REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-*versus*-

PHILIPPINE NATIONAL BANK,
Respondent.

CTA *EB* NO. 1615
(CTA Case No. 8636)

x--x

PHILIPPINE NATIONAL BANK,
Petitioner,

-*versus*-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

x--x

CTA *EB* NO. 1617
(CTA Case No. 8636)

Present:

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

Promulgated:

APR 25 2018 4:05 p.m.

x- x

DECISION

MANAHAN, J.:

For review before this Court are the Petitions for Review filed by petitioner Commissioner of Internal Revenue (CIR) on March 22, 2017 docketed as CTA EB No. 1615 and by petitioner Philippine National Bank (PNB) filed on April 10, 2017 and docketed as CTA EB No. 1617 pursuant to Section 7 of Republic Act No.1125, as amended and Rule 4, Section 2 (a) (1) of the Revised Rules of the Court of Tax Appeals (RRCTA).

The Petition for Review filed by the CIR seeks the setting aside of the Decision and Resolution of the First Division (Court in Division) promulgated on October 3, 2016 and March 9, 2017, respectively (CTA Case No. 8636), which partially granted the refund of petitioner for excess creditable withholding taxes (CWT) for taxable year 2010. On the other hand, the Petition for Review filed by PNB prays for the partial reversal of the same Decision and Resolution of the First Division and for the granting of additional refund claimed for taxable year 2010.

The dispositive portions of the assailed Decision and Resolution are quoted hereunder:

Decision dated October 3, 2016:

WHEREFORE, premises considered, the instant Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, respondent is hereby **ORDERED TO ISSUE A TAX CREDIT CERTIFICATE** in the amount of Php210,337,544.67 in favor of petitioner, representing petitioner's excess creditable withholding taxes for taxable year 2010.

SO ORDERED.

Resolution dated March 9, 2017:

WHEREFORE, premises considered, respondent's **Motion for Partial Reconsideration (Re: Decision promulgated 3 October 2016)** and petitioner's **Motion for Partial Reconsideration of Decision and/or to Reopen the**

Case for Presentation of Evidence are hereby **DENIED** for lack of merit.

SO ORDERED.

FACTS

The facts as stated in the Decision of the Court in Division and as established by the records of the case, read as follows:

> "Petitioner seeks the refund of the amount of Php289,085,378.91, allegedly representing its excess creditable withholding tax (CWT) for taxable year 2010.
>
> Petitioner Philippine National Bank is a domestic corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines with principal business address at the PNB Financial Center, President Diosdado Macapagal Blvd., Pasay City.
>
> On the other hand, respondent is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR), empowered to perform the duties of said office xxx, including among others, the power to decide, approve, and grant tax refunds or tax credits of erroneously or excessively paid taxes as provided by law. He holds office at the BIR National Office Building, BIR Road, Diliman, Quezon City.
>
> On April 15, 2011, petitioner filed with the BIR, through the Electronic Filing and Payment System (EFPS), its tentative Annual Income Tax Return (ITR) for taxable year 2010.
>
> Petitioner then filed its first Amended ITR and its Final Amended ITR for taxable year 2010 on May 23, 2011 and on December 26, 2012, respectively.
>
> On January 10, 2013, petitioner filed with respondent an administrative claim for issuance of tax credit certificate dated January 8, 2010 in the amount of Php289,085,378.91.
>
> Due to respondent's inaction on the administrative claim, petitioner filed the instant Petition for Review before this Court on April 12, 2013, which was later docketed as CTA Case No. 8636.
>
> Respondent filed an Answer on July 16, 2013 xxx xxx

xxx xxx xxx

The Pre-Trial Conference was set on August 23, 2013.

Petitioner filed its Pre-Trial Brief on August 16, 2013. Respondent, on the other hand, filed a Pre-Trial Brief on August 23, 2013.

The parties filed their Joint Stipulation of Facts and Issues on September 26, 2013. The Court likewise issued a Pre-Trial Order on January 16, 2014.

