REPUBLIC OF THE PHILIPPINES

Court of Tax Appeals

QUEZON CITY

En Banc

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**CTA EB CASE NO. 856** (CTA Case No. 7910)
	Present: *Del Rosario, P.J.* *Castañeda, Jr.,* *Bautista,* *Uy,* *Casanova,* *Fabon-Victorino,* *Mindaro-Grulla,* *Cotangco-Manalastas,* and *Ringpis-Liban, JJ.*
- versus -	
WINEBRENNER & IÑIGO INSURANCE BROKERS, INC., Respondent.	**Promulgated:** NOV 04 2013 ... 9:10 a.m.

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DECISION

BAUTISTA, J.:

The Case

Before the Court *En Banc* is a Petition for Review,[1] filed by registered mail on February 6, 2012 by petitioner Commissioner of Internal Revenue ("CIR"), pursuant to Section 11 of Republic Act No. 1125, as amended by Section 18 of Republic Act No. 9282,[2] assailing the Decision dated October

[1] *Rollo*, CTA EB Case No. 856 (CTA Case No. 7910), pp. 5-53, with Annexes.

[2] SECTION 18. *Appeal to the Court of Tax Appeals En Banc.* – No civil proceeding involving matters arising under the National Internal Revenue Code, the Tariff and Customs Code or the Local Government Code shall be maintained, except as herein provided, until and unless an appeal has been previously filed with the CTA and disposed of in accordance with the provisions of this Act.

A party adversely affected by a resolution of a Division of the CTA on a motion for reconsideration or new trial, may file a petition for review with the Court *en banc*.

11, 2011,[3] and Resolution dated December 20, 2011,[4] rendered by the then First Division of the Court ("Court in Division"), and accordingly, praying for the denial of the claim for refund/tax credit made by respondent Winebrenner & Iñigo Insurance Brokers, Inc., ("WIIBI") of its unutilized creditable withholding tax on income payments for taxable year 2006 for lack of merit.

The Antecedent Facts

The relevant antecedents are succinctly recited by the Court in Division in its Decision dated October 11, 2011, as follows:

> "Petitioner Winebrenner & Iñigo Insurance Brokers, Inc.,[5] alleges that it is a duly organized domestic corporation with Securities and Exchange Commission (SEC) Registration No. 70271 and located at the 8th Floor, 88 Corporate Center, Sedeño corner Valero Streets, Salcedo Village, Makati City. Petitioner is likewise registered with the Bureau of Internal Revenue (BIR) Region No. 8, District Office No. 50 (South Makati) and has been issued a Tax Identification No. 000-151-714-000. Its primary purpose is to engage in the business of insurance and/or reinsurance, as a general agent and/or agent and/or broker and/or consultant.
>
> Respondent, on the other hand, is the Commissioner of the Bureau of Internal Revenue (BIR)[6] vested with authority to refund overpaid and erroneously or illegally collected internal revenue taxes. She holds office at the BIR National Office Building, BIR Road, Diliman, Quezon City.
>
> On April 15, 2007, petitioner filed its Annual Income Tax Return for taxable year 2006. Indicated therein was its CWT in the amount of ₱4,327,568.00 and the exercise of its option 'To be issued a Tax Credit Certificate' for the same.

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[3] Penned by Associate Justice Esperanza R. Fabon-Victorino, with Presiding Justice Ernesto D. Acosta, and Associate Justice Erlinda P. Uy, concurring; *Rollo*, pp. 18-42, *Annex "A."*
[4] *Rollo*, pp. 43-52; *Annex "B."*
[5] Herein Respondent WIIBI.
[6] Herein Petitioner CIR.

On April 8, 2009, petitioner filed with the BIR a letter dated March 19, 2009, claiming the refund of the said 2006 excess and unutilized CWT of ₱4,327,568.00. Respondent failed to act on the claim for refund thus, petitioner filed the instant Petition for Review on April 14, 2009.

