Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

En Banc

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-versus-

AXIA POWER HOLDINGS PHILIPPINES CORP.
Respondent.

CTA EB No. 1411
(CTA Case No. 8249)

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AXIA POWER HOLDINGS PHILIPPINES CORPORATION,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB No. 1416
(CTA Case No. 8249)

Present:
DEL ROSARIO, P.J.,
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA,
FABON-VICTORINO,
MINDARO-GRULLA,
RINGPIS-LIBAN, and
MANAHAN, JJ.

Promulgated:

SEP 28 2017 3:29 p.m.

x--x

DECISION

CASANOVA, J.:

Before this Court are consolidated Petitions for Review separately filed by Commissioner of Internal Revenue on January 27, 2016, docketed as CTA EB No. 1411[1], and by Axia Power Holdings Philippines Corporation, on February 9, 2016, docketed as CTA EB No. 1416[2]. Both petitions seek the reversal and setting aside of the Decision[3] (Assailed Decision) dated July 15, 2015, and Resolution[4] (Assailed Resolution) dated December 10, 2015, both rendered by the CTA Third Division in CTA Case No. 8249, entitled "Axia Power Holdings Philippines Corporation vs. Commissioner of Internal Revenue". The respective dispositive portions of the Assailed Decision and Resolution are quoted hereunder, to wit:

Decision dated July 15, 2015:

> "**WHEREFORE**, the instant Petition for Review filed by petitioner Axia Power Holdings Philippines Corporation on March 31, 2011, is hereby **PARTIALLY GRANTED**. Accordingly, respondent is hereby **DIRECTED TO REFUND** in favor of petitioner the amount of PhP12,687,328.44, representing Marubeni Energy Services Corporation's unutilized excess CWT for CY 2008.
>
> **SO ORDERED.**"

Resolution dated December 10, 2015:

> "**WHEREFORE**, petitioner's Motion for Partial Reconsideration and respondent's Motion for Reconsideration both posted on July 31, 2015, are hereby **DENIED**, for lack of merit.
>
> **SO ORDERED.**"

Axia Power Holdings Philippines Corporation (Axia) is a domestic corporation, with principal office located at Unit 2807 28/F The Trade & Financial Tower, 7th Avenue corner 32nd St., Bonifacio Global City, The Fort, Taguig City. It is duly registered with the Bureau of Internal Revenue (BIR) with Tax Identification Number (TIN) 237-208-599-000 dated April 4, 2005. It is the surviving entity after its merger with Marubeni Energy Services Corporation (MESC), Marubeni Pacific Energy

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[1] En Banc Rollo (EB No. 1411), pp. 5-20.
[2] En Banc Rollo (EB No. 1416), pp. 40-58.
[3] Annex "A" to the Petition for Review, En Banc Rollo (EB No. 1411), pp. 22-42.
[4] Annex "B" to the Petition for Review, Ibid., pp. 44-53.

Holdings Corporation (MPEHC) and Marubeni Pacific II Energy Holdings Corporation (MP2EHC).[5]

On the other hand, the Commissioner of Internal Revenue (CIR) is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR) who is vested by law in general to implement and enforce the provisions of the National Internal Revenue Code and other laws, and in particular, decide claims for refund of internal revenue taxes. He holds office at the BIR National Office Building, Agham Road, Diliman Quezon City.[6]

The facts[7] of the case, as narrated by the CTA Third Division in the Assailed Decision, are as follow:

> "On December 22, 2009, the respective Boards of Directors and stockholders of petitioner, MESC, MPEHC and MP2EHC, approved the merger of petitioner [Axia], MESC, MPEHC and MP2EHC, with petitioner as the surviving entity.
>
> The Certificate of Filing of the Articles and Plan of Merger dated March 29, 2010 specifically states that the entire assets and liabilities of MESC, MPEHC, and MP2EHC will be transferred and absorbed by petitioner.
>
> Prior to the merger or on April 14, 2009, MESC filed with the BIR its Annual Income Tax Return (ITR) for CY 2008, reporting a gross income of PhP21,739,472.00, representing its income subject to creditable withholding tax. However, it was not able to utilize its creditable withholding taxes in the total amount of PhP40,974,229.00, inclusive of the prior years' excess income taxes. MESC indicated in its Annual ITR for CY 2008 its intention to apply for a tax credit certificate covering the said amount.
>
> On April 15, 2010, MESC filed with the BIR RDO No. 47-Makati City a written application for cancellation of Tax Identification No. (TIN) and issuance of tax clearance with a claim for refund or issuance of tax credit certificate of its unutilized creditable withholding taxes for CYs 2007 to 2009.

