxx [emphasis supplied]

Petitioner's reliance on the Independent Certified Public Accountant's statement in her judicial affidavit[16] that there was no carry-over which took place for the taxable year 2007 does not hold water because the independent accountant merely based her findings on petitioner's 2007 a*nnual income tax returns*, to wit:

> The total taxes withheld of ₱8,021,037 in 2006, which is subject of the claim for refund, was not presented as a credit against the Petitioner's income tax liabilities in 2006 nor carried over to the <u>amended 2007 **Annual Income Tax Return**</u> (Exhibit E) and the 2008 Annual Income Tax Return (Exhibit HH). [emphasis supplied] *ɕ*

[16] *En Banc D*ocket, pp. 226-235.

Moreover, as stated in the Independent Certified Public Accountant (ICPA)'s Final Report,[17] what was checked were the ***annual income tax returns or final adjustment returns (FARs)*** for the taxable years 2006 and 2007. The ICPA's Final Report states:

> 3. To verify the disposition of the creditable taxes withheld for the calendar year 2006 in the amount of ₱8,021,037, and to determine whether the creditable withholding taxes being claimed for refund were applied against the Petitioner's income tax liabilities for the calendar years 2006, 2007 and 2008, we checked the following ***annual income tax returns*** of the Petitioner: xxx [emphasis supplied]

To repeat, the presentation of petitioner's quarterly income tax returns is necessary to determine whether there was a carry-over of its 2006 alleged excess and unutilized creditable withholding taxes 'against the estimated *quarterly* income tax liabilities for the taxable *quarters* of the successive taxable year,' as instructed by Section 76 of the 1997 NIRC itself.

Exercising the option for a tax refund or a tax credit does not *ipso facto* confer upon a taxpayer the right to an immediate availment of the choice made.[18] What could be the best evidence then of exercising such option to carry over is but the quarterly income tax returns of petitioner, and if such option was indeed exercised, its claim for refund should then rightfully be denied by this Court.

As We have held in the *UPSI Case:*

> It is a matter of evidence and axiomatic that a claimant has the burden of proof to establish the factual basis of his or her claim for tax credit or refund. Tax refunds, like tax exemptions, are construed strictly against the taxpayer. xxx **Apparently, the best evidence to prove that the excess creditable withholding tax was**

[17] *En Banc* Docket, pp. 136-153.
[18] *Supra* note 10.

> **not carried over to the succeeding taxable quarters is the presentation of the succeeding quarterly income tax return and the annual income tax return of the subsequent taxable year in order for this Court to verify and conclude that the claimed amount was not utilized or carried over to the said quarters.**
>
> xxx
>
> Therefore, as to which option the taxpayer chose is generally a matter of evidence. It is axiomatic that a claimant has the burden of proof to establish the factual basis of his or her claim for tax credit or refund. Tax refunds, like tax exemptions, are construed strictly against the taxpayer. [19]
>
> [emphasis supplied]

The taxpayer is allowed to amend its annual income tax return, hence, the option to carry-over that was exercised during the taxable quarters may not be reflected in the taxpayer's annual income tax return. In the instant case, the option to carry-over may have already been exercised during the taxable quarters of 2007. Consequently, granting the claim for refund would violate the provisions of Section 76. If the claim for refund is allowed when, in fact, the amount was already carried over by petitioner against its taxable quarter liabilities, then this would result to unjust enrichment on the part of the taxpayer, at the expense of the government and the lifeblood doctrine would obviously be contravened. In claims for tax refunds, which are tax exemption in nature, the burden of proof is upon the taxpayer. ***Entitlement to a tax refund is for the taxpayer to prove and not for the government to disprove.***[20]

The requirement of presentation of the quarterly income tax returns ***guides this Court to the veracity of a petitioner's claim for refund without which petitioner could not prove with certainty that the claimed***

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[19] Citing *Commissioner of Internal Revenue vs. Bank of the Philippine Islands*, G.R. No. 178490, July 7, 2009.