In her Answer, filed on June 8, 2009, respondent interposes the following Special and Affirmative Defenses:

> '4. Petitioner's claim for refund or issuance of a tax credit certificate is still subject to administrative routinary investigation/examination by respondent's Bureau;
>
> 5. Taxes paid and collected are presumed to have been made in accordance with law, hence, not refundable;
>
> 6. Petitioner's claim for refund in the amount of **₱4,327,568.00**, as alleged excess and unutilized creditable withholding taxes for taxable year 2006 were not fully substantiated by proper documentary evidence, such as invoices, official receipts, certificates of withholding tax at source and other necessary tax returns;
>
> 7. Petitioner failed to prove that the amount of **₱4,327,568.00**, as alleged excess and unutilized creditable withholding taxes for taxable year 2006 were declared in full as part of its gross income for taxable year 2006, and that it did not carry-over to the succeeding taxable quarters or years the subject of its claim, and the same were not fully utilized in payment of its income tax liability for the succeeding taxable quarters or years;
>
> 8. Petitioner failed to prove that the amount of **₱4,327,568.00**, as alleged excess and unutilized creditable withholding taxes for taxable year 2006 were received in full by the BIR;

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9. In an action for refund/credit, the burden of proof is on petitioner to establish its right to the claimed refund and failure to adduce sufficient evidence is fatal to its claim;

10. It is incumbent upon petitioner to show that it has complied with the provisions under Section 204(C) in relation to Section 229 of the Tax Code. Otherwise, its failure to prove the same is fatal to its claimed refund; and

11. Claim for refund partakes the nature of tax exemption, hence, the same is construed strictly against petitioner. *(CIR vs. Ledesma, 31 SCRA 95)*.'

During the pre-trial conference, the parties agreed and pursuant thereto filed their Joint Stipulation of Facts and Issues on August 07, 2009. It was approved by the court on August 14, 2009.

Petitioner's lone witness, Soo Yuk L. Yu, testified that she is the Assistant Manager for Finance and Administration of petitioner. She assists in the financial and accounting management of petitioner, reviews its transaction before they are entered in its books, reviews tax returns before filing with the BIR, and assists in the handling of tax audits and assessments against petitioner including the filing of administrative and judicial claims for refund or issuance of TCCs.

She is familiar with the case as she assisted in the preparation of petitioner's 2006 Annual Income Tax Return filed with the BIR on April 16, 2007. In relation to petitioner's administrative claim for refund, she identified petitioner's Tax Credit Schedule for the Year 2006 showing the schedule of CWT withheld by petitioner's clients, petitioner's Audited Financial Statement as of December 31, 2006, and the Letter dated March 19, 2009 constituting petitioner's claim for refund with the BIR filed on April 8, 2009.

In its 2006 Annual ITR, petitioner had excess income tax credits in the aggregate amount of ₱8,748,741.00 broken down, as follows:

Prior Year's Excess Credits	₱4,421,173.00
Creditable Tax Withheld (1st 3 quarters of 2006)	₱1,463,074.00
CWT for the 4th quarter of 2006	₱2,864,494.00
TOTAL	**₱8,748,741.00**

Petitioner however had an income tax liability for 2006 in the amount of ₱1,082,009.00. Pursuant to the 'first-in, first-out' principle, petitioner utilized its Prior Year's Excess Credits of ₱4,421,173,00 to pay the said income tax liability. The remainder of ₱3,339,164.00 when added to the sum of ₱4,327,568.00, representing the CWT for the 1st to the 4th quarters of 2006 (₱1,463,074.00 + ₱2,864,494.00 = ₱4,327,568.00) amounted to ₱7,666,732.00. Petitioner opted 'To be issued a TCC' for its unutilized CWT for 2006 in the total amount of ₱4,327,568.00, which is the subject of both the administrative and the present appeal.