During trial, petitioner presented Heherson U. Butuc and Frederic B. Landicho as its witnesses.

On May 16, 2014, petitioner filed its Formal Offer of Evidence. xxx xxx xxx.

xxx xxx xxx

In the hearing dated July 7, 2015, the counsel for respondent manifested that respondent would not be presenting evidence.

The Court declared the case submitted for decision on November 26, 2015, taking into consideration the filing of respondent's Memorandum on October 21, 2015 and petitioner's Memorandum on November 17, 2015."

After trial on the merits, the Court in Division rendered the assailed Decision on October 3, 2016.

Unsatisfied with the decision, respondent CIR filed a Motion for Partial Reconsideration on October 20, 2016 while petitioner also filed a Motion for Partial Reconsideration of the Decision and/or to Reopen the Case for Presentation of Evidence on November 21, 2016.

In a Resolution dated March 9, 2017, the Court in Division denied the Motions filed by both parties for lack of merit. We quote the relevant portions of the said Resolution, thus:

"From the foregoing, finding no cogent reason to disturb the Court's findings in the assailed Decision, the Court denies both motions for reconsideration.

> **WHEREFORE**, premises considered, respondent's Motion for Partial Reconsideration (Re: Decision promulgated 3 October 2016) and petitioner's Motion for Partial Reconsideration of Decision and/or to Reopen the Case for Presentation of Evidence are hereby **DENIED** for lack of merit."

Hence these Petitions.

Respondent CIR primarily submits in its Petition for Review that PNB failed to prove its entitlement to the tax refund by failing to offer in evidence substantial proof, and we quote portions of his arguments below:

> " In its Decision, the First Division ruled that respondent chose the issuance of a tax credit certificate for its CWTs for taxable year 2010 by marking the box corresponding to the option "To be issued a Tax Credit Certificate"; and as evidenced by respondent's Annual ITR for taxable year 2011, only the prior year's excess credits in the amount of Php75,138,889.66 were carried over. That clearly, the claimed CWTs for the year 2010 amounting to Php289,085,378.91 were not carried over to the succeeding taxable year.
>
> Petitioner respectfully begs to disagree
>
> xxx xxx xxx
>
> At issue is the application of the "irrevocability rule" in relation to the heavy burden of a taxpayer in excess of CWT refund cases to prove that it did not carry-over such to the succeeding year. This is a relatively newer requirement brought about by the amendments introduced by RA 8424 to what was finally renumbered as Section 76 of the NIRC. Section 76 of the NIRC of 1997 now categorically provides among others:
>
> xxx xxx xxx
>
>> 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.

xxx xxx It is clear that respondent should have presented its quarterly income tax returns in order to ascertain whether it opted to carry over its 2010 excess credits and to prove that the excess creditable withholding tax has not been carried over to the succeeding taxable quarters.

xxx xxx xxx

Well-settled it is in our jurisprudence that tax refunds are in the nature of tax exemptions and as such, they are regarded as in derogation of sovereign authority. Thus, tax refunds are construed strictissimi juris against the person or entity claiming the same. In the instant case, not only should petitioner establish that it is entitled to the claim but it must most importantly prove that it did not carry over the claimed excess credits even though not utilized.

xxx xxx xxx

Respondent not only failed to have its documents and the entries therein, in particular the alleged withholding tax certificates, identified by the respective withholding agents, but more importantly, it also failed to prove remittance of the amounts alleged to have been withheld to the BIR."

In its Petition for Review filed with the Court *En Banc*, petitioner PNB asseverates the following arguments:

1. The presentation of CWT certificates is not indispensable in proving the existence of prior years' excess credit;

2. The existence of the prior years' excess credit was sufficiently established by documents which were offered and admitted as evidence;

3. Trial should have been reopened to afford petitioner an opportunity to substantiate its prior years' excess credit with CWT certificates.

Petitioner therefore prays for the partial reversal of the assailed Decision or in the alternative, remand the case to the Court in Division and reopen trial for the presentation of additional evidence.