[5] Par. 1, The Parties, Petition for Review, En Banc Rollo (EB No. 1416), pp. 41.
[6] Par. 1, The Parties, Petition for Review, En Banc Rollo (CTA EB No. 1411), p. 6.
[7] February 17, 2015 Decision, En Banc Rollo (CTA EB No. 1411), pp. 60-80.

On the same date, MESC filed a Petition for Review with the Court to claim for the refund/tax credit of its excess creditable withholding tax for CY 2007 in the amount of PhP16,370,326.00, docketed as CTA Case No. 8092. On October 15, 2010, the said Petition for Review was amended to indicate petitioner as the party seeking the Court's intervention in lieu of MESC.

On March 31, 2011, pending respondent's [CIR] action on petitioner's claim for refund/tax credit of its excess and unutilized CWT for CY 2008 and before the lapse of the two (2)-year prescriptive period under Section 229 of the National Internal Revenue Code (NIRC) of 1997, as amended, petitioner filed the instant Petition for Review for the remaining unutilized creditable withholding tax in the amount of PhP24,603,903.00 (PhP40,974,229.00 - PhP16,370,326.00).

In her Answer belatedly filed on May 26, 2011, respondent mainly contends that petitioner's administrative claim for refund is still subject to administrative routinary investigation/examination and raises the presumption that the taxes are paid and collected in accordance with law and implementing regulations, hence, not refundable. Besides, petitioner failed to comply with the requirements under Section 76 of the 1997 Tax Code, viz., to prove that the claimed amount was included as part of its gross income for CY 2008; that it remains unutilized; and that it was fully remitted to the BIR. Additionally, petitioner already exercised the option to carry-over the subject amount to the succeeding taxable quarters/years.

Respondent further argues that the ruling in the case of *Bank of the Philippine Island vs. Commissioner of Internal Revenue,* is not applicable to the instant case since petitioner being the surviving corporation may still utilize the alleged excess creditable withholding taxes for CY 2008 to the succeeding taxable quarters or years, as a consequence of merger. Even assuming that petitioner is entitled to a tax refund, it must still show compliance with *Section 204, in relation to Section 230 (now 229) of the Tax Code,* for failure to do so is fatal to its claim for refund. Finally, respondent invokes the principle that claims for refund are construed strictly against the claimant for it is deemed an exemption from taxation.

On August 12, 2011, petitioner filed a Reply. It counter-argued that it was able to fully substantiate by documentary evidence its claim for the refund of its excess creditable withholding tax for the CY 2008 in the amount of PhP24,603,903.00. Annexed to both its administrative and judicial claims were the following documents, to wit: certificates of creditable tax withheld at source for the years 2007 to 2009; annual ITRs of MESC for CYs 2007 to 2009; audited financial statements for CYs 2007 to 2009. In any event, the issues raised by respondent are evidentiary in nature best threshed out during the trial on the merits.

Further, its tabular presentation on page 3 of its Petition for Review shows that the amount of PhP24,603,903.00 was included as part of its gross income for CY 2008. The same table reveals its total sales/revenues/receipts of PhP105,311,085.00, all covered by certificates of creditable tax withheld at source attached to its Annual ITR and Independent Auditor's Report (Financial Statement for the Year 2008).

Contrary to respondent's claim, it did not exercise its option to carry over to the succeeding taxable quarters/years the amount subject of its claim as it is clearly evident from its Annual ITR for 2008 that it ticked the box 'to be issued a tax credit certificate'. Further, the fact of full remittance of the amount subject of its claim to the BIR and its compliance with the requirements under Section 76 of the 1997 Tax Code are best left to the appreciation of the Court after a full blown trial of the case. Nevertheless, an exhaustive examination of the documents submitted shows compliance with the substantiation requirements of the law.

Finally, petitioner reiterates that the doctrine laid down in the *Bank of the Philippine Islands vs. Commissioner of Internal Revenue*, is applicable to the instant case considering that MESC is deemed a dissolved corporation in view of its merger with petitioner. Despite MESC's merger with petitioner, the action taken is proper since MESC exercised its option to claim for the issuance of a tax credit certificate for the year 2008 for its excess creditable withholding tax.

After the filing of their respective Pre-Trial Briefs, the parties submitted their Joint Stipulation of Facts and Issues on September 29, 2011.

