REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

PHILIPPINE BANK OF COMMUNICATIONS,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB NO. 1194
(CTA Case No. 8460)

x - x

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus -

PHILIPPINE BANK OF COMMUNICATIONS,
Respondent.

CTA EB NO. 1199
(CTA Case No. 8460)

Present:

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

Promulgated:

SEP 09 2016 2:54 p.m.

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RESOLUTION

DEL ROSARIO, P.J.:

For resolution are the following:

1. Commissioner of Internal Revenue's ("CIR") **Motion for Reconsideration Re: Decision dated March 21, 2016** filed on April 18, 2016, with Philippine Bank of Communications' ("PBCOM") **Opposition (Re: Commissioner of Internal Revenue's Motion for Reconsideration dated 15 April 2016)** filed June 8, 2016; and

2. PBCOM's **Motion for Partial Reconsideration (Re: Decision dated 21 March 2016)** filed on April 19, 2016, with CIR's **Comment** filed on June 30, 2016.

In her Motion for Reconsideration, CIR prays that the Decision issued by the Court *En Banc* dated March 21, 2016 be reversed and set aside and a new one be issued denying the claim in its entirety. CIR claims that PBCOM's bare assertion that it suffered a net loss is merely self-serving and is not supported by any corroborative evidence. CIR asserts that PBCOM failed to prove and support its claim for refund by proper and sufficient documents to show that they are entitled to a tax refund or credit.

On the other hand, in its Opposition, PBCOM claims that CIR's Motion for Reconsideration is a mere rehash of arguments which were already passed upon by the Court *En Banc* in its Decision. PBCOM also contends that its Income Tax Returns and other supporting documents show that it in fact incurred a net loss for calendar year 2009.

With regard to PBCOM's Motion for Partial Reconsideration, PBCOM insists that the Court *En Banc* erred in finding that it was only entitled to a tax refund in the amount of ₱34,783,511.66. PBCOM prays that the Court *En Banc* reconsider and modify its decision to order CIR to refund or issue a tax credit certificate, instead, in the amount of ₱44,562,975.05.

In her Comment, CIR asserts that tax refunds are in the nature of tax exemptions which are construed *strictissimi juris* against the taxpayer and liberally in favor of the government. CIR likewise claims that the taxpayer has the burden to prove that he has complied with and satisfied all the statutory and administrative requirements to be entitled to a tax refund. Here, CIR argues that petitioner failed to prove and support its claim for refund by proper and sufficient documents to show that they are entitled to a tax refund or credit.

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After carefully reviewing the records of this case and considering the parties' respective arguments, the Court *En Banc* resolves to deny CIR's Motion for Reconsideration and PBCOM's Motion for Partial Reconsideration.

The arguments posited by CIR in her Motion are substantially reiterations of those made in her Petition for Review, which have been exhaustively and thoroughly discussed in the Court *En Banc's* Decision. While CIR asserts that the Court *En Banc* could not rely on PBCOM's bare, uncorroborated and self-serving assertion that it suffered a net loss, the Court *En Banc* finds that the burden has been actually shifted to CIR to prove that PBCOM is not entitled to a refund. **Otherwise stated, once the taxpayer has complied with the requirements for the refund of its excess and unutilized withholding tax credits, the duty to verify and prove that the taxpayer is not entitled thereto, or in this particular case, that the taxpayer's income tax liability exceeds its withholding tax credits, rests with the BIR.**

The pronouncement of the Supreme Court in *Commissioner of Internal Revenue vs. PERF Realty Corporation*[1] may in fact be analogously applied, *viz.*:

> "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. The verification process is not incumbent on PERF; it is the duty of the CIR to verify whether or not PERF had carried over the 1997 excess income taxes**." (Emphasis supplied)

To be sure, the Court *En Banc* noted that PBCOM has sufficiently complied with the requirements and presented the requisite documents to entitle it to a refund of unutilized creditable withholding tax. It is thus incumbent upon CIR to disprove PBCOM's entitlement thereto by substantiating its claim that PBCOM did not actually suffer a net loss in 2009 and showing that PBCOM was liable for income tax for said taxable period against which its withholding tax credits should have been applied. Interestingly, CIR failed to prove her claim.

Anent PBCOM's Motion for Partial Reconsideration, the Court *En Banc* found that the arguments and issues raised by PBCOM are a mere rehash of its previous contentions which have been duly

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[1] G.R. No. 163345, July 4, 2008.

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considered and adequately passed upon in the Court *En Banc*'s Decision.

All told, the Court *En Banc* finds no cogent reason to reverse or set aside the assailed Decision.

WHEREFORE, premises considered, the Commissioner of Internal Revenue's **Motion for Reconsideration Re: Decision dated March 21, 2016** filed on April 18, 2016, and PBCOM's **Motion for Partial Reconsideration (Re: Decision dated 21 March 2016)** filed on April 19, 2016, are both **DENIED** for lack of merit.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

WE CONCUR:

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

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

(On Official Business)
ESPERANZA R. FABON-VICTORINO
Associate Justice

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

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

Ma. Belen
MA. BELEN M. RINGPIS-LIBAN
Associate Justice