[20] *Commissioner of Internal Revenue vs. Far East Bank & Trust Company,* G.R. No. 173854, March 15, 2010.

amount was not utilized or carried over to the succeeding quarters or the option to carry-over and apply the excess was effectively chosen despite the intent to claim a refund.[21] As this Court ruled in the case of *Millennium Business Services, Inc. vs. Commissioner of Internal Revenue:*[22]

> 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.
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> x x x x x x x x x
>
> The presentation of the final adjustment return does not the shift the burden of proof that the excess creditable withholding tax was not utilized or carried over to the first three (3) taxable quarters. It remains with the taxpayer claimant. It goes without saying that final adjustment returns of the preceding and the succeeding taxable years are not sufficient to prove that the amount claimed was utilized or carried over to the first three (3) taxable quarters.
>
> The importance of the presentation of the succeeding quarterly income tax return and the annual income tax return of the subsequent taxable year need not be overly emphasized. All corporations subject to income tax, are required to file quarterly income tax returns, on a cumulative basis for the preceding quarters, upon which payment of their income tax has been made. In addition to the quarterly income tax returns, corporations are required to file a final or adjustment return on or before the fifteenth day of April. The quarterly income tax return, like the final adjustment return, is the most reliable first hand evidence of corporate acts pertaining to income taxes, as it

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[21] *Millennium Business Services, Inc., vs. Commissioner of Internal Revenue,* CTA EB Case No. 510 (CTA Case No. 7441), September 28, 2010.
[22] *Ibid.*

> includes the itemization and summary of additions to and deductions from the income tax due. xxx
>
> In the same vein, if the government wants to disprove that the excess creditable withholding tax was not utilized or carried over to the succeeding taxable quarters, the presentation of the succeeding quarterly income tax return and the annual income tax return of the subsequent taxable year indicating utilization or carrying over are indispensable. However, the claimant must first establish its claim for refund, such that it did not utilize or carry over or that it opted to utilize and carry over to the 1st, 2nd, 3rd quarters and final adjustment return of the succeeding taxable year.
>
> 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. [Emphasis supplied]

Since petitioner failed to present its quarterly income tax returns for the taxable year 2007, it cannot be determined with reasonable certainty whether it opted to carry-over its excess and unutilized creditable withholding taxes and such is vital to prove its entitlement to the refund.

This Court similarly disagrees with the contention of petitioner that to deny the claim for its refund would be tantamount to unjust enrichment on the part of the government. Petitioner failed to prove that it did not carry over to the succeeding taxable quarters the subject of its claim, hence, it failed to prove that the said amount went into the coffers of the government. Nevertheless, the amount will not be forfeited in the government's favor, because it may be claimed by petitioner as tax credits in the succeeding taxable years.[23] There would be no unjust enrichment in the event of denial of the claim for refund, in cases where the taxpayer opted to carry over its excess creditable withholding tax under Section 76 of the NIRC of 1997, as amended, because there would be no forfeiture of any amount in favor of the government. The amount being claimed by petitioner would remain in his account until it is fully utilized in succeeding taxable years.[24]

In fine, petitioner's claim for refund of excess and unutilized creditable income taxes withheld for the year 2006 is denied for insufficient evidence.

WHEREFORE, premises considered, the Petition for Review, which is docketed as CTA EB Case No. 861, is hereby **DENIED**. Accordingly, the assailed Decision of the Third Division of this Court in CTA Case No. 7916, promulgated on September 23, 2011, and the Resolution, promulgated on December 26, 2011, are AFFIRMED. No pronouncement as to costs.

SO ORDERED.

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

WE CONCUR:

(*Concurs with the Separate Concurring Opinion of Justice Castañeda*)
ROMAN G. DEL ROSARIO
Presiding Justice

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[23] *Supra* note 11.
[24] *IMPSA Construction Corporation vs. Commissioner of Internal Revenue,* CTA EB Case No. 685 (CTA Case Nos. 6921 and 7172), May 24, 2011.

(With Separate Concurring Opinion)
JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

(*Concurs with the Separate Concurring Opinion of Justice Castañeda*)
CAESAR A. CASANOVA
Associate Justice

(*Joins Justice Castañeda in his Separate Concurring Opinion*)
ESPERANZA R. FABON-VICTORINO
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

(No part)
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

C E R T I F I C A T I O N

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

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

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Present:

Del Rosario, *P.J.*,
Castañeda, Jr.,
Bautista,
Uy,
Casanova,
Fabon-Victorino,
Mindaro-Grulla, and
Cotangco-Manalastas, *JJ.:*

Promulgated:
JUN 05 2013 [signature] 9:02 a.m.