To prove its case, petitioner presented its Senior Accountant Ivy P. Acosta, who testified by way of a Judicial Affidavit.

She declared that since August 2000 or prior to the cited merger, she has been MESC's Senior Accountant handling the preparation and filing of its accounting and financial reports, books of accounts and records. MESC provided operations and maintenance services to power generating companies, covered with an Operations and Maintenance (O&M) Agreement.

On June 2009, MESC ceased operation in view of the merger with petitioner as the surviving corporation. MESC was dissolved with its entire assets and liabilities transferred and absorbed by petitioner. On June 19, 2009, she became petitioner's Senior Accountant.

Sometime in June 2000, MESC took over the O&M Agreement between Oxbow Power Services, Inc. and Mindanao I Geothermal Power Plant (M1GP) and Mindanao II Geothermal Power Plant (M2GP). In return, M1GP and M2GP paid MESC the actual labor cost of the plant staff and other personnel as well as other expenses MESC incurred, which the latter considered as domestic purchases and categorized as payment for payroll costs in its invoices.

For CY 2008, MESC filed its Quarterly and Annual Income Tax Return, together with supporting documents such as: Certificates of Creditable Tax Withheld At Source issued by clients of MESC, the Independent Auditor's Report issued by Sycip, Gorres, Velayo & Co. (SGV) with attached Scheduled of Taxes and Licenses for the year ended December 31, 2008, List of attachments to Annual ITR for the year ended December 31, 2008 and Independent Auditor's Report.

For CY 2008, MESC's total creditable tax withheld at source for CY 2008 is PhP15,797,109.00, as reflected in lines 30C and 30D of its 2008 Annual ITR. However, MESC used a portion of its total tax credits in the amount of PhP3,109,332.00 to offset its income tax liability of PhP3,109,332.00 for CY 2008.

The witness explained that the subject of the instant claim is the excess creditable withholding tax for CY 2008 amounting only to PhP24,603,903.00 although the total excess creditable tax of MESC as reflected in its ITR for CY 2008 amounts to a total of PhP40,974,229.00. The difference of PhP16,370,326.00 covers MESC's excess creditable withholding tax for CY 2007, which is subject of a separate Petition for Review docketed as CTA Case No. 8092.

MESC signified its intention to claim for refund or tax credit by placing an 'X' on the box denominated 'To be issued a Tax Credit Certificate' located at the lower portion of its Annual ITR for CY 2008. Likewise, in the Line 30A of MESC 2009 Annual ITR, no amount was shown in the box for prior years' excess credit carry-forward.

On April 15, 2010, MESC filed two (2) administrative claims with the BIR RDO No. 47 — Makati City, specifically, 1) an Application for Cancellation of TIN and issuance of Tax Clearance Certificate with a claim for refund of excess input Value-Added Tax and Creditable Withholding Tax and 2) an Application for Tax Credits/Refunds for the period covered January 1, 2007 to December 31, 2009 with a claim for refund of excess creditable withholding tax in the amount of PhP52,080,309.00. On March 31, 2011, MESC filed before the Court the instant case for refund or tax credit of its excess creditable withholding tax for CY 2008 in the amount of PhP24,603,903.00.

On June 17, 2010, MESC received a Letter of Authority (LOA) No. 00005126 dated May 24, 2010, issued by the BIR for the examination of its books of account and other accounting records for all internal revenue taxes for the period of January 1 to December 31, 2008. This was followed by another LOA No. 00005130 dated May 24, 2010 received on June 18, 2010, this time, for the period January 1 to December 31, 2009.

In compliance, MESC submitted the documents required with a transmittal letter dated August 26, 2010 to Revenue Officers (ROs) Myrabel C. Dela Cruz and Ferdinand J. Palisoc of BIR RDO No. 47 — East Makati. Another set of documents was submitted with transmittal letter dated September 2, 2010 to RO Alwino R. Daga and GS Reyanaldo G. Causapin of BIR RDO No. 47 Makati City.

The witness admitted that she did not prepare petitioner's Operation and Finance Agreement. Neither did she prepare nor was she a signatory to petitioner's Quarterly ITR for 2007 and 2008, the Certification of Creditable Tax Withheld at Source, and Annual ITRs for 2008 and 2009. She is likewise not aware if a certification stating that the amount subject of the present claim was remitted to the BIR had been issued or secured by MESC.