The witness further testified that petitioner did not carry over or utilize the said CWT for 2006 in the amount of ₱4,327,568.00 in the succeeding taxable year as shown in its 2007 Quarterly ITRs and 2007 Annual ITR. Its 2007 Quarterly ITRs indicates a zero or nil prior year's excess credits while its Annual ITR indicates the amount of ₱3,339,164.00 as prior year's excess credits.

Petitioner's excess CWT in 2006 in the amount of ₱4,327,568.00 consists of the CWT withheld by various insurance companies from their respective income payments to it as shown in the Certificates of Creditable Tax Withheld at Source (BIR Form 2307) issued in its favor. The Certificates specify the income payments to petitioner, the CWT withheld, and the period for which the Certificates were issued. Per these Certificates (BIR Form 2307), various insurance companies paid petitioner an aggregate amount of ₱43,275,680.00, of which the amount of ₱4,327,568.00 was withheld as CWT.

Likewise, petitioner declared as part of its sales and revenues in its 2006 Annual ITR the amount of ₱43,275,680.00 income payments made by various insurance companies. The said income payments are included in the 'Sales/Revenues/Receipts/Fees' amounting to ₱44,216,619.00 as reflected in Item No. 15C of its 2006 Annual ITR.

The witness clarified that petitioner is in the business of 'Life' and 'Non-Life Insurance' as indicated in its BIR Certificate of Registration dated June 27, 1994. Aside from primarily insurance, petitioner is also involved in brokering, as shown in its Audited Financial Statements (AFS) for December 31, 2006. In the pursuit of this line of business, petitioner, in 2006, earned commission from various insurance companies amounting to ₱44,216,619.00 as indicated in its 2006 AFS. However, only the amount of ₱43,271,924.92 from the said earned commission is reflected in petitioner's 'Tax Credit Schedule for the Year 2006,' or ₱944,694.08 less than the amount indicated in the 2006 AFS.

The discrepancy, according to the witness, was due to the timing difference of petitioner's booking of commission income and the insurance companies' recognition of the commission expense they pay and the corresponding income tax liability. Petitioner recognizes commission income at the time the insurance policies are received and recorded in the books.

As an insurance broker, it is authorized by insurance companies to collect premiums from their clients on their behalf. Petitioner is given a special credit term of 90 days from inception of policy to remit the collected premium to them. Only upon receipt of petitioner's remittance will the insurance companies record the commission expenses, withhold and remit corresponding expanded withholding taxes to the BIR. Only then the insurance companies will issue the CWT Certificates to petitioner.

The discrepancies also surface when petitioner's billings on commission are disputed by insurance companies. Under this circumstance, the insurance companies pay less than the billed amounts. Consequently, the CWT Certificates issued by the insurance companies and the CWT withheld on commissions are based on the lower amount paid to petitioner. This is not to mention that there are also entities that do not issue CWT Certificates for CWT withheld on commission payments to petitioner. In any event, petitioner declares all the commission received as part of its commission income in its Annual Income Tax return even if it will not be able to claim any CWT on such commission income.

Witness Soo Yuk L. Yu further declared that the prior year's excess credits of ₱4,421,173.00 reported in the 2006 Annual ITR consists of unutilized CWT in 2004 and prior years, as shown in the 2002, 2003, 2004, 2005 Annual ITR's, as well as the Amended 2005 Annual ITR of petitioner.

After presentation of its evidence petitioner rested, filing its Formal Offer of Evidence on February 09, 2010.

In its Resolution dated June 15, 2010, the Court admitted all of petitioner's documentary evidence except Exhibits '*Q*,' 'E^4,' 'A^6,' and 'N^6.'

On August 12, 2010, respondent waived presentation of evidence and submitted the case for decision.

On October 11, 2010, respondent filed her Memorandum while petitioner, on October 13, 2010.