On May 12, 2017, the Court *En Banc* issued a Resolution ordering both parties to file their respective Comments to the Petitions for Review within ten (10) days from receipt thereof.

On June 2, 2017, respondent CIR filed his Comment to the Petition for Review docketed as CTA EB No. 1617 while respondent PNB filed its Comment to the Petition for Review filed by the CIR on June 5, 2017.

On July 3, 2017, the Court *En Banc* issued a Resolution giving due course to the Petitions for Review and requiring the parties to submit their respective memoranda within thirty (30) days from receipt of the Resolution.

On August 18, 2017, petitioner PNB filed its Memorandum.

On August 24, 2017, petitioner CIR filed a Motion to Admit Attached Memorandum.

On September 20, 2017, the Court *En Banc* issued a Resolution granting the CIR's Motion to Admit Attached Memorandum and admitted CIR's Memorandum as part of the records of the case. In this same Resolution, the Court *En Banc* stated that the instant cases are deemed submitted for decision.

ISSUE

As gleaned from the arguments of both parties, the issue in this case is whether the Court in Division committed reversible error in partially granting the claim for refund of PNB representing alleged excess creditable withholding taxes for taxable year 2010.

RULING OF THE COURT *EN BANC*

CTA EB No. 1615

The main objection of petitioner CIR relative to the assailed Decision of the Court in Division is his assertion that the Court seemed to have overlooked the fact that respondent PNB failed to substantiate its claim for refund of excess CWT for taxable year 2010 and that in spite of the lack of documents, the Court still granted the claim for refund. The CIR asseverates that in the administrative level, PNB did not submit the documents enumerated under Revenue Memorandum Order (RMO) No. 53-98 and Revenue Regulations (RR) No. 2-2006.

Petitioner insists that RR 2-2006 particularly requires the submission of the summary alphalist of withholding agents of income subjected to CWT by the payee/income recipient and of the monthly alphalist of payees subjected to withholding tax by the withholding agent income payor as attachment to their filed returns.

Petitioner avers that PNB should have presented its quarterly income tax returns (ITR) for the year 2011 to ascertain whether it opted to carry over its 2010 excess credits and to prove that the excess CWT has not been carried over to the succeeding taxable quarters. The CIR maintains that had PNB submitted the aforesaid documents in the administrative level, their office would have had the opportunity to study and determine the merits of PNB's claim for refund. The CIR further claims that even at the judicial level, PNB still failed to submit the required documents to prove its entitlement thereto.

Petitioner CIR also puts in issue the fact that PNB did not present its withholding agents to identify the withholding tax certificates and to prove its actual remittance to the BIR.

PNB on its part, maintains that the presentation of the quarterly ITRs for 2011 is not necessary to prove that the excess CWT of 2010 has not been carried over to the succeeding quarters as there were other evidence presented to prove such fact. As to the presentation of the withholding agents to identify the withholding tax certificates, petitioner submits that this not a requirement as the fact of withholding was sufficiently established through the presentation of the CWT certificates for taxable year 2010.

Petitioner CIR's arguments are bereft of merit.

As clearly stated in the assailed Decision, jurisprudence[1] and Revenue Regulations of the BIR have established that in order for a taxpayer to be entitled to a refund or an issuance of tax credit certificate for its unutilized excess CWT, the following basic requisites must be sufficiently established:

1. The claim for refund must be filed within the two-year prescriptive period as provided under Sections 204 (C) and 229 of the National Internal Revenue Code (NIRC) of 1997, as amended;

2. The fact of withholding must be 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. The income upon which the taxes were withheld must be declared as part of the gross income of the recipient.

The Court in Division correctly found that respondent PNB complied with the first requisite as to the timeliness of the filing of the claim for refund. Records show that petitioner filed its Annual Income Tax Return for taxable year 2010 on April 15, 2011 and counting two years therefrom, respondent PNB had until April 15, 2013 within which to file its administrative and judicial claims for refund or issuance of a tax credit certificate. Respondent PNB's administrative claim for refund dated January 8, 2013 was received by the BIR on January 10, 2013 well within the prescriptive period provided by law. The Petition for Review was filed with the Court in Division on April 12, 2013, which is likewise within the aforesaid two-year period.

As to the second requisite, we find that the findings of the Court in Division are in accord with the basic evidentiary requirements to prove that the fact of withholding as established by showing the amount paid and the amount of tax withheld therefrom. Respondent PNB offered in evidence its Trial Balance for 2010; its Audited Financial Statements;

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[1] Citibank N.A. vs. Court of Appeals, et.al., G.R. No. 107434,October 10, 1997; ACCRA Investments Corporation vs. The Honorable Court of Appeals, et.al., G.R. No. 96322, December 20, 1991; United International Pictures AB vs. Commissioner of Internal Revenue, G.RE. No. 168331, October 11, 2012; Republic of the Philippines, represented by the Commissioner of Internal Revenue vs. Team (Phils.) Energy Corporation (formerly Mirant (Phils) Energy Corporation), G.R. No. 188016, January 14, 2015; Section 2.58, Revenue Regulations No. 2-98, as amended.

General Ledgers and various Certificates of Creditable Tax Withheld at Source (BIR Form No. 2307) with Transaction Tickets/Input Sheets and Deeds of Sale and the Independent Certified Public Accountant ICPA Report. A review of the records shows that respondent's income upon which the taxes were withheld was properly reported as forming part of its gross income as shown in the Annual ITR for taxable year 2010. There were, however, some income payments shown in the CWT certificates which were not reflected or traced to the General Ledger. Also, a close scrutiny of some CWT certificates reveals that some of these were not dated or were dated outside the period of the claim, hence, were not included in the final computation.

Aside from compliance with the three aforementioned requisites, evaluation should also be made whether or not petitioner made an option to carry over its excess CWTs to the succeeding quarters because only the amount that was not carried over should be refunded to PNB. The Court in Division conducted the necessary evaluation and came up with the following findings:

> "A thorough perusal of petitioner's Annual ITR for taxable year 2010 filed with the BIR on April 15, 2011 shows that petitioner had a Minimum Corporate Income Tax (MCIT) due of Php75,036,131.92. The said amount was applied against its total tax credits of Php439,260,400.49, which consisted of prior year's excess credits other than MCIT and CWTs for the four quarters of taxable year 2010 in the respective amounts of Php150,175,021.58 and Php289,085,378.91, leaving the CWTs in the aggregate amount of Php364,224,268.57 unutilized as of December 31, 2010 xxx xxx
>
> xxx xxx xxx
>
> Furthermore, petitioner chose the issuance of a tax credit certificate for its CWTs for taxable year 2010 by marking the box corresponding to the option "To be issued a Tax Credit Certificate", and as evidenced by petitioner's Annual ITR for taxable year 2011, only the prior year's excess credits in the amount of Php75,138,889.66 were carried over. Clearly the claimed CWTs for the year 2010 amounting to Php289,085,378.91 were not carried over to the succeeding quarters or taxable year. Thus, the substantiated CWTs for taxable year 2010 in the amount of Php285,373,676.59 may be refunded pursuant to Section 76 of the NIRC of 1997, as amended."

Overall, we subscribe to the findings of the Court in Division that all the above requisites were substantially complied with but with some reductions in the amount claimed due to the varied reasons aforestated in the Decision promulgated on October 3, 2016.

The Court *En Banc* finds no reason to reverse or modify such findings.

CTA EB No. 1617

Two significant reasons for the appeal made by petitioner PNB are the sufficiency of the documents it submitted and the consequent denial of its Motion to Reopen the Case for Presentation of Evidence by the Court in Division.