In her Supplemental Judicial Affidavit, petitioner's lone witness explained that the difference of PhP11,916,127.41 between the excess creditable withholding tax for CY 2008 and the amount subject of the instant case pertains to the combined excess creditable tax for CYs 2004 and 2005 amounting to PhP6,839,081.50 and PhP5,077,045.91, as reflected in the Certificates of Creditable Tax Withheld at Source for the years 2004 and 2005, respectively, which were claimed together with the excess creditable tax for CY 2008.

Further, she explained that the original copies of said Certificates could no longer be located despite diligent efforts. Allegedly, in 2006, petitioner transferred to its new office in Taguig, and their voluminous documents accumulated throughout the years might have been mixed up with the voluminous documents of MESC, M1GP and M2GP which were stored in their office after the merger in 2010. In any event, she was able to keep photocopies of said Certificates as it has been her practice to photocopy important documents for reference and safety reasons.

But insofar as the original certificates of creditable tax withheld at source, photocopies of which were marked as Exhibits P-1 to P-16, she believes that their originals still exist in their office, therefore, not yet considered lost or destroyed.

On August 8, 2013, or after petitioner rested, it filed through registered mail a Motion to Defer the Submission of Petitioner's Memorandum and Motion to Reopen the Case for the Purpose of Identifying and Marking Certain Documents Testified to by Ms. Ivy P. Acosta in her Judicial Affidavit, which the Court granted. After the additional evidence were admitted, the case was considered submitted for decision."

On July 15, 2015, the Court in Division promulgated the Assailed Decision[8] partially granting Axia's claim for refund or issuance of tax

[8] See Footnote No. 3.

credit certificate (TCC) in the amount of ₱12,687,328.44, representing Marubeni Energy Services Corporation's unutilized creditable withholding tax (CWT) for CY 2008.

On July 31, 2015, Axia[9] and CIR[10] sought reconsideration of the foregoing Assailed Decision, which were both denied in the Assailed Resolution[11] promulgated on December 10, 2015.

Within the extension of time granted, Axia and CIR filed their Petitions for Review with the Court En Banc on February 9, 2016 and January 27, 2016, respectively.

In a Resolution[12] promulgated on March 28, 2016, both parties were directed to submit their Comments on the Petitions for Review within ten (10) days from notice.

In compliance thereto, Axia filed its Comment[13]on April 27, 2016, while CIR failed to file the same as per Records Verification[14] dated May 24, 2016.

On June 14, 2016, the Court En Banc directed[15] both parties to submit their respective Consolidated Memoranda within a period of thirty (30) days from receipt of the resolution.

Within the extension of time granted by the Court En Banc, Axia filed its Memorandum[16] on August 8, 2016, while CIR failed to file the same per Records Verification[17] dated September 1, 2016.

The above-captioned cases were submitted for decision in the Resolution[18] promulgated on October 3, 2016.

Hence, this Decision.

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[9] Filed a Motion for Partial Reconsideration on July 31, 2015, Division Docket (Vol. II), pp. 775-781.
[10] Filed a Motion for Reconsideration on July 31, 2015, Ibid., pp. 765-772.
[11] See Footnote No. 4.
[12] En Banc Rollo (EB No.1411), pp. 57-58.
[13] Ibid., pp. 66-78.
[14] Id., p. 100.
[15] Resolution, Id., pp. 102-103.
[16] Id., pp. 111-133.
[17] Id., p. 162.
[18] Id., pp. 164-165.

CTA EB No. 1411

In assailing the aforesaid Decision and Resolution, CIR submits this sole assigned error for the consideration of the Court:

> **"THE THIRD DIVISION OF THIS HONORABLE COURT ERRED IN HOLDING THAT RESPONDENT [AXIA] IS ENTITLED TO ITS CLAIM FOR REFUND/TAX CREDIT IN THE REDUCED AMOUNT OF PHP12,687,328.44, REPRESENTING MARUBENI ENERGY SERVICES CORPORATION'S UNUTILIZED AND EXCESS CWT FOR CALENDAR YEAR 2008."**

In support of the foregoing contention, CIR mainly argues that the absence of any entry in the "Creditable Tax Withheld" column in Axia's 2008 Annual Income Tax Return (ITR) would mean that no part of the gross income reported therein were ever subjected to creditable withholding tax. Thus, the supposed income payments from which taxes were withheld cannot be said to have been declared as part of the gross income of Axia in its 2008 Annual ITR.

CIR also insists that there was no compliance with the requirements enumerated under Revenue Regulations No. 2-98, as amended by Revenue Regulations No. 2-2006 on account of Axia's failure (i) to present the various payors and withholding agents who can establish and validate the fact of withholding and remittance made; and, (ii) to prove the actual remittance of the tax withheld.