In its Memorandum, petitioner basically reiterates the testimony of its lone witness Ms. Soo Yuk L. Yu that it is entitled to a refund or issuance of tax credit certificate. It was able to fully substantiate its entitlement to the relief sought through the documentary evidence it presented in Court, among others are the CWT Certificates which are sufficient proof of the CWT. With the presentation of these documents, it is not required to prove actual remittance of the unutilized CWT to the BIR.

It also presented its Annual ITR and reconciling schedule to prove that the income payments from which the CWT sought to be refunded were withheld were declared by petitioner as part of its income. Petitioner as well established that it has exercised its option to be issued a tax credit certificate in its 2006 Annual ITR.

To show that it did not carry over the CWT in 2006 to the succeeding quarters or years, petitioner presented its 2007 Annual ITR and its 1st, 2nd, and 3rd Quarterly ITRs for 2007. Finally, both its administrative and judicial claims for refund or issuance of tax credit certificate were filed within the two-year prescriptive period as provided under Section 229 of the Tax Code.

Respondent however is diametrically opposed to petitioner's asseveration. She argues that petitioner failed to substantiate its claim for refund as it failed to present and offer in evidence its quarterly income tax returns for taxable year 2006 and for the 4th quarter of taxable year 2007, as required under Section 76 of the NIRC. Absent such documents, it cannot be determined with reasonable certainty whether petitioner had exercised the option to claim a refund, or carry-over its alleged unutilized excess creditable withholding taxes for the year 2006 to the year 2007.

Admittedly, petitioner did not mark the option box '*To be carried as tax credit next year*' in its 2006 and 2007 Annual ITRs, nonetheless it is deemed to have exercised such option by indicating the amounts of ₱4,412,173.00 and ₱3,339,164.00 as '*Prior year's excess tax credit*' in its 2006 and 2007 Annual ITRs, respectively. Having impliedly made an irrevocable carry-over choice, petitioner, pursuant to Section 76 of the NIRC, cannot at this point turn 180 degrees to claim for a refund.

Lastly, respondent claims that although she admits the existence of the Certificates of Creditable Tax Withheld at Source presented in evidence by petitioner, she disputes that these documents are conclusive evidence of payment and remittance to the BIR of the taxes withheld by petitioner's withholding agents. The Certificates are mere proof of the withholding and not the remittance of the withheld taxes to the government in contravention of Section 51 (a) of the Tax Code which states that '*taxes deducted and withheld under Section 50 thereof shall be covered by a return and paid to the BIR.*'

After the parties filed their respective memoranda, the instant Petition for Review was deemed submitted for decision on October 22, 2010."[7]

The Ruling of the Court in Division

The Court in Division issued a Decision dated October 11, 2011, ruling as follows:

> "**WHEREFORE,** the instant Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, respondent Commissioner of Internal Revenue is hereby **ORDERED** to **REFUND** or **ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner WINEBRENNER & IÑIGO INSURANCE BROKERS, INC., in the reduced amount of ₱3,853,147.41 representing its excess/unutilized creditable withholding taxes for the year 2006.
>
> **SO ORDERED**."[8]

Aggrieved, CIR filed her Motion for Reconsideration on November 2, 2011, which the Court in Division denied in a Resolution dated December 20, 2011.[9]

The Issues

Hence, the present Petition for Review, where the CIR assigns the following issues of:

I. WHETHER OR NOT RESPONDENT IS PARTIALLY ENTITLED TO ITS CLAIMED REFUND OF UNUTILIZED CREDITABLE WITHHOLDING TAXES IN THE REDUCED AMOUNT OF ₱3,853,147.41, FOR TAXABLE YEAR 2006;

II. WHETHER OR NOT SECTION 76 OF THE 1997 TAX CODE REQUIRES THE PRESENTATION OF THE

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[7] *Rollo*, pp. 19-31.
[8] *Supra*, note 3; pp. 41-42.
[9] *Supra*, note 4.

QUARTERLY INCOME TAX RETURNS OF THE RESPONDENT FOR 2006 AND FOR THE 4TH QUARTER OF 2007, TO SUPPORT ITS CLAIM FOR REFUND OF UNUTILIZED CREDITABLE WITHHOLDING TAXES FOR TAXABLE YEAR 2006; and

III. WHETHER OR NOT RESPONDENT VIOLATED THE REQUIREMENTS UNDER SECTION 58(A) OF THE 1997 TAX CODE.[10]

The CIR's Arguments

The CIR claims that WIIBI failed to present its quarterly income tax returns for taxable year 2006 and quarterly income tax return for the 4th quarter of taxable year 2007, in accordance with Section 76 of the 1997 National Internal Revenue Code ("NIRC"), as amended, and as ruled in the case of *Millenium Business Services, Inc., v. Commissioner of Internal Revenue*.[11] In the absence of said documents, she then argues that she cannot determine with reasonable certainty whether WIIBI has effectively exercised its options under Section 76 of the same Code.

The CIR also points out that albeit WIIBI failed to indicate its option, a perusal of WIIBI's 2006 and 2007 Annual Income Tax Returns show that the amounts of ₱4,412,173.00 and ₱3,339,164.00 were respectively indicated as "Prior year's excess tax credit," which are more than sufficient manifestations of its intention to carry-over its 2006 unutilized creditable withholding taxes.

Finally, she asserts that WIIBI failed to comply with Section 58(A) of the 1997 NIRC, as amended, considering that the Certificates of Creditable Tax Withheld at Source presented by WIIBI are not conclusive evidence of payment and remittance of the final taxes withheld by its withholding agents.

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[10] *Rollo*, p. 8.
[11] CTA EB Case No. 510 (CTA Case No. 7441), September 28, 2010.

The WIIBI's Counter-Arguments

On the other hand, WIIBI counters that what is required is the presentation of Quarterly Income Tax Returns and Annual Income Tax Return for the succeeding taxable year.

It also insists that while it reflected the amount of ₱7,666,732.00 as total excess credit in its Annual Income Tax Return for taxable year 2006 - which consists of prior year's excess credit in the amount of ₱4,421.173.00, and creditable tax withheld for the taxable year 2006 in the amount of ₱4,327,568.00 - it only declared the amount of ₱3,339,164.00 as prior year's excess credit for the succeeding year 2007, to indicate that it did not carry-over the amount of ₱4,327,568.00, which is the subject of the present claim for refund. It likewise maintains that the record clearly shows that it had marked the option "*To be issued a tax credit certificate*."

The Ruling of the Court En Banc

In the assailed Decision, the Court in Division ruled as follows:

> "Before any claim for refund can be entertained by the Court, petitioner-claimant must show compliance with Section 76 of the National Internal Revenue Code (NIRC) of 1997, which reads as follows:
>
> xxx xxx xxx
>
> From the foregoing provision, the excess tax credits or overpaid income tax in a given taxable year of the corporate taxpayer may either be refunded — either in cash or tax credit certificate — or carried-over/applied to the succeeding taxable quarters of the succeeding taxable years. The phrase 'taxable period' referred to in the provision is that taxable period when the excess income tax, subject of the option, was acquired by the taxpayer.
>
> If 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 a tax credit certificate

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shall be allowed. The law is clear and unequivocal. It provides that the carry-over option, once actually or constructively chosen by a corporate taxpayer, it becomes irrevocable.

The taxpayer must signify in its annual corporate adjustment return – by marking the option box provided in the BIR form its intention – whether to request for a refund or claim an automatic tax credit for the succeeding taxable years. To ease the administration of tax collection, these remedies are in the alternative, and the choice of one precludes the other.

In the instant case, petitioner unequivocally expressed its option to be issued a tax credit certificate for its excess creditable withholding tax for taxable year 2006, by placing a check mark in the box corresponding to the said choice in its 2006 Annual Income Tax Return.