Petitioner firmly posits that the submission of CWT Certificates is not indispensable in proving the prior year's excess credit and is not a requirement for its claim for refund of excess CWT. Petitioner points out the error of the Court in Division when it ruled that its failure to substantiate its prior years' excess credit with CWT Certificates resulted in a reduction in the amount granted. For clarity, we quote the pertinent portions of the assailed decision of the Court in Division:

> "However, petitioner failed to substantiate its Prior Year's Excess Credits of Php150,175,021.58 with the corresponding CWT Certificates.
>
> The Certificates of Creditable Tax Withheld at Source issued by the withholding agents of the government are prima facie proof of actual payment to the government through the agents. xxx
>
> xxx xxx xxx
>
> Here, the subject claim pertains to excess tax credits, i.e., undiminished by any income tax liability. Petitioner only proferred as evidence its Schedule of Creditable Withholding Taxes for the years 2000 to 2009 and 2011 to 2013. The said Schedule, standing alone, does not constitute proof that petitioner had prior year's excess credits. Without the corresponding CWT Certificates to support petitioner's claim, the said amount cannot be applied against the reported income tax liability of petitioner for taxable year 2010 amounting to Php75,036,131.92. Hence, a portion of the substantiated CWT in the amount of Php285,373,676.59 shall be applied against the said income tax liability. Consequently,

> petitioner's refundable excess CWTs for taxable year 2010 amount only to Php210,337,544.67 xxx xxx"

Petitioner contravenes the above findings and insists that the submission of its Annual ITR for taxable year 2009 and the Schedule of Creditable Withholding Taxes for years 2000 to 2009, 2011 and 2013 are sufficient to prove the existence of prior year's excess credit that may be refundable in 2010.

We do not agree with petitioner PNB's contentions.

The Court *En Banc* agrees with the decision of the Court in Division that there is a need to substantiate prior year's excess credit in claims involving *excess* CWT hence the petitioner has the burden to prove that it had indeed sufficient prior year's excess CWT to cover its income tax liability for 2010, otherwise, the income tax liability for 2010 shall be offset against the substantiated unutilized CWT for 2010.

It is clear that the subject claim pertains to "overpaid taxes" which the petitioner/taxpayer would like to refund based on the relevant provisions of the law.

To our collective minds, we believe that overpayment must be proven. The excess credits may be sourced from *prior* year's excess credits and those that may have been withheld in the *current* year. The remaining balance after these tax credits have been applied to the current income tax liability is, strictly speaking, the overpaid and refundable amount. Hence, if the Court requires the substantiation of the current year's tax credit as discussed earlier, the same requirement should be similarly applied to the prior year's excess credit.

This, petitioner failed to do so as correctly determined by the Court in Division. The Schedule of Creditable Withholding Taxes for the years 2000 to 2009 and 2011 to 2013 submitted by petitioner is an incomplete proof of its prior year's excess credits to substantiate its claim for refund for taxable year 2010.

It is well-settled that tax refunds are in the nature of a claim for exemption and should be strictly construed against the taxpayer. Likewise, it is the taxpayer who has the burden of proof to establish the factual basis of its claim for tax refund.[2]

As to the arguments proffered by petitioner against the ruling of the Court denying its Motion to Reopen the Case for Presentation of Evidence, these were already thoroughly and exhaustively passed upon in the Resolution of the Court dated March 9, 2017 and we find no reason to reverse the said Resolution.

WHEREFORE, in light of the foregoing considerations, the Petitions for Review are **DENIED** for lack of merit. Accordingly, the Decision dated October 3, 2016 and the Resolution dated March 9, 2017 of the Court in Division, are hereby **AFFIRMED**.

CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

(with Concurring and Dissenting Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

(I join PJ's CDO)
LOVELL R. BAUTISTA
Associate Justice

(on leave)
ERLINDA P. UY
Associate Justice

(on leave)
CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

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[2] CIR vs. Tokyo Shipping Co., Ltd. and CTA, G.R. L-68252, May 26, 1995; Philippine Phosphate Fertilizer Corp. vs. CIR, G.R. No. 141973, June 28, 2005; Atlas Consolidated Mining and Development Corporation vs. CIR, G.R. No. 159490, February 18, 2008.

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

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	**CTA EB No. 1615 (CTA Case No. 8636)**
-versus-	
PHILIPPINE NATIONAL BANK, *Respondent.*	

x- x

PHILIPPINE NATIONAL BANK, *Petitioner,*	**CTA EB No. 1617 (CTA Case No. 8636)**
	Present:
-versus-	Del Rosario, *P.J.,* Castañeda, Jr., Bautista, Uy, Casanova, Fabon-Victorino, Mindaro-Grulla, Ringpis-Liban, *and* Manahan, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: APR 25 2018 4:05 p.m.

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CONCURRING AND DISSENTING OPINION

DEL ROSARIO, P.J.:

I concur with the *ponencia* of my learned colleague, the Honorable Associate Justice Catherine T. Manahan, in so far as it denies the Petition for Review filed by the Commissioner of Internal Revenue for lack of merit.

Anent the Petition for Review filed by Philippine National Bank, with utmost respect, I withhold my assent to the *ponencia*. I maintain the position I have taken in my Dissenting Opinion dated October 3, 2016 that Philippine National Bank is entitled to the issuance of a tax credit certificate in the amount of Php285,373,676.59, representing its excess and unutilized creditable withholding tax (CWT) for the taxable year 2010.

I accordingly reiterate my October 3, 2016 Dissenting Opinion, *viz.*:

> "xxx. I am of the humble opinion that petitioner is entitled to the issuance of a tax credit certificate in the amount of Php285,373,676.59, representing its duly substantiated excess and unutilized CWT for the year 2010 which is undiminished by its 2010 income tax liability.
>
> It is settled that in order to be entitled to a refund or issuance of a tax credit certificate representing any excess or unutilized CWT, a claimant must prove that it has complied with the following essential requirements set forth under pertinent provisions of the National Internal Revenue Code (NIRC) of 1997, as amended, its implementing revenue regulations, and existing jurisprudence, *viz.*:
>
> (1) The claim is filed with the Commissioner of Internal Revenue (CIR) within the two-year period from the date of payment of the tax;
>
> (2) It is shown on the return of the claimant that the income payment received was declared as part of its gross income; and,
>
> (3) The fact of withholding is established by a copy of a statement duly issued by the payor to the payee (claimant) showing the amount paid and the amount of the tax withheld therefrom.
>
> As stated in the *ponencia*, petitioner has **complied with the foregoing requirements in so far as the excess CWT for the year 2010 - - the subject of the claim - - is concerned**, albeit in the reduced amount of Php285,373,676.59. The *ponencia*, however, ruled that in view of **petitioner's failure to substantiate its excess credits prior to 2010 with CWT certificates**, a portion of

petitioner's substantiated CWT for the year 2010 in the amount of Php285,373,676.59 should be applied against petitioner's 2010 income tax liability amounting to Php75,036,131.92. Thus, petitioner is entitled only to the refundable excess CWT for the year 2010 in the amount of Php210,337,544.67.

In requiring petitioner to substantiate its prior year's excess credits with CWT certificates, the *ponencia* cites as basis *Commissioner of Internal Revenue vs. Philippine National Bank* where the Supreme Court stressed the importance of presenting the pertinent CWT certificates to substantiate a claim for refund. A plain reading of *PNB case* reveals that **it did not, however, declare that the claimant's prior year's excess credits** against which the income tax liability during the year of the claim may be applied **must be substantiated with CWT certificates**. Truth to tell, in the *PNB case*, the issue on the substantiation of prior year's excess credits was not raised at all. Thus, since said issue was not submitted for resolution, the pronouncement in said case as to the importance or absolute necessity of presenting CWT certificates in substantiating **prior year's excess credits** cannot be relied upon.

To my mind, the **presentation of CWT certificates is not indispensable in proving the existence of prior year's excess credits** since aforesaid credits are not the actual subject of the claim for refund. In the present case, I submit that the 2009 **Annual Income Tax Return (ITR) and the Schedule of Creditable Withholding Taxes (CWT)** for the years 2000 to 2009 and 2011 and 2013 specifically offered by petitioner to prove the existence of its prior year's excess credits against which its income tax liability for the year 2010 may be applied are sufficient. Notably, **respondent never refuted or questioned the truthfulness and existence of petitioner's prior year's excess credits**. Since respondent ought to know the tax records of all taxpayers, respondent could have easily disproved petitioner's claim that it has prior year's excess credits in the amount of Php150,175,021.58. Instead, respondent chose not to question or disprove the same. **In fact, respondent failed to make any objection to petitioner's offer of 2009 Annual ITR and the Schedule of Creditable Withholding Taxes (CWT) for the years 2000 to 2009 and 2011 to prove the existence of petitioner's prior year's excess credits**

despite the opportunity given him. Respondent's failure to object to the evidence offered by petitioner renders the same admissible, and this Court cannot, on its own, disregard such evidence.

It may not be amiss to state that while petitioner's 2009 Annual ITR was prepared under penalties of perjury, the figures indicated therein (which necessarily include the amount of its prior year's excess credits of Php150,175,021.58) should be presumed true and correct in the absence of any evidence to the contrary. The pronouncement of the Supreme Court in *Citibank N.A. vs. Court of Appeals* is most enlightening:

> 'A refund claimant is required to prove the inclusion of the income payments which were the basis of the withholding taxes and the fact of withholding. However, **detailed proof of the truthfulness of each and every item in the income tax return is not required. That function is lodged in the Commissioner of Internal Revenue by the NIRC which requires the Commissioner to assess internal revenue taxes within three years after the last day prescribed by law for the filing of the return**. In *San Carlos Milling Co., Inc. vs. Commissioner of Internal Revenue*, the Court held that the internal revenue branch of government must investigate and confirm the claims for tax refund or credit before taxpayers may avail themselves of this option. **The grant of a refund is founded on the assumption that the tax return is valid; that is, the facts stated therein are true and correct**. In fact, even without petitioner's tax claim, the Commissioner can proceed to examine the books, records of the petitioner-bank, or any data which may be relevant or material in accordance with Section 16 of the present NIRC.'

Since petitioner's prior year's excess credits are duly reported in its **2010 Annual ITR and further supported by figures indicated in its 2009 Annual ITR, as corroborated by the Schedule of Creditable Withholding Taxes (CWT) for the years 2000 to 2009**

> **and 2011 and 2013**, the said prior year's excess credits in the amount of Php150,175,021.58 may be utilized and applied against petitioner's 2010 income tax liability in the amount of Php75,036,131.92.
>
> Finally, Section 235 of the NIRC of 1997, as amended, requires the preservation of the books of account and records of taxpayers only "for a period beginning from the last entry in each book until the last day prescribed by Section 203." Section 203 of the NIRC of 1997, as amended, provides that internal revenue taxes shall be assessed within three years after the last day prescribed by law for the filing of the return, and no proceeding in Court without an assessment for the collection of such taxes shall begin after the expiration of such period. **To require a taxpayer to produce all CWT certificates in support of its prior year's excess credit (which may include all CWT certificates from the start of its commercial operations) will be excessively burdensome, unreasonable and violative of Section 235 in relation to Section 203 of the NIRC of 1997, as amended.**" (Citations omitted)

All told, I vote to 1) DENY the Petition for Review filed by the Commissioner of Internal Revenue for lack of merit; 2) PARTIALLY GRANT the Petition for Review filed by Philippine National Bank; and, 3) AFFIRM with MODIFICATION the assailed October 3, 2016 Decision and March 9, 2017 Resolution by ordering the Commissioner of Internal Revenue to issue a tax credit certificate in the amount of Php285,373,676.59 in favor of Philippine National Bank, representing its excess and unutilized CWT for the taxable year 2010.

ROMAN G. DEL ROSARIO
Presiding Justice