Axia counters that nowhere in Revenue Regulations No. 2-98, as amended, does a taxpayer-claimant required to fill up the creditable tax withheld column in its Annual ITR.

CTA EB No. 1416

Axia, on the other hand, raised the following assignment of errors for resolution:

> **"I**
>
> **THE THIRD DIVISION OF THIS HONORABLE COURT ERRED IN APPLYING THE IRREVOCABILITY RULE TO PETITIONER'S [AXIA] CLAIM FOR TAX REFUND OR ISSUANCE OF TAX CREDIT CERTIFICATE FOR THE**

YEAR 2008 INSOFAR AS THE AMOUNT OF P11,916,127.00 REPRESENTING MESC'S EXCESS AND UNUTILIZED TAX CREDITS FOR THE YEARS 2004 AND 2005 BECAUSE MESC HAS CLEARLY CHOSEN THE OPTION THAT IT BE ISSUED A TAX CREDIT CERTIFICATE IN ITS ANNUAL INCOME TAX RETURNS FOR THE YEARS 2004 AND 2005, RESPECTIVELY.

II

ASSUMING THAT THE AFORESAID AMOUNT OF P11,916,127.00 REPRESENTING MESC'S EXCESS AND UNUTILIZED TAX CREDITS FOR THE YEARS 2004 AND 2005 WERE CARRIED OVER TO THE SUCEEDING TAXABLE YEARS, STILL, THE IRREVOCABILITY RULE SHOULD NOT HAVE BEEN APPLIED BY THE THIRD DIVISION OF THIS HONORABLE COURT BECAUSE MESC, AS A DISSOLVED CORPORATION, CAN NO LONGER INCUR FUTURE TAX LIABILITIES AGAINST WHICH THE SAID EXCESS AND UNUTILIZED TAX CREDITS CAN BE APPLIED, AND IS THEREFORE, AN EXCEPTION TO THE SAID IRREVOCABILITY RULE.

Axia claims that the prohibition to apply for cash refund or issuance of tax credit certificate applies only when the taxpayer chose 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, and not when it chose the option that it be issued a tax credit certificate, as in the case.

It further contends that the Decision promulgated by the CTA Court in Division in *Axia Power Holdings Philippines Corporation vs. Commissioner of Internal Revenue*[19] should not be applied to its case on the ground that the facts obtaining therein are different from the case at bench. In the latter case, MESC chose to carry over its excess creditable withholding tax for the year 2007 as shown in its 2007 Annual ITR, while in the present case, MESC has chosen to be issued a tax credit certificate in its 2004 and 2005 Annual ITRs.

Both Petitions are devoid of merit.

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[19] CTA Case No. 8092, February 25, 2014.

CTA EB No. 1411

CIR argues that the absence of any entry in the "Creditable Tax Withheld" column in Axia's 2008 Annual ITR would mean that no part of the gross income reported therein were ever subjected by the latter to creditable withholding tax. Thus, the supposed income payments from which taxes were withheld cannot be said to have been declared as part of the gross income of Axia in its 2008 ITR.

We do not agree.

Even if Axia's Annual ITR for taxable year 2008 clearly shows that there is no entry whatsoever in the "Creditable Tax Withheld" column on page 2 of the said ITR under Schedule 1, or the "Schedule of Sales/Revenues/Receipts/Fees", the Court cannot brush aside the fact that Axia made entries on the space for "Creditable Tax Withheld for the First Three Quarters" (Line 30C)[20] and "Creditable Tax Withheld Per BIR Form No. 2307 for the Fourth Quarter" (Line 30D)[21] on page 1 of the same Annual ITR, which basically provide the same information as that found in the "Creditable Tax Withheld" column on page 2 of the ITR.

In the case of *Commissioner of Internal Revenue vs. Sonoma Services, Inc.*[22], the CTA En Banc ruled that mere failure to make entries in the "Creditable Tax Withheld" column does not automatically deny a taxpayer of its entitlement to refund if there are other evidence to support the claim, thus:

> "There is neither law nor jurisprudence that states that the taxpayer's failure to fill up the entry in the 'Creditable Tax Withheld' column in Schedule 1 of the Annual Income Tax Return would be fatal to a claim for refund. What Section 2.58.3 of RR No. 2-98 and the applicable jurisprudence require is that the taxpayer be able to declare as part of its gross income in the Annual Income Tax Return the income payment from which the withholding was made.
>
> An entry into the 'Creditable Tax Withheld' column found in page 2 of the Annual Income Tax Return (BIR Form 1702), specifically Schedule 1 or the 'Schedule of

[20] Exhibit "F-17".
[21] Exhibit "F-18'.
[22] CTA EB Case No. 931 (CTA Case No. 7911), December 11, 2013.