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SEPARATE CONCURRING OPINION

CASTAÑEDA, JR., J.:

Petitioner earlier sought for refund or issuance of tax credit certificate ("TCC") of P8,021,037.00 representing its alleged excess and unutilized creditable taxes withheld for taxable year ended December 31, 2006. In the Petition for Review filed with the Court *en banc*, it now prays for a refund of the reduced amount of P7,302,349.56 as the alleged substantiated amount covering the same period.[1] [initials]

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[1] Rollo, p. 33. See Docket, CTA Case No. 7916, p.10

On September 23, 2011, the Third Division issued a Decision denying petitioner's refund claim or issuance of tax credit certificate due to insufficiency of evidence.[2]

Acting upon petitioner's Motion for Reconsideration, the Court denied the same for lack of merit as shown in the Resolution dated December 26, 2011.[3]

On appeal to the Court *en banc*, Associate Justice Cielito N. Mindaro-Grulla as the ponente recommended to affirm the Decision dated September 23, 2011 and December 26, 2011 in CTA Case No. 7916

The Court in Division which denied petitioner's refund claim or issuance of tax credit certificate due to insufficiency of evidence observed that:

> Petitioner should have submitted documents such as, but not limited to, lease contracts, breakdown of the rental expense per income tax return, books of accounts such as general journal, detailed general ledger, sales journal, sales invoices/billing statements, official receipts, prior year's income tax return or any other document whereby the Court can verify that it properly reported the income related to the claimed CWT either in the current or prior year. Petitioner's non compliance with the third requisite is fatal to its claim.[4]

While We concur with the Court in Division concerning the absence of the third requisite for a tax refund specifically, the recipient's return must show that the income payment received was declared as part of the gross income, I respectfully disagree with the majority requiring the submission of quarterly returns for the subsequent year on the following grounds:

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

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[2] Rollo, pp. 40-58. Penned by Associate Amelia R. Cotangco-Manalastas with Associate Justice Lovell R. Bautista concurring and Associate Justice Olga-Palanca Enriquez (retired) with concurring and dissenting opinion.
[3] Rollo, pp. 61-64.
[4] Rollo, p. 52.

BINDING UPON THIS COURT. <u>THESE SUPREME COURT CASES MUST PREVAIL.</u>

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.**

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.[5] In the case of *Systra Philippines, Inc. v. Commissioner of Internal Revenue,*[6] 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.[7] That decision becomes a judicial precedent to be followed in subsequent cases by all courts in the land.[8] The doctrine of *stare decisis* explains why the cases of ***Commissioner of Internal Revenue v. Mirant (Philippines) Operations, Corporation***[9], ***Philam Asset Management, Inc. v. Commissioner of Internal Revenue***[10], ***State Land Investment Corporation v. Commissioner of***

[5] *Dante Nacuray, et al. v. National Labor Relations Commission,* G.R. Nos. 114924-27, March 18, 1997, 270 SCRA 9.
[6] *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.*
[7] *Negros Navigation Co., Inc.., v. Court of Appeals, et al.,* G.R. No. 110398, November 7, 1997, 281 SCRA 534.
[8] *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.
[9] G.R. Nos. 171742 and 176165, June 15, 2011.
[10] *Philam Asset Management, Inc. v. Commissioner of Internal Revenue,* G.R. No. 156637/162004, December 14, 2005, 477 SCRA 761.

Internal Revenue[11] and ***Commissioner of Internal Revenue v. PERF Realty Corporation***[12] are binding upon this Court.

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,*[13] 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.**
>
> 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)

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[11] *State Land Investment Corporation v. Commissioner of Internal Revenue,* G.R. No. 171956, January 18, 2008, 542 SCRA 114.
[12] *Commissioner of Internal Revenue v. PERF Realty Corporation, 163345,* July 4, 2008, 557 SCRA 165.
[13] *Philam Asset Management, Inc. vs. Commissioner of Internal Revenue,supra.*

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*[14] 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,*[15] the Supreme Court mentioned that a tax credit or refund of creditable withholding tax requires compliance with only three (3) requisites as follows:

> 1) The claim must be filed with the CIR within the two-year period from the date of payment of the tax;
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> 2) It must be shown on the return that the income received was declared as part of the gross income; and
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> 3) The fact of withholding must be established by a copy of a statement duly issued by the payor to the payee

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

> showing the amount paid and the amount of the tax withheld.[16]

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

Thus, the submission of income tax returns be it annual or quarterly for the subsequent taxable year is not required pursuant to law and jurisprudence.

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

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[16] 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.
[17] *Commissioner of Internal Revenue v. PERF Realty Corporation, supra.*

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice