REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

PHILIPPINE NATIONAL BANK, Petitioner,	**CTA EB Case No. 859** (CTA Case No. 7760)
-versus-	Present: DEL ROSARIO, *P.J.*, CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, COTANGCO-MANALASTAS, and RINGPIS-LIBAN *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	**Promulgated:** FEB 04 2014 9:00 a.m.

X- -X

AMENDED DECISION

CASANOVA, *J.*:

This resolves petitioner's Motion for Reconsideration (of the 05 June 2013 Decision)[1] filed on June 28, 2013 thru registered mail, seeking reconsideration of the Decision (Assailed Decision)[2] of the Court En Banc promulgated on June 5, 2013, with respondent's "Comment/Opposition (Re: Motion for Reconsideration)" filed on

[1] En Banc Rollo, pp. 220-231.
[2] *Ibid.*, pp. 170-186.

September 26, 2013. The dispositive portion of the Assailed Decision reads:

> "**WHEREFORE**, premises considered, the Petition for Review is hereby **DENIED**. The Decision and Resolution of the former Third Division of this Court in CTA Case No. 7760 dated September 30, 2011 and December 29, 2011, respectively, are hereby **AFFIRMED**. No pronouncement as to costs.
>
> **SO ORDERED**."[3]

In its motion, petitioner argues that the Assailed Decision has no basis in law and jurisprudence based on the following grounds:

> "A. The Supreme Court's Rulings that presentation of tax returns for the succeeding year is not required to prove a tax refund claim must prevail against a contrary Ruling of the CTA En Banc.
>
> B. A case for the refund for overpaid taxes requires mere preponderance of evidence, and not proof beyond reasonable doubt."[4]

Respondent, in her Comment/Opposition[5], argues that the present Motion should be denied for lack of merit as the issues raised by petitioner had already been conclusively passed upon by this Honorable Court in the Assailed Decision. Respondent further argues that it is a well settled principle in taxation that claims for refund are construed strictly against the claimant as they partake the nature of an exemption from tax and it is incumbent upon petitioner to prove that it is entitled thereto under the law. Hence, the Motion should be denied as petitioner failed to discharge its burden of establishing its claim for a tax refund/credit.

After a careful and thorough evaluation and consideration of the arguments of both parties in their respective pleadings, this Honorable Court finds the instant Motion meritorious.

---

[3] *Id.*, p. 185.
[4] *Id.*, p. 221.
[5] *Id.*, pp. 237-245.

The principal issue in the present Motion is whether or not the CTA En Banc erred in denying petitioner's claim for the issuance of a Tax Credit Certificate (TCC) in the amount of P74,598,430.47 representing its excess and unutilized creditable withholding taxes for the taxable year 2005, in light of the petitioner's non-submission of its quarterly income tax returns for the taxable year 2006, the year succeeding the period of the subject claim.

This Honorable Court finds that the submission of the quarterly income tax returns of petitioner for the subsequent taxable year is not a legal requisite in filing a claim for refund of excess creditable withholding tax credits for the taxable year 2005.

A review of the pertinent provision of the 1997 National Internal Revenue Code (NIRC) reveals that the law does not require the presentation of the quarterly income tax returns to prove the claim for refund of creditable withholding taxes. The law states:

> "**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.
>
> 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."

Moreover, Section 2.58 of BIR Revenue Regulations No. 2-98, as amended, set forth the requisites for the entitlement to a refund of excess creditable withholding tax credits:

> 1. That the claim for refund was filed within the two-year prescriptive period as provided under Section 204 (C) in relation to Section 229 of the NIRC of 1997;
>
> 2. That the fact of withholding is 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. That the income upon which the taxes were withheld was included in the return of the recipient.[6]

Based on the foregoing, it is clear that nowhere in the law or in its implementing rules and regulations is it indicated that the presentation of quarterly tax returns for the succeeding taxable years is a requisite to establish the entitlement to the refund of excess creditable withholding tax credits.