Anent the timeliness of the filing of the instant claim, Sections 204 and 229 of the National Internal Revenue Code (NIRC), as amended, are instructive, to wit:

xxx xxx xxx

The Tax Code allows the refund of erroneously paid or collected taxes and penalties to a taxpayer who claims it in writing within two years after payment of the taxes to the BIR. The two-year prescriptive period is reckoned from the filing of the final adjusted return (FAR).

In the instant case, petitioner filed its Annual Income Tax Return for taxable year 2006 on April 15, 2007. On April 8, 2009, it filed with the BIR a letter dated March 19, 2009, representing petitioner's administrative claim for refund of the excess and unutilized creditable withholding tax in 2006 in the amount of ₱4,327,568.00. On the other hand, the instant Petition for Review was filed on April 14, 2009. Patently, both the administrative claim and the judicial claim through the instant Petition were instituted within the two-year prescriptive period from the filing of the FAR in compliance with the law."[12]

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[12] *Rollo*, pp. 33-38.

While the Court *En Banc* is in unison with the Court in Division with the above findings, a second look, nonetheless, shows that WIIBI's claim must be denied due to insufficiency of evidence.

In not a few instances did this Court rule that the following requisites must be complied with in order that the subject claim may be granted, *viz*:

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 1997 NIRC, 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 (BIR Form No. 1743-A), 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.[13]

As determined by the Court in Division, both the administrative and judicial claims were instituted within the two-year prescriptive period. Further, based on the records of the case, various Certificates of Creditable Tax Withheld at Source were presented by WIIBI, as well as its schedule of tax credits for the year 2006, showing a total creditable taxes withheld in the amount of ₱4,327,192.49. And as verified by the Court in Division, only the amount of ₱3,853,147.41 has been duly substantiated.

The Court in Division, likewise, noted that WIIBI's withholding tax certificates show that the above-mentioned substantiated creditable withholding taxes of ₱3,853,147.41 were withheld from gross income payments in the amount of ₱41,379,378.31, which, however, is lower than the gross income reflected in the 2006 Annual Income Tax Return and Audited Statement of Operations in the amount of ₱44,216,619.00; therefore, a discrepancy between the income payments per Income Tax Return and that of Certificates of Creditable Tax Withheld.

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[13] Section 2.58 of Revenue Regulations No. 2-98, as amended; Citibank N.A. *v.* Court of Appeals and Commissioner of Internal Revenue, G.R. No. 107434, October 10, 1997, 280 SCRA 459; ACCRA Investments Corporation *v.* Court of Appeals, G.R. No. 96322, December 20, 1991, 204 SCRA 957.

In a similar case,[14] this Court ruled as follows:

"Petitioner provided a Reconciliation of Income, to account for the discrepancies. It contends that the variation was due to some timing difference on its booking the commission income and the insurance companies' recognition of the commission expense that they paid, and the corresponding income tax liability, as well as the contingent profit commission it received from the insurance companies but are recorded as other income in its Annual ITR for the year 2007.

The Court, however, is not convinced.

In the case of *Jardine Llyod Thompson Insurance Brokers, Inc., v. Commissioner of Internal Revenue*,[15] the Court resolved as follows:

> Comparing the income shown per valid certificates vis-à-vis the income per petitioner's 2006 Annual Income Tax Return, a difference of ₱29,916,993.65 is evident, as shown below:
>
> xxx xxx xxx
>
> Petitioner explains that the discrepancy of ₱29,244,394.37 was brought about by the timing difference between the recording of revenue by petitioner and the recognition by its clients of the creditable withholding taxes, and the discrepancy of ₱672,599.28 pertains to the sublease of its office space which was recorded as a reduction against the rent expense account in its general ledger.
>
> Nevertheless, petitioner failed to support its claim with pieces of documentary evidence. Except for the General Ledgers for Account Nos. 100001 (Brokerage and Others) and 120003 (Profit Commission), nothing more was presented by petitioner to bolster its claim and convince the Court that it deducted the rental

[14] Winebrenner & Iñigo Insurance Brokers, Inc., *v.* Commissioner of Internal Revenue, CTA Case No. 8072, July 24, 2012.
[15] *Ibid., citing CTA Case No. 7916, September 23, 2011.*

income of ₱672,599.28 from its rental expense for the year 2006 and that the ₱29,244,394.37 discrepancy in its revenues from sales of services was merely due to timing difference. 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.

Also in the case of *Havi Food Services, Phils., Inc., v. Commissioner of Internal Revenue*,[16] the Court ruled in this wise:

Based on the documentary evidence presented, petitioner's reported gross income in its Annual Income Tax Return for taxable year 2006 amounted to ₱201,584,012.00, broken down as follows:

xxx xxx xxx

On the other hand, the total income payments for the same year per BIR Form No. 2307 amounted to ₱229,131,716.50, detailed as follows:

xxx xxx xxx

From the foregoing, it is apparent that there is a discrepancy of ₱27,547,704.50 between the total gross income reflected per petitioner's income tax return vis-à-vis the total amount shown per BIR Form No. 2307. Here, petitioner failed to reconcile such discrepancy.

While the Independent CPA reported that out of the total income of ₱228,510,328.59 reflected per BIR Form No. 2307, it was able to verify that the amount of

[16] *Ibid., citing CTA Case No. 7735, February 28, 2011.*

> ₱208,939,481.04 30 was recorded by petitioner in its books of accounts and declared in its income tax return, this Court cannot confirm said findings due to petitioner's failure to present the source documents, such as invoices and official receipts, upon which the income amount of ₱208,939,481.04 was based.
>
> In view of petitioner's failure to prove that it declared the income upon which the substantiated creditable withholding tax of ₱4,995,370.31 for taxable year 2006 was withheld, the refund claim cannot be granted.

Applying the foregoing in a similar case, the Court likewise held that failure of petitioner to present documents such as, but not limited to, official receipts, sales invoices, detailed general ledger, sales register, reconciliation schedules or any other document whereby the income payments related to the claimed creditable withholding taxes may be traced and confirmed as forming part of the taxable gross income reflected in the Annual Income Tax Returns, is fatal to its claim."[17]

In the case at bench, a perusal of the records shows that WIIBI failed to support the earlier-mentioned discrepancy. Stated differently, records are bereft of evidence to reconcile the said discrepancy and to prove that the income payments related to the claimed creditable withholding taxes formed part of the taxable gross income in WIIBI's 2006 Annual Income Tax Return.

Lest it be forgotten, this Court is a court of record, and is, therefore, required to conduct a formal trial to prove every minute aspect of a claim.[18] Thus, a claimant has the burden of proof to present all that is required for the successful prosecution of its claim.

In sum, the Court *En Banc* finds compelling reason to warrant a reversal of the assailed Decision and Resolution.

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[17] *Ibid., citing Winebrenner & Iñigo Insurance Brokers, Inc. v. Commissioner of Internal Revenue, CTA Case No. 7764, August 17, 2011.*

[18] Commissioner of Internal Revenue *v.* Manila Mining Corporation, G.R. No. 153204, August 31, 2005, 469 SCRA 571.

WHEREFORE, the Petition for Review is hereby **GRANTED**. Accordingly, the Decision dated October 11, 2011, and Resolution dated December 20, 2011 are hereby **REVERSED** and **SET ASIDE**. The Petition for Review, filed by **Winebrenner & Iñigo Insurance Brokers, Inc.,** docketed as CTA Case No. 7910, is hereby **DENIED** due to insufficiency of evidence.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

(with Dissenting Opinion)
ESPERANZA R. FABON-VICTORINO
Associate Justice

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

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

Ma. Belen M. Ringpis-Liban
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 this Court.

ROMAN G. DEL ROSARIO
Presiding Justice