> Sales/Revenues/Receipts/Fees' may expedite the determination of Sonoma's compliance with the requirement that the income payments from which the withholding of taxes were made formed part of its gross income declared in its Annual Income Tax Return. It does not, however, follow that the Court should immediately deny Sonoma's claim for refund only because it failed to make such entry, without the Court looking at the evidence submitted by Sonoma.
>
> Stated otherwise, failure on the part of a taxpayer to make an entry in the 'Creditable Tax Withheld' column found in page 2 of the Annual Income Tax Return, specifically Schedule 1 or the 'Schedule of Sales/Revenues/Receipts/Fees' is not a sufficient basis to conclude that the taxpayer failed to comply with the requirement that 'the income upon which the taxes were withheld were included in the return of the recipient' when the taxpayer has offered other evidence to establish its compliance with this requirement."

Similarly, the foregoing stance of the Court was reiterated in the cases of *Commissioner of Internal Revenue vs. Philippine Bank of Communications*[23] and *Commissioner of Internal Revenue vs. Axia Power Holdings Philippines Corporation*[24].

Thus, the absence of any entry in the "Creditable Tax Withheld" column of Schedule1 of the Annual ITR is not fatal to Axia's claim for refund/TCC.

CIR also insists that there was no compliance with the requirements enumerated under Revenue Regulations No. 2-98, as amended by Revenue Regulations No. 2-2006, on account of Axia's failure (i) to present the various payors and withholding agents who can establish and validate the fact of withholding and remittance made; and, (ii) to prove the actual remittance of the tax withheld.

Again, We do not agree.

In the case of *Commissioner of Internal Revenue vs. Philippine National Bank*[25], the Supreme Court, citing the case of *Commissioner of*

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[23] CTA EB Case No. 1085 (C.T.A. Case No. 8084), March 23, 2015.
[24] CTA EB Case No. 1135, September 21, 2015.
[25] G.R. No. 180290, September 29, 2014.

Internal Revenue vs. Team (Philippines) Operations Corporation,[26] held that "(t)he certificate of creditable tax withheld at source is the competent proof to establish the fact that taxes are withheld. It is not necessary for the person who executed and prepared the certificate of creditable tax withheld at source to be presented and to testify personally to prove the authenticity of the certificates."

The certificate of creditable tax withheld at source is complete in the relevant details that would aid the courts in the evaluation of any claim for refund of excess creditable withholding taxes. Thus, upon presentation of a withholding tax certificate complete in its relevant details and with a written statement that it was made under the penalties of perjury, the burden of evidence then shifts to the CIR to prove that (1) the certificate is not complete; (2) it is false; or (3) it was not issued regularly.[27]

Further, the Supreme Court in *Commissioner of Internal Revenue vs. Asian Transmission Corporation*[28] emphasized that proof of actual remittance is the responsibility of the withholding agent and not of the taxpayer-refund claimant. The rationale for the same is explained in this wise:

> "x x x **proof of actual remittance by the respondent is not needed in order to prove withholding and remittance of taxes to petitioner. Section 2.58.3 (B) of Revenue Regulation No. 2-98 clearly provides that proof of remittance is the responsibility of the withholding agent and not of the taxpayer-refund claimant.** It should be borne in mind by the petitioner that payors of withholding taxes are by themselves constituted as withholding agents of the BIR. The taxes they withhold are held in trust for the government. In the event that the withholding agents commit fraud against the government by not remitting the taxes so withheld, such act should not prejudice herein respondent who has been duly withheld taxes by the withholding agents acting under government authority. **Moreover, pursuant to Section 57 and 58 of the NIRC of 1997, as amended, the withholding of income tax and the remittance thereof to the BIR is the responsibility of the payor and not the payee.** Therefore, respondent, x x x has no control over the

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[26] G.R. No. 179260, April 2, 2014.