This position was confirmed by no less than the Supreme Court, in the case of *Philam Asset Management, Inc. (PAMI) vs. Commissioner of Internal Revenue*[7], where the High Court reversed the decision of the Court of Appeals and ruled that the presentation of the succeeding year's income tax return is not an essential requisite in proving a claim for refund of excess creditable income tax credits, the Supreme Court held that:

---

[6] Citibank N.A. vs. Court of Appeals and CIR, 280 SCRA 459; Banco Filipino Savings and Mortgage Bank vs. Court of Appeals, Court of Tax Appeals and Commissioner of Internal Revenue, G.R. No. 155682, March 27, 2007.

[7] G.R. Nos. 156637/162004, December 14, 2005.

"Requiring that the ITR or the FAR of the succeeding year be presented to the BIR in requesting a tax refund has no basis in law and jurisprudence.

First, Section 76 of the Tax Code does not mandate it. The law merely requires the filing of the FAR for the preceding — not the succeeding — taxable year. Indeed, any refundable amount indicated in the FAR of the preceding taxable year may be credited against the estimated income tax liabilities for the taxable quarters of the succeeding taxable year. However, nowhere is there even a tinge of a hint in any of the provisions of the Tax Code that the FAR of the taxable year following the period to which the tax credits are originally being applied should also be presented to the BIR.

Second, Section 5 34 of RR 12-94, amending Section 10(a) of RR 6-85, merely provides that claims for the refund of income taxes deducted and withheld from income payments shall be given due course only (1) when it is shown on the ITR that the income payment received is being declared part of the taxpayer's gross income; and (2) when the fact of withholding is established by a copy of the withholding tax statement, duly issued by the payor to the payee, showing the amount paid and the income tax withheld from that amount.

Undisputedly, the records do not show that the income payments received by petitioner have not been declared as part of its gross income, or that the fact of withholding has not been established. According to the CTA, "[p]etitioner substantially complied with the . . . requirements" of RR 12-94 "[t]hat the fact of withholding is 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 . . . [t]hat the income upon which the taxes were withheld were included in the return of the recipient."

The established procedure is that a taxpayer that wants a cash refund shall make a written request for it, and the ITR showing the excess expanded withholding tax credits shall then be examined by the

> BIR. For the grant of refund, RRs 12-94 and 6-85 state that all pertinent accounting records should be submitted by the taxpayer. These records, however, actually refer only to (1) the withholding tax statements; (2) the ITR of the present quarter to which the excess withholding tax credits are being applied; and (3) the ITR of the quarter for the previous taxable year in which the excess credits arose. To stress, these regulations implementing the law do not require the proffer of the FAR for the taxable year following the period to which the tax credits are being applied."

A similar ruling was enunciated by the Supreme Court in the case of *State Land Investment Corporation vs. Commissioner of Internal Revenue*[8] wherein it held that:

> "It was not necessary on the part of petitioner to file with the BIR its income tax return for 1999. In Philam Asset Management, Inc. v. Commissioner of Internal Revenue, we held that the Tax Code merely requires the filing of the final adjustment return for the preceding – not the succeeding – taxable year. Indeed, any refundable amount indicated therein corresponding to the preceding taxable year may be credited against the estimated income tax liabilities for the taxable quarters of the succeeding taxable year. Requiring that the income tax return or the final adjustment return of the succeeding year be presented to the BIR in requesting a tax refund has no basis in law and jurisprudence."

In the case of *Commissioner of Internal Revenue vs. PERF Realty Corporation*[9], the Supreme Court elucidated that the presentation of subsequent year's annual income tax return is not fatal to the claim for refund of excess creditable withholding taxes as it is the duty of the CIR to verify whether or not the taxpayer carried over its excess tax credits to the succeeding year. The Supreme Court held that:

> "We must also point out that, simply by exercising the CIR's power to examine and verify petitioner's claim for tax exemption as granted by law,

---

[8] GR No. 171956, January 18, 2008.
[9] G.R. No. 163345, July 4, 2008.

> respondent CIR could have easily verified petitioner's claim by presenting the latter's 1997 Income Tax Return, the original of which it has in its files. However, records show that in the proceedings before the CTA, respondent CIR failed to comment on petitioner's formal offer of evidence, waived its right to present its own evidence, and failed to file its memorandum. Neither did it file an opposition to petitioner's motion to reconsider the CTA decision to which the 1997 Income Tax Return was appended.
>
> x x x
>
> 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."

Applying the abovementioned provisions of law and jurisprudence to the instant case, this Court concludes that the presentation of quarterly tax returns for the subsequent taxable year 2006 is not a requisite for the establishment of petitioner's claim for refund of its excess creditable withholding tax credits for the taxable year 2005.

Having settled the issue on the submission of the subsequent quarterly income tax returns, We now delve into petitioner's compliance with the following requisites for the entitlement to the refund of excess or unutilized Creditable Withholding Tax (CWT), as provided by our tax rules and regulations, and recent jurisprudence:

> 1. That the claim for refund was filed within the two-year prescriptive period as provided under Section 204 (C) in relation to Section 229 of the NIRC of 1997;
>
> 2. That the fact of withholding is 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[10]; and
>
> 3. That the income upon which the taxes were withheld were included in the return of the recipient.[11]

As regards the first requisite on the timeliness of petitioner's claim for refund, Sections 204(C) and 229 of the NIRC of 1997, as amended, respectively, provide as follows:

> "**SEC. 204.** ***Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.*** - The Commissioner may-
>
> xxx xxx xxx
>
> **(C)** Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. **No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two (2) years after the payment of the tax or penalty:** *Provided, however,* That a return filed showing an overpayment shall be considered as a written claim for credit or refund.
>
> xxx xxx xxx
>
> **SEC. 229.** ***Recovery of Tax Erroneously or Illegally Collected.***- No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of

---

[10] Section 2.58 of Revenue Regulations No. 2-98, as amended.

[11] Citibank N.A. vs. Court of Appeals and CIR, G.R. No. 107434, October 10, 1997; Banco Filipino Savings and Mortgage Bank vs. Court of Appeals, Court of Tax Appeals and Commissioner of Internal Revenue, G.R. No. 155682, March 27, 2007.

> any penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.
>
> **"In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment:** *Provided, however,* That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid." (Emphasis supplied)

In the cases of *Commissioner of Internal Revenue vs. TMX Sales, Inc.*[12] and *ACCRA Investments Corporation vs. The Honorable Court of Appeals, et al.*,[13] the Supreme Court ruled that the reckoning of the two-year prescriptive period for the filing of a claim for refund or tax credit certificate of excess income tax paid/withheld should commence from the date of filing of the final adjustment return because it is only during that date that the exact tax liability or refundability of the tax can be determined.

Records show that the claimed excess CWT pertain to taxable year ended December 31, 2005 for which petitioner filed its original Income Tax Return (ITR) on April 17, 2006. Counting from this date, petitioner had until April 17, 2008 within which to file a claim for refund/issuance of TCC of excess CWT for taxable year 2005, both in the administrative and judicial levels. Thus, petitioner complied with the first requisite when it filed its administrative claim on February 22, 2007[14], amended administrative claim on June 25, 2007[15] and final letter with attached supporting documents on March 13, 2008[16] as well as its judicial claim on April 11, 2008.

---

[12] G.R. No. 83736. January 15, 1992.
[13] G.R. No. 96322, December 20, 1991.
[14] Exhibit "K".
[15] Exhibit "L".
[16] Exhibit "M".

Anent the second requisite, petitioner presented Certificates of Creditable Tax Withheld at Source[17] duly issued to it by various withholding agents for the year 2005 which were examined by the Court-commissioned Independent CPA (ICPA), SGV & Co, through its Partner, Ms. Mary Ann C. Capuchino. In her final and consolidated report dated June 19, 2009, Ms. Capuchino noted the following:[18]

FINDING	Amount of Tax Withheld	Exhibit "EEE"
A. There are CWTs which are properly supported by original Certificates of Creditable Tax Withheld at Source issued in the name of the Bank and dated within the CY 2005	₱74,026,451.67	Annex A (Page 21 of 21)
B. There are CWTS which are not supported by Certificates of Creditable Tax Withheld at Source	571,978.80	Annex B (Page 1 of 1)
Total	**₱74,598,430.47**	

This Court agrees with the ICPA findings. Petitioner's creditable withholding taxes for the year 2005 in the amount of ₱571,978.80 should be disallowed for not being supported by Certificates of Creditable Tax Withheld at Source (BIR Forms No. 2307). Thus, petitioner was able to prove compliance with the second requisite but only to the extent of ₱74,026,451.67 out of the total claimed creditable withholding taxes of ₱74,598,430.47.

With regard to the third requisite of proving that the income related to the claimed creditable withholding were declared as part of petitioner's taxable gross income, the ICPA reported that the duly supported creditable withholding taxes of ₱74,026,451.67 were withheld on the following income payments[19]:

[17] Exhibits "GG-1" to "GG-1114".
[18] Exhibit "EEE", p. 7.
[19] Exhibit "EEE", p. 10.

Nature of Income	Tax Base Per CWT	Amount of CWT	Exhibit "EEE"
Interest Income on Loans & Receivables	₱ 469,885,059.27	₱ 9,450,108.42	Annex C-1 (Page 4 of 4)
Sub-total	₱ 469,885,059.27	₱ 9,450,108.42	
Non-Interest Income			
Service Charges, Fees & Commissions	123,484,356.93	4,298,973.03	Annex C-2 (Page 2 of 2)
Other Income (Rentals)	82,115,421.29	4,006,731.65	Annex C-3 (Page 3 of 3)
Sub-total	₱ 205,599,778.22	₱ 8,305,704.68	
Total Income Per CWT	**₱ 675,484,837.49**	**₱ 17,755,813.10**	
Sale of Real Properties	**₱ 934,001,335.32**	**₱ 56,270,638.57**	Annex C-4 (Page 15 of 15)
TOTAL		**₱ 74,026,451.67**	

Also, the ICPA noted that the creditable taxes withheld on petitioner's sale of real properties, in the amount of ₱56,270,638.57, was based on the gross selling price or fair market value of the real property sold, whichever is higher, but the amount included in petitioner's audited financial statements (AFS) and ITR is the income derived from such sale (i.e., Profit/Loss from Assets Sold/Exchanged).[20]

Based on the review of petitioner's pertinent documents such as original accounting tickets or input sheets[21] and original Deeds of Absolute/Conditional Sale[22] and general ledgers (GLs)[23] for the years 1999 to 2006, the ICPA was able to determine that the revenues related to the creditable withholding taxes of ₱74,026,451.67 were recorded in petitioner's General Ledgers (GLs) for the years 1999 to 2006, as summarized below:

FINDING	Amount of Tax Withheld	Exhibit "EEE"
CWTs with related revenues traced to the original Certificates of Creditable Taxes Withheld at Source (BIR Form No. 2307)		

[20] Exhibit "EEE", Findings and Observations, B.2.b, p. 12 and B.2.c, p. 13.
[21] Exhibit "LL".
[22] Exhibit "MM".
[23] Exhibits "QQ", "AAA-1" to "AAA-7".

dated 2005 and traced to the GL		
1. CWTs supported with original Certificates of Creditable Taxes Withheld at Source dated 2005 and with related revenues traced to the CY 2005 general ledger using as reference the name of the withholding agent, amount of income/loss and date of entry reflected in the original input sheet/accounting tickets, branch name and branch code, account code and account title (e.g., PLASE, Income from Assets Acquired, Bank Commissions, Service Charges, Fees/Commissiones-Others). For transactions pertaining to sales of real properties, these are further supported with original Deeds of Absolute Sale executed in 2005	₱ 58,417,886.59	Annex E (Page 21 of 21)
2. CWTs supported with original Certificates of Creditable Taxes Withheld at Source dated 2005 and with related sales of real property traced to the CY 2005 general ledger using as reference in the name of the withholding agent, date of entry reflected in the original input sheet/accounting tickets, branch name and branch code, account code and account title. The CWTs are supported with Original Deeds of Absolute Sale executed in 2005. The accounting tickets and other documents supporting the transactions in which these withholding taxes pertain show that there were no income earned or loss incurred on these transactions	6,687,905.33	Annex F (Page 2 of 2)
3. CWTs supported with original Certificates of Creditable Taxes Withheld at Source dated 2005 and with related downpayments traced to the CY 2005 general ledger using as reference the name of the withholding agent, amount paid and date of entry reflected in the original input sheet/accounting tickets, branch name and branch code, account code and account title. For transactions pertaining to sales of real properties, these are further supported with original Deeds of Absolute Sale executed in 2005.	72,754.80	Annex G (Page 1 of 1)

4. CWTs supported with original Certificates of Creditable Taxes Withheld at Source dated 2005 and with related revenues traced to general ledgers pertaining to 1999, 2000, 2001, 2002, 2003 and 2004 using as reference the name of the withholding agent, amount of income/loss and date of entry reflected in the original input sheet/accounting tickets, branch name and branch code, account code and account title. For transactions pertaining to sales of real properties, these are further supported with original Deeds of Absolute Sale executed in 2005	6,500,328.06	Annex H (Page 2 of 2)
5. CWTs supported with original Certificates of Creditable Taxes Withheld at Source dated 2005 and with related sales of real property traced to general ledgers and pertaining to 1999, 2000, 2001, 2002, 2003 and 2004 using as reference the name of the withholding agent, amount of income/loss and date of entry reflected in the original input sheet/accounting tickets, branch name and branch code, account code and account title. The CWTs are supported with Original Deeds of Absolute Sale executed in 2005. The accounting tickets and other documents supporting the transactions in which these withholding taxes pertain show that there were no income earned or loss incurred on these transactions.	1,372,631.70	Annex I (Page 1 of 1)
6. CWTs supported with original Certificates of Creditable Taxes Withheld at Source dated 2005 and with related revenues traced to general ledgers pertaining CY 2006 using as reference the name of the withholding agent amount of income/loss and date of entry reflected in the original input sheet/accounting tickets, branch name and branch code, account code and account title. For transactions pertaining to sales of real properties, these are further supported with original Deeds of Absolute Sale executed in 2005.	974,945.19	Annex J (Page 1 of 1)
Total	**₱ 74,026,451.67**	

We find the ICPA report in order. The total GL balances of the revenue accounts pertaining to the creditable withholding taxes of ₱74,026,451.67, namely, Interest Income on Loans and Receivables; Service Charges, Fees and Commissions; Rental Income; Profit and Loss on Assets Sold or Exchanged and Income from Assets Acquired tally with those reflected in petitioner's AFS and ITRs for the years 1999 to 2006 as can be seen from petitioner's Statements of Income for the years 1999 to 2006[24], ITRs for the years 1999 to 2006[25], Reconciliation of Interest Income and Non-Interest Income Per Audited Financial Statements against Income Tax Return for the years 1999 to 2006[26], Bankwide Profit & Loss Statement[27], Schedule of Other Income[28], Schedule of Interest Income on Loans[29], Schedule of Service Charges, Fees and Commission Income[30] and Schedule of Gain on Sale or Exchange of Assets[31]. In other words, the income related to the creditable withholding taxes of ₱74,026,451.67 formed part of petitioner's taxable income for the years 1999 to 2006, thus, satisfying the third requisite.

In fine, petitioner sufficiently proved that it is entitled to the issuance of TCC in the amount of ₱74,026,451.67 representing unutilized excess creditable withholding taxes for taxable year 2005.

In view of the foregoing, this Court holds that petitioner was able to sufficiently prove its claim for refund. It complied with the legal requisites set forth under the law. It was able to file its claim within the prescriptive period of two years. It was able to substantiate its claim by presenting the creditable withholding tax certificates issued by the payors. And lastly, it was able to prove that the income upon which the taxes were withheld was included in its income tax return for the taxable year 2005.

---

[24] Exhibits "KK-05", "DDD-003", "DDD-027", "DDD-054", "DDD-089", "DDD-167" and "DDD-198".

[25] Exhibits "H-2", "CCC-01" to "CCC-51", "JJ-001" to "JJ-022" and "SS-001" to "SS-019".

[26] Exhibits "TT-01" to "TT-22", "GGG-1" to "GGG-24" and "FFF-01" to "FFF-03".

[27] Exhibits "AAA1-01" to ""AAA1-02", "AAA2-01" "AAA3-01". "AAA4-001", "AAA5-001", "AAA6-01", "QQ-0001" and "AAA7-001".

[28] Exhibits "AAA1-02", "AAA2-02", "AAA3-02", "AAA4-002", "AAA5-002", "AAA6-0009" to "AAA6-00010", "QQ-1464" to "QQ-1465" and "AAA2-02".

[29] Exhibits "QQ-0002" to "QQ-0004" and "AAA6-0002 " to "AAA6-004".

[30] Exhibits "AAA6-1140" to "AAA6-1141"

[31] Exhibits "AAA7-002" to "AAA7-003".

Finally, we reiterate our consistent ruling that actions for tax refund, as in the instant case, are in the nature of a claim for exemption and the law is not only construed in *strictissimi juris* against the taxpayer, but also the pieces of evidence presented entitling a taxpayer to an exemption is *strictissimi* scrutinized and must be duly proven.[32]

WHEREFORE, premises considered, petitioner's Motion for Reconsideration (of the 05 June 2013 Decision) is hereby **GRANTED**. Accordingly, the Assailed Decision dated June 5, 2013 is hereby **REVERSED** and **SET ASIDE**. Respondent is **ORDERED TO REFUND**, or in the alternative, **ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the amount of **Seventy-Four Million Twenty-Six Thousand Four Hundred Fifty-One Pesos and 67/100 (₱ 74,026,451.67)**, representing excess and unutilized creditable withholding taxes for the taxable year 2005.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

---

[32] Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue, G.R.No. 159490, February 18, 2008.

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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

(I maintain my vote to deny the Petition for Review for insufficiency of evidence)
LOVELL R. BAUTISTA
Associate Justice

(I join Justice Grulla's Dissenting Opinion)
ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

Cielito N. Mindaro-Grulla
(With Separate Dissenting Opinion)
CIELITO N. MINDARO-GRULLA
Associate Justice

(I vote to affirm the assailed Decision)
AMELIA R. COTANGCO-MANALASTAS
Associate Justice

Ma. Belen 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 the Court.

ROMAN G. DEL ROSARIO
Presiding Justice

Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

EN BANC

PHILIPPINE NATIONAL BANK, *Petitioner,*	**CTA EB CASE NO. 859** (CTA Case No. 7760)
-versus-	Present: DEL ROSARIO, P.J., CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, COTANGCO-MANALASTAS, RINGPIS-LIBAN, JJ.
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: FEB 04 2014

x---x

SEPARATE DISSENTING OPINION

MINDARO-GRULLA, J.:

With all due respect to my colleagues, I dissent from the majority decision granting petitioner's Motion for Reconsideration and which ordered the refund or issuance of tax credit certificate. It is my opinion that the said motion should be denied for insufficiency of evidence.

The law is clear. Section 76 of the National Internal Revenue Code (NIRC) of 1997, as amended, expressly mandates that "[o]nce 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 tax refund or issuance of a tax credit certificate shall be allowed** therefor." Thus, under the irrevocability rule, it is now incumbent upon the taxpayer to prove that the amount being claimed as refund or tax credit was not actually carried over and credited against the estimated quarterly income tax liabilities for the taxable quarters of the succeeding taxable years.

The majority decision cited the cases of *Philam Asset Management, Inc. vs. Commissioner of Internal Revenue* (the "*Philam Case*"),[1] *State Land Investment Corporation vs. Commissioner of Internal Revenue* (the "*State Land Case*"),[2] and *Commissioner of Internal Revenue v. PERF Realty Corporation (the "PERF Case")* [3] in concluding that the presentation of quarterly tax returns for the subsequent taxable year 2006 is not a requisite for the establishment of petitioner's claim for refund of its excess creditable withholding tax credits for the taxable year 2005.

It is my humble opinion that the foregoing cases cited are not on all fours with the instant case. It must be emphasized that the *Philam Case* is a consolidated case involving interpretations of Section 69 of the old code and Section 76 of the new code. Suffice it to say, the Supreme Court in G.R. No. 156637 interpreted Section 69 of the old code in holding that "[r]equiring that the ITR or the FAR of the *succeeding* year be presented to the BIR in requesting a *tax refund* has no basis in law and jurisprudence." Thus, the Supreme Court similarly applied the doctrine in *Philam Case* (G.R. No. 156637) in interpreting the provision of Section 69 of the old code in the *State Land Case,* where the "irrevocability rule" was not yet enforced.

In fact, the *PERF Case* cited the *Philam Case* in discussing the history of the Final Adjustment Return found in Section 69 (now 76) of the NIRC. The pertinent portion of the said decision reads:

> "In *Philam Asset Management, Inc. v. Commissioner of Internal Revenue* [G.R. Nos. 156637 & 162004, December 14, 2005, 477 SCRA 761], the Court had occasion to trace the history of the Final Adjustment Return found in Section 69 (now 76) of the NIRC. Thus:

---
[1] G.R. Nos. 156637/162004, December 14, 2005.
[2] G.R. No. 171956, January 18, 2008.
[3] 557 SCRA 165, G.R. No. 163345, July 4, 2008.

The provision on the final adjustment return (FAR) was originally found in Section 69 of Presidential Decree (PD) No. 1158, otherwise known as the "National Internal Revenue Code of 1977." On August 1, 1980, this provision was restated as Section 86 in PD 1705.

On November 5, 1985, all prior amendments and those introduced by PD 1994 were codified into the National Internal Revenue Code (NIRC) of 1985, as a result of which Section 86 was renumbered as Section 79.

On July 31, 1986, Section 24 of Executive Order (EO) No. 37 changed all 'net income' phrases appearing in Title II of the NIRC of 1977 to 'taxable income.' Section 79 of the NIRC of 1985, however, was not amended.

On July 25, 1987, EO 273 renumbered Section 86 of the NIRC as Section 76, which was also rearranged to fall under Chapter of Title II of the NIRC. Section 79, which had earlier been renumbered by PD 1994, remained unchanged.

Thus, Section 69 of the NIRC of 1977 was renumbered as Section 86 under PD 1705; later, as Section 79 under PD 1994; then, as Section 76 under EO 273. Finally, after being renumbered and reduced to the chaff of a grain, Section 69 was repealed by EO 37.

Subsequently, Section 69 reappeared in the NIRC (or Tax Code) of 1997 as Section 76, which reads:

> **Section 76. *Final Adjustment Return.*** - Every corporation liable to tax under Section 24 shall file a final adjustment return covering the total net 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 net income of that year the corporation shall either:
>
> **(a) Pay the excess tax still due; or**
> **(b) Be refunded the excess amount paid, as the case may be.**
>
> **In case the corporation is entitled to a refund of the excess estimated quarterly income taxes paid, the refundable amount shown on its final adjustment return may be**

> **credited against the estimated quarterly income tax liabilities for the taxable quarters of the succeeding taxable year.**" [Emphasis supplied.]

Clearly then, the "irrevocability rule" under the present code was not applied in the said case.

To reiterate, "while Section 69 of the 1977 NIRC, as amended, allows unutilized tax credits to be refunded as long as the claim is filed within the prescriptive period, the same no longer holds true under Section 76 of the 1997 NIRC as the option to carry-over excess income tax payments to the succeeding taxable year is now irrevocable. For emphasis, unlike in Section 69 of the old code, the unutilized excess income tax payments may now be carried over to the succeeding taxable years until fully utilized. Therefore, once the option to carry-over is exercised, the taxpayer may no longer be refunded of its unutilized excess income tax payments."[4]

In fine, as entitlement to a tax refund is for the taxpayer to prove and not for the government to disprove,[5] and having failed to sufficiently prove that it did not carry over its claimed 2005 excess creditable withholding tax credits to the succeeding quarters of taxable 2006, I vote to deny the motion for insufficiency of evidence.

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

I CONCUR:

ERLINDA P. UY
Associate Justice

---

[4] Assailed Decision dated June 5, 2013, *En Banc* Docket, p. 180 citing *Belle Corporation v. Commissioner of Internal Revenue*, G.R. No. 181298, January 10, 2011.
[5] *Commissioner of Internal Revenue v. Far East Bank & Trust Company (Now Bank of the Philippine Islands)*, G.R. No. 173854, March 15, 2010.