# REPUBLIC OF THE PHILIPPINES
# COURT OF TAX APPEALS
# QUEZON CITY

## FIRST DIVISION

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| **TRANS PACIFIC AIR SERVICE CORPORATION,** Petitioner, | **CTA Case No. 8630** |
| | **Members:** |
| **- versus -** | **DEL ROSARIO,** *P.J.*, **UY,** and **MINDARO-GRULLA,** *JJ.* |
| **COMMISSIONER OF INTERNAL REVENUE,** Respondent. | **Promulgated:** DEC 09 2015, 2:05 p.m. |

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## RESOLUTION

**UY, *J.*:**

This resolves petitioner's **"OMNIBUS MOTION FOR RECONSIDERATION AND NEW TRIAL"** filed on March 3, 2015, praying for the reconsideration and setting aside of this Court's Decision dated January 30, 2015, the dispositive portion of which reads:

> "**WHEREFORE**, all the foregoing considered, the instant Petition for Review is hereby **DENIED** for lack of merit.
>
> **SO ORDERED.**"

Records show that in the Resolution dated May 20, 2015,[1] this Court granted the motion for new trial of petitioner to present its Summary of Alphalist of Withholding Taxes (SAWT) for 2010 and the Acknowledgement Receipt thereof by the Bureau of Internal Revenue

[1] Docket – Vol. II, pp. 1238 to 1239.

(BIR).

Thus, on July 2, 2015, petitioner filed its **"SUBMISSION OF JUDICIAL AFFIDAVIT"**, submitting the judicial affidavit of its witness on new trial, Ms. Arlene J. Aquino, together with the documents identified by her.

At the hearing held on July 7, 2015, petitioner's counsel recalled to the witness stand, Ms. Aquino, who testified on direct examination by way of said Judicial Affidavit marked as Exhibit "P-244" and said witness identified her signature appearing on page 3 thereof submarked as Exhibit "P-244-a". Ms. Aquino likewise identified the following documents: Exhibits "P-243", "P-79-c" and "P-79-d". No cross-examination was conducted by respondent's counsel.

In the Resolution dated July 7, 2015,[2] the Court gave petitioner until July 13, 2015, within which to file a Formal Offer of Evidence, copy furnished respondent's counsel by personal service. From receipt thereof, respondent's counsel was given a period of five (5) days to file his comment thereto.

On July 13, 2015, petitioner filed its **"FORMAL OFFER OF EVIDENCE IN SUPPORT OF MOTION FOR RECONSIDERATION"**,[3] wherein it offered in evidence Exhibits "P-79-c", "P-79-d", "P-243", "P-243-1", "P-244", and "P-244-a". Respondent then filed her **"Comment to Petitioner's Formal Offer of Evidence in support of Motion for Reconsideration"**[4] on July 15, 2015, stating that she has no objection to the admission of petitioner's exhibits, without necessarily admitting its probative value, materiality and relevance of the purpose for which said exhibits are offered.

Thereafter, in the Resolution dated September 9, 2015,[5] the Court admitted said Exhibits, subject to its final evaluation and appreciation of their purposes, materiality, relevancy, and probative value to the issues involved in this case. In the same Resolution, petitioner's motion for reconsideration was deemed submitted for resolution.

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[2] Docket – Vol. II, pp. 1238 to 1239.
[3] Docket – Vol. II, pp. 1238 to 1239.
[4] Docket – Vol. II, pp. 1238 to 1239.
[5] Docket – Vol. II, pp. 1238 to 1239.

To recall, in the Omnibus Motion, petitioner raises the following grounds and arguments for its motion for reconsideration as follows:

"I

> Petitioner's positive assertion that it reported as part of its 2010 gross income of ₱46,852,978.92 the income from which withholding was made and the documents offered in support of said assertion were not assailed nor controverted by the respondent.

II

> Despite the lack of entries in the 'Creditable Tax Withheld' columns of petitioner's 2010 Annual ITR, the fact that petitioner's reported gross income of ₱46,852,978.92 (Sales/Revenues/Receipts/Fees of ₱44,784,890.00 and Other income of ₱2,068,088.00) includes the ₱46,852,978.92 income from which a total withholding of ₱3,128,835.31 was made can be verified from petitioner's other documentary evidence. For example, the details of petitioner's services and rentals were contained in the SAWT and in the Detail Trial Balance.

III

> The alleged unexplained discrepancy between the amount of income subjected to withholding tax as per SAWT and the income reported as per petitioner's Annual ITR and FS does not negate petitioner's entitlement to refund of excess payment."[6]

For her part, respondent in her Comment/Opposition, contends that this Court did not err in denying petitioner's claim for refund of its 2010 excess creditable withholding tax because they failed to show that the income from which the creditable tax were withheld formed part of their gross income. According to respondent, although petitioner went to the extent of presenting the individual cash receipts journals proving that it issued receipts of payment, to the mind of the Court these are not enough.

Furthermore, respondent avers that the assailed Decision is in accordance with law and evidence; and that in an action for tax credit or refund, the burden is upon the taxpayer to prove that he is entitled

[6] Docket – Vol. II, pp. 1270-1271

thereto, and failure to discharge the said burden is fatal to the claim.

## THE COURT'S RULING

The Motion for Reconsideration lacks merit.

***Entitlement to a tax refund is for the taxpayer to prove and not for the government to disprove.***

In arguing that its positive assertions were not assailed nor controverted by respondent, petitioner points to the testimony of its witness, and then argues that it has established a *prima facie* case of entitlement to the refund.

The contention is untenable.

In *Commissioner of Internal Revenue vs. Far East Bank & Trust Company*,[7] the Supreme Court ruled:

> "Entitlement to a tax refund is for the taxpayer to prove and not for the government to disprove.
>
> xxx xxx xxx
>
> Moreover, **the fact that the petitioner failed to present any evidence or to refute the evidence presented by respondent does not *ipso facto* entitle the respondent to a tax refund.** It is not the duty of the government to disprove a taxpayer[']s claim for refund. Rather, **the burden establishing the factual basis of a claim for a refund rests on the taxpayer.**
>
> And while the petitioner has the power to make an examination of the returns and to assess the correct amount of tax, his failure to exercise such powers does not create a presumption in favor of the correctness of the returns. **The taxpayer must still present <u>substantial evidence</u> to prove his claim for refund. As we have said, there is no automatic grant of a tax refund.**" *(Emphases and underscoring supplied)*

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[7] G.R. No. 173854, March 15, 2010.

Such being the case, notwithstanding the fact that respondent did not present any evidence in this case, and even when she did not assail or controvert petitioner's positive assertion that it reported as part of its 2010 gross income the income from which taxes are withheld and documents in support thereof, it is still the duty of petitioner to prove its entitlement to the refund being claimed by substantial evidence, *i.e.*, that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion.[8]

***The lack of entries in the*** **"Creditable Tax Withheld"** ***columns of petitioner's 2010 Annual Income Tax Return does not negate compliance with the condition that it must be shown on the return of the recipient that the income payment received was declared as part of the gross income.***

Petitioner disagrees with this Court's disquisition, in the assailed Decision, that the lack of entry in the *"Creditable Tax Withheld"* column under Schedule 1 of petitioner's Annual Income Tax Return for 2010 is critical.

We find merit in petitioner's assertion.

There is neither law nor jurisprudence that states that the taxpayer's failure to fill up the entry in the *"Creditable Tax Withheld"* column of Schedule 1 of the Annual ITR would be fatal to a claim for refund. What Section 2.58.3[9] of Revenue Regulations 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 ITR the income payment from which the withholding was made.

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[8] Section 5, Rule 133 of the Rules of Court.

[9] "SECTION 2.58.3. *Claim for Tax Credit or Refund.*—

(A) The amount of creditable tax withheld shall be allowed as a tax credit against the income tax liability of the payee in the quarter of the taxable year in which income was earned or received.

(B) Claims for tax credit or refund of any creditable income tax which was deducted and withheld on income payments shall be given due course only when it is shown **that the income payment has been declared as part of the gross income** and the fact of withholding is established by a copy of the withholding tax statement duly issued by the payer to the payee showing the amount paid and the amount of tax withheld therefrom.

xxx xxx xxx." *(Emphasis supplied)*

An entry in the *"Creditable Tax Withheld"* column found on page 2 of the Annual ITR (BIR Form 1702), specifically Schedule 1 or the *"Schedule of Sales/Revenues/Receipts/Fees"* may expedite the determination of respondent'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 necessarily follow that the Court should immediately deny petitioner's refund claim only because it failed to make such entry.

This must be so as there are instances when the taxpayer has offered, and the Court has admitted, other evidence to establish its compliance with this requirement.

Nevertheless, this does not automatically mean that petitioner should already be entitled to the refund being claimed. A careful review of petitioner's evidence must still be had vis-à-vis the evidence which were presented after the grant of the new trial in this case.

***To be entitled to the tax refund, petitioner must prove every minute aspect of its case.***

Petitioner asserts that alleged unexplained discrepancy between the amount of income subjected to withholding tax and the income reported as per petitioner's Annual Income Tax Return (ITR) and Financial Statements (FS) does not negate petitioner's entitlement to refund of excess payment.

We disagree.

It must be pointed out that the discrepancy found herein is between the amount of total revenue indicated in the Annual ITR and FS, and not between the amount of income subjected to withholding tax and the income reported as per petitioner's Annual ITR and FS. Thus, on this score alone, petitioner is already mistaken.

Nevertheless, as We have pointed out in the assailed Decision, petitioner did not present any evidence to prove that the alleged discrepancy in the amount of total revenue indicated in the Annual ITR[10] and FS[11] was due to timing difference.

[10] Exhibit "P-5", Docket – Vol. II, pp. 757 to 761.

We now look into petitioner's invitation for this Court to note from its evidence, two related and important facts, to wit:

1. the gross income declared by petitioner for the year 2010 is higher than the income from which the withholding was made; and

2. there are six (6) certificates that cover more than one month period and with total withholding of ₱1,949,589.22 and which cogently supports a timing difference of ₱90,349.00.

These supposed important facts do not, at all, establish that the said discrepancy was due to timing difference. The first fact does not show why the timing difference arose; and as for the second fact, it causes further confusion because the noted difference between the Annual ITR and FS is only ₱48,458.00, and not ₱90,349.00.

As tax refunds partake of the nature of tax exemptions, which are construed *strictissimi juris* against the taxpayer, evidence in support of a claim must likewise be *strictissimi* scrutinized and duly proven.[12]

To reiterate, to the mind of the Court, petitioner's evidence are not enough. The Court could not verify whether the income from which the creditable tax withheld of ₱3,126,132.78 indeed formed part of petitioner's taxable gross income for 2010, due to petitioner's failure to present proof, such as, but not limited to, the detailed sales schedules and reconciliation schedules of its revenue with corresponding creditable tax withheld as reported in its ITR and FS for the year 2010.

Considering that cases filed before this Court are litigated *de novo*, party-litigants should prove **every minute aspect** of their cases.[13] Failing which, the instant Omnibus Motion must perforce be denied.

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[11] Exhibit "P-6-b", Docket – Vol. II, p. 767.

[12] *Commissioner of Internal Revenue vs. Far East Bank & Trust Company*, G.R. No. 173854, March 15, 2010; and *Atlas Consolidated Mining and Development Corporation v. Commissioner of Internal Revenue,* G.R. No. 159490, February 18, 2008.

[13] *Dizon vs. Court of Tax Appeals, et al.,* G.R. No. 140944, April 30, 2008; *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue,* G.R. No. 145526, March 16, 2007; and *Commissioner of Internal Revenue vs. Manila Mining Corporation,* G.R. No. 153204, August 31, 2005.

**WHEREFORE**, all the foregoing considered, petitioner's Motion for Reconsideration is hereby **DENIED** for lack of merit.

**SO ORDERED.**

**ERLINDA P. UY**
Associate Justice

WE CONCUR:

**ROMAN G. DEL ROSARIO**
Presiding Justice

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