[27] Commissioner of Internal Revenue vs. Honda Cars Makati, Inc., CTA EB Case No. 1432 (CTA Case No. 8466), May 18, 2017

[28] G. R. No. 179617. January 19, 2011

> remittance of the taxes withheld from its income by the withholding agent or payor who is the agent of the petitioner. **The Certificates of Creditable Tax Withheld at Source issued by the withholding agents of the government are prima facie proof of actual payment by herein respondent-payee to the government itself through said agents."**

Thus, We emphasized in the recent case of *Commissioner of Internal Revenue vs. Citadel Holdings, Inc.*[29] that the testimony of the withholding agent is not required to establish the fact of withholding because the certificate of tax withheld at source (BIR Form No. 2307) is competent proof of the fact that taxes were withheld by the withholding agent, who by law, is obliged to remit the amount withheld to the BIR.

EB NO. 1416

Axia insists that MESC opted to be issued a tax credit certificate in its 2004 and 2005 Annual Income Tax Returns. Thus, the irrevocability rule does not apply to its excess and unutilized tax credits in the amount of ₱11,916,127.00 for the said years.

We disagree.

Section 76 of the 1997 NIRC provides the irrevocability rule, as follows:

> 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.

[29] CTA EB Case No. 1375 (CTA Case No. 8631), May 2, 2017, citing Commissioner of Internal Revenue vs. Team (Philippines) Operations Corporation, G.R. No. 179260, April 2, 2014.

> 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**.

Based on the foregoing provision, a corporation entitled to a tax credit or refund of the excess income taxes paid in a given taxable year has two options: (1) to carry over the excess credit or (2) to apply for the issuance of a tax credit certificate or to claim a cash refund. In case the option to carry over the excess credit is exercised, the same shall be irrevocable for that taxable period and no application for cash refund or issuance of tax credit certificate shall be allowed therefor.[30]

In the landmark case of *Philam Asset Management, Inc. vs. Commissioner of Internal Revenue*,[31] no less than the Supreme Court ruled that the simple act of filling out the line item for "Prior Year's Excess Tax Credits" on the ITR of the succeeding calendar year would signify that the carry-over option was chosen, thus:

> **"First, the fact that it filled out the portion 'Prior Year's Excess Credits' in its 1999 FAR means that it categorically availed itself of the carry-over option.** In fact, the line that precedes that phrase in the BIR form clearly states 'Less: Tax Credits/Payments.' The contention that it merely filled out that portion because it was a requirement — and that to have done otherwise would have been tantamount to falsifying the FAR — is a long shot.
>
> The FAR is the most reliable firsthand evidence of corporate acts pertaining to income taxes. In it are found the itemization and summary of additions to and deductions from income taxes due. These entries are not without

[30] Systra Philippines, Inc. vs. Commissioner of Internal Revenue, G.R. No. 176290, September 21, 2007.
[31] G.R. Nos. 156637/162004, December 14, 2005.

rhyme or reason. They are required, because they facilitate the tax administration process.

Failure to indicate the amount of 'prior year's excess credits' does not mean falsification by a taxpayer of its current year's FAR. **On the contrary, if an application for a tax refund has been — or will be — filed, then that portion of the BIR form should necessarily be blank, even if the FAR of the previous taxable year already shows an overpayment in taxes."** (Emphasis supplied)

In this case, while MESC chose the issuance of tax credit certificate for its excess/unutilized CWT for CY 2004 and 2005, the same is defeated by its very act of carrying over the said excess amount to the succeeding taxable years. This is evident from the following testimony of Ms. Ivy P. Acosta, then Senior Account of MESC, to wit:

"096Q You mentioned that the excess total creditable tax of MESC for the CY ended December 31, 2008 is ₱40,974,187.37 but in your Petition for Review (CTA Case No. 8249) in the present case, it appears that MESC is claiming only the amount of ₱24,603,862.85, what was the reason for the said difference?

A. The difference of ₱16,370,284.37 pertains to the claim for refund or tax credit of excess creditable withholding tax for the CY Ended December 31, 2007 which is the subject of a separate petition.

097Q. You mentioned that the excess creditable withholding tax for the CY Ended December 31, 2007 is in the amount of ₱16,370,284.37. However, a perusal of the Annual ITR for 2008 (Exhibit 'F') would show that the excess creditable withholding tax indicated for the prior year is in the amount of ₱28,286,452.00, how do you account for the difference of ₱11,916,127.41 (₱28,286,452.00 less ₱16,370,284.37)?

A. **The difference of ₱11,916,127.41 between the excess creditable tax for the CY ended December 31, 2008 and the amount claimed**

> **in the Petition for Review (CTA Case 8249) pertains to the excess creditable tax for the CY ended December 31, 2004 and December 31, 2005, amounting to ₱6,839,081.50 and ₱5,077,045.91, respectively, that were claimed together with the excess creditable tax for the CY ended 2008.** (Emphasis ours)

Thus, Axia's subsequent actions of actually carrying over its unutilized CWT to the subsequent years show that it has effectively chosen the option to carry over its unutilized CWT. By such reason, the Court En Banc is in unison with the Court in Division in its findings quoted below:

> "As may be gleaned from above, petitioner [Axia] included the amount of PhP11,916,127.00 representing excess tax credits from CY 2004 and CY 2005 in the line item for "Prior Year's Excess Tax Credits" in its Annual ITR for CY 2008 and simultaneously, in the subject amount for refund/tax credit certificate for CY 2008. Considering that petitioner merely succeeded to the rights of MESC who previously chose to carry-over the amount of PhP11,916,127.00 in its Annual ITR for CY 2008, the Court is constrained to deny petitioner's claim for refund insofar as the amount of PhP11,916,127.00, pursuant to the irrevocability rule under Section 76 of the NIRC of 1997, as amended, and the ruling in *Systra Philippines, Inc. vs. Commissioner of Internal Revenue*."

Consequently, Axia's only recourse is to apply the said overpaid tax to the succeeding quarters/years until it is fully utilized.

Lastly, Axia argues that the case of *Axia Power Holdings Philippines Corporation vs. Commissioner of Internal Revenue*[32] cited in the Assailed Decision, is inapplicable to its case on the ground that the facts obtaining therein are different from the case at bench. Accordingly, in the latter case, MESC chose to carry over its excess creditable withholding tax for the year 2007 as shown in its 2007 Annual ITR, while in the present case, MESC has chosen to be issued a tax credit certificate in its 2004 and 2005 Annual ITRs.

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[32] CTA Case No. 8092, February 25, 2014.

While perhaps not of governing sway in all fours, the issue on MESC's preclusion from claiming a refund is the same issue that was resolved by the Court in Division in this case. Thus, the rationale underpinning the disposition in that case is squarely applicable to the case at bench. Consequently, We sustain the following findings and conclusions of the Court in Division in the said February 25, 2014 Axia Case, to wit:

> "The Supreme Court, in a litany of cases, discussed the effects of corporate merger with regard to the rights and privileges of the absorbed corporation, thus:
>
> > Ordinarily, in the merger of two or more existing corporations, **one of the combining corporations survives and continues the combined business**, while the rest are dissolved and all their rights, properties and liabilities are acquired by the surviving corporation. Although there is dissolution of the absorbed corporations, **there is no winding up of their affairs or liquidation of their assets**, because the surviving corporation automatically acquires all their rights, privileges and powers, as well as their liabilities. (Emphasis supplied)
>
> Upon the effectivity of the merger among MESC, MPEHC and MPEHC II as the absorbed corporation and petitioner Axia as the surviving corporation, the rights, assets and obligations of the absorbed corporations were transferred to petitioner Axia which shall continue the combined business. The excess CWT of MESC, being a prepaid tax asset, was transferred to petitioner Axia by operation of law, as a necessary consequence of the merger. Since MESC has chosen to carry over its excess CWT for the CY ended December 31, 2007, as shown in its 2007 Annual ITR, petitioner Axia, having succeeded to the rights, properties and liabilities of MESC, cannot now claim for a refund of MESC's excess CWT for CY ended December 31, 2007. Petitioner Axia may nonetheless carry over MESC's excess CWT to the succeeding taxable years and use the same as tax credits against its future tax liabilities, until fully utilized, provided that said excess CWT of MESC is duly substantiated."

It should be noted that the CTA Court En Banc already affirmed the foregoing findings and conclusions of the Court in Division in our Amended Resolution[33] promulgated on April 6, 2017.

In sum, the Court En Banc finds no cogent reason to reverse the findings of the Court in Division.

WHEREFORE, premises considered, the instant Petitions for Review are **DENIED** for lack of merit. The Assailed Decision and Resolution of this Court's Third Division in CTA Case No. 8249 are **AFFIRMED** in toto.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

(On Leave)
JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

[33] Axia Power Holdings Philippines Corporation vs. Commissioner of internal Revenue, CTA EB Case No. 1203 (CTA Case No. 8092), April 6, 2017.

(On-Leave)
CIELITO N. MINDARO-GRULLA
Associate Justice

(On-Leave)
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice