REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

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PHILAM PROPERTIES CORPORATION, Petitioner,	**CTA EB NO. 885** (CTA Case No.7912)
	Present:
- versus -	**DEL ROSARIO,** *PJ*, **CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, COTANGCO-MANALASTAS,** and **RINGPIS-LIBAN,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	**Promulgated:**
	AUG 2 2 2013 ... 11:15 a.m.

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D E C I S I O N

UY, *J*.:

This Petition for Review was filed on April 23, 2012 assailing the Decision dated January 12, 2012[1] and Resolution dated March 20, 2012[2], both promulgated by the Second Division of this Court[3] in CTA Case No. 7912 entitled *"Philam Properties Corporation, petitioner, vs. Commissioner of Internal Revenue, respondent"* which denied petitioner's claim for refund or issuance of tax credit certificate in the amount of P9,176,116.69 allegedly representing excess/

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[1] Docket, pp. 16 to 42.
[2] Docket, pp. 43 to 45.
[3] Ponencia of Associate Justice Cielito N. Mindaro-Grulla, concurred by Chairperson of the Second Division, Associate Justice Juanito C. Castañeda, Jr., with Associate Justice Caesar A. Casanova, Senior Member.

unutilized creditable withholding taxes for the calendar year 2006, due to insufficiency of evidence.

THE FACTS

Petitioner Philam Properties Corporation is a corporation duly organized and existing under and by virtue of the laws of Philippines, with principal office at 5th Floor, Philamlife Bldg., 126 L.P. Leviste St., Salcedo Village, Makati City.

Respondent is the Commissioner of the Bureau of Internal Revenue (BIR), who is duly appointed and empowered to perform the duties of her office, including the duty to act and approve claims for refund or tax credit as provided by law. She holds office at the BIR National Office Building, Diliman, Quezon City.

On April 16, 2007, petitioner filed with the BIR its Annual Income Tax Return (ITR) for calendar year (CY) 2006. The said ITR indicated that petitioner declared a net loss in the amount of P3,300,336.00, and a Minimum Corporate Income Tax (MCIT) due in the amount of P981,659.12. Petitioner also had total tax credits in the amount of P34,739,282.96, consisting of prior years' excess credits in the amount of P25,550,663.00 and creditable tax withheld for the year in the amounts of P7,087,172.37 and P2,101,447.59, respectively. After deducting the MCIT liability in the amount of P981,659.12, petitioner indicated an overpayment in the amount of P33,757,623.84. Petitioner opted to be issued a tax credit certificate (TCC).

On April 8, 2009, petitioner filed an administrative claim with BIR Revenue District Office No. 50 for the issuance of a TCC for excess/unutilized creditable taxes withheld for the taxable year 2006 amounting to P9,176,116.69.

Subsequently, on April 14, 2009, petitioner filed a Petition for Review before the Court in Division docketed as CTA Case No. 7912, in order to preserve its right to claim for refund of its excess or unutilized creditable withholding tax for CY 2006 in the amount of P9,176,116.69.

Respondent filed her Answer[4] interposing special and

[4] Answer, CTA Case No. 7912 Docket, pp. 39-42

affirmative defenses, alleging, among others, that petitioner's claim for refund is still subject to investigation by the Bureau of Internal Revenue; and that it is incumbent upon petitioner to prove by substantial and credible evidence its entitlement to subject claim.

During trial, petitioner presented two (2) witnesses in support of its refund claim, namely: Ms. Mary Jane C. Baysic and Atty. Fredieric B. Landicho.

On the other hand, the supposed presentation of respondent's evidence was reset several times on November 17, 2010, January 17, 2011, February 16, 2011 and March 16, 2011. On the last date, March 16, 2011, respondent's counsel manifested that upon verification with the Revenue District Office No. 50, where petitioner's administrative claim for refund is filed, there is still no final report on the said claim, hence, he manifested that he was submitting the case for decision. Thus, the Court in Division directed the parties to file the respective Memorandum within thirty (30) days from said date. [5]

On June 1, 2011[6], the case was deemed submitted for decision, considering petitioner's Memorandum and the report of this Court's Records Division that respondent did not file her Memorandum.

The Court in Division rendered the assailed Decision on January 12, 2012, denying petitioner's Petition for Review due to insufficiency of evidence, the dispositive portion of which reads as follows :

> "**WHEREFORE,** premises considered, petitioner's claim for refund or issuance of a tax credit certificate is hereby **DENIED** due to insufficiency of evidence.
>
> **SO ORDERED.**"

On February 6, 2012, petitioner filed a Motion for Reconsideration[7] of the said Decision, raising the following arguments:

1. Petitioner sufficiently established through both documentary and testimonial evidence that the income

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[5] Minutes of hearing held on March 16, 2011, CTA Case No. 7912 Docket, p. 387.
[6] Resolution dated June 1, 2011, CTA Case No. 7912 Docket, p. 403
[7] Motion for Reconsideration, CTA Case No. 7912 Docket, pp. 433-440

payments from which taxes were withheld were reported as income in its CY 2006 corporate ITR;

2. Petitioner submitted a Reconciliation Schedule detailing the items which accounted for the discrepancy; and

3. Petitioner sufficiently established that there were sufficient prior year's excess credits from which the MCIT of P981,659.00 for CY 2006 was offset.

The Court in Division, however, in the assailed Resolution dated March 20, 2012, denied the said Motion for Reconsideration for lack of merit. The dispositive portion thereof reads as follows:

> "**WHEREFORE,** premises considered, petitioner's **'MOTION FOR RECONSIDERATION'** is hereby **DENIED** for lack of merit.
>
> **SO ORDERED.**"

Thereafter, petitioner filed before the Court *En Banc*, a Motion For Extension of Time To File Petition for Review on Certiorari,[8] praying for an additional period of fifteen (15) days from April 10, 2012 or until April 25, 2012, within which to file its Petition for Review. The same was granted by the Court *En Banc* in its Resolution dated April 11, 2012.[9]

On April 23, 2012, petitioner filed the instant Petition for Review, praying that the assailed Decision and Resolution be reconsidered, and that judgment be rendered: (1) ordering respondent to refund in favor of petitioner the total amount of P9,176,116.69, representing excess/unutilized creditable withholding taxes of petitioner for the year ended December 31, 2006; and (2) declaring that for CY 2006, petitioner had sufficient excess/unutilized tax credits from where its MCIT liability was offset.

In the Resolution dated May 8, 2012,[10] the Court *En Banc* directed respondent to file a comment to the instant Petition for Review, but respondent failed to file said comment.[11]

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[8] Docket, pp. 1 to 3.
[9] Docket, p. 5.
[10] Docket, pp. 95 to 96.
[11] Per Records Verification Form dated June 18, 2012, Docket, p. 97.

Considering however the arguments/discussion raised by petitioner in the instant Petition for Review, without respondent's Comment despite notice, the Court *En Banc* resolved to give due course to the instant Petition for Review, and directed the parties to file their respective memoranda within thirty (30) days from notice.[12]

On July 26, 2012, petitioner filed a Motion for Extension of Time To File Memorandum.[13] Accordingly, the Court *En Banc* granted petitioner a final and non-extendible period of thirty (30) days from July 29, 2012 or until August 28, 2012, within which to file its Memorandum

Within the extension period requested by petitioner[14], and granted by the Court *En Banc* in the Resolution dated July 27, 2012,[15] petitioner filed its Memorandum on Appeal[16] on August 23, 2012. Respondent, on the other hand, failed to file her Memorandum.[17]

In the Resolution dated September 26, 2012,[18] the case was deemed submitted for decision as of such date.

Hence, this Decision.

THE ISSUE

In its Memorandum on Appeal,[19] petitioner raises this sole issue, to wit:

> **"Whether the Second Division of the Court of Tax Appeals erred in denying the claim for refund on the ground that Petitioner allegedly failed to establish that the income payments which were subject to creditable tax formed part of the taxable income**

[12] Resolution dated June 25, 2012, Docket, pp. 99 to 100.
[13] Docket, pp. 101 to 102.
[14] Motion for Extension of Time to File Memorandum filed on July 26, 2012, Docket, pp. 101-103.
[15] Docket, p. 104.
[16] Docket, pp. 105 to 111.
[17] Per Records Verification Form dated September 10, 2012, Docket, p. 113.
[18] Docket, pp. 115 to 116.
[19] Docket, at p. 107.

> **recorded in its CY 2006 annual corporate income tax return".**

Petitioner's Arguments:

Petitioner contends that it had sufficiently established that the income payments which were subject to creditable withholding taxes for CY 2006 formed part of its taxable income as recorded in its annual corporate ITR, through both testimonial and documentary evidence.

It points out that respondent did not conduct any cross-examination of petitioner's witnesses. Neither did she present any evidence to controvert the documentary and testimonial evidence of petitioner.

Lastly, petitioner argues that claims for refund shall be governed by the "preponderance of evidence" rule, and that *preponderance* of evidence simply means evidence which is of greater weight, or more convincing than that which is offered in opposition thereto. Thus, petitioner submits that petitioner had sufficiently established the quantum proof necessary to establish its claim for refund.

THE COURT *EN BANC*'S RULING

After weighing the arguments raised by petitioner, We find no merit in the instant Petition for Review.

The conditions for the grant of a claim for refund of creditable withholding income tax.

In *Banco Filipino Savings and Mortgage Bank vs. Court of Appeals, et al.,*[20] the Supreme Court ruled that there are three (3) conditions for the grant of a claim for refund of creditable withholding income tax, to wit: *first*, the claim is filed with the Commissioner of Internal Revenue within the two-year period from the date of payment of the tax;[21] *second*, it is shown on the return of the recipient that the

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[20] G.R. No. 155682, March 27, 2007.

[21] Jose C. Vitug and Ernesto D. Acosta, Tax Law and Jurisprudence, 329 (2006), citing *Gibb v. Collector,* 107 Phil. 230 (1960).

income payment received was declared as part of the gross income;[22] and *third*, the fact of withholding is established by a copy of a statement duly issued by the payor to the payee showing the amount paid and the amount of the tax withheld therefrom.

The Court in Division, in denying petitioner's claim for tax refund, held that while petitioner was able to establish the first of the above-stated conditions, it failed to prove its compliance with the second. Furthermore, in relation to the third condition, the Court *a quo* found that even when petitioner was able to demonstrate the fact of withholding through its submission of Certificates of Creditable Tax Withheld At Source, there are discrepancies between the income payments shown per said Certificates and the amount of income per petitioner's 2006 Annual ITR.

Furthermore, the Court *a quo* likewise found that petitioner failed to establish the existence of its prior year's (2005) excess credits in the amount of P25,550,663.00, from which the amount of MCIT due for 2006 was applied or credited.

Thus, We sustain the findings and conclusions of the Court in Division.

Petitioner should prove every minute aspect of its case.

In the assailed Decision, the Court in Division clearly identified that documentary evidence which should have been presented by petitioner, to wit:

> "But petitioner failed to establish the existence of its prior year's excess credits in the amount of P25,550,663.00, from which the amount of MCIT due for 2006 was applied or credited. Petitioner should prove that indeed it had enough prior year's excess credits to cover its MCIT liability; otherwise, the said MCIT liability shall be deducted from petitioner's 2006 creditable withholding taxes. **Petitioner should have submitted the Certificates of Creditable Taxes Withheld at Source and the Annual Income Tax Returns for prior years**.

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[22] *Calamba Steel Center, Inc. v. Commissioner on Internal Revenue*, G.R. No. 151857, April 28, 2005.

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Evidently, there are discrepancies between the income payments shown per certificates vis-à-vis the income amounts per petitioner's 2006 Annual Income Tax Return, as shown below:

	Per Certificates	Per Income Tax Return	Discrepancy
Sale of Service	P 51,232,067.75	P 52,552,837.00	P 1,320,769.25
Lease of Properties	32,312,794.85	40,659,655.00	8,346,860.15
Total	P 83,544,862.60	P 93,212,492.00	P 9,667,629.40

The Independent CPA explained that the discrepancies represent certain items such as recovery of condominium dues, payments where taxes were not withheld, accrual of income in the calendar year 2006 but billed in calendar year 2007, timing differences in recording income and certain non-income payments.

Also, the Independent CPA reported that the income related to the claimed creditable withholding taxes of P8,851,978.35 was recorded in petitioner's books. xxx

xxx xxx xxx

However, **the Court cannot verify the above report and the explanation of the Independent CPA because petitioner failed to present supporting documents such as, but not limited to, detailed general ledger, sales journal and sales invoices/billing statements for 2006 and prior years, income tax returns and audited financial statements for prior years or any other document whereby the Court can determine if petitioner properly reported the income related to the claimed creditable withholding taxes either in the current or prior years.** Petitioner's non-compliance with the third requisite[23] is fatal to its claim." *(Emphases supplied)*

[23] Referring to the second condition for the grant of a claim for refund of creditable withholding taxes as herein stated, *i.e.*, it is shown on the return of the recipient that the income payment received was declared as part of the gross income.

We agree with the Court in Division.

To controvert the above findings of the Court in Division, petitioner points to the testimonies of its witnesses, namely, Ms. Jane Baysic, Finance Manager of petitioner, vis-a-vis specific portions of petitioner's financial statements, and Atty. Fredieric Landicho, the Independent CPA.

A careful and thorough evaluation of the testimonies of said witnesses and the subject financial statements however fail to persuade the Court *En Banc* to reverse the findings of the Court *a quo*.

Testimonial evidence, to be credible, should come not only from the mouth of a credible witness but it should also be credible in itself, reasonable, and in accord with human experience.[24] For it is easy of fabrication.[25]

To Our mind, the veracity of the testimony of Ms. Baysic, albeit that the latter *"was directly responsible for the preparation of financial statements and income tax returns of Petitioner"*,[26] could not be tested or verified as the same was not supported by documentary evidence. Especially so that petitioner offered no explanation as to why the supposed supporting documents (which are all records of petitioner), mentioned by the Court in Division in the assailed Decision, were never presented nor offered in evidence before the said Court.

Anent the findings and conclusions of the Court commissioned, independent CPA, Atty. Fredieric B. Landicho, suffice it to state that the same are not conclusive upon this Court.[27]

Furthermore, with regard to petitioner's compliance with the second condition for the grant of a claim for refund of creditable withholding income tax, even granting that the pertinent supporting documents are indeed not necessary, an examination of petitioner's Annual ITR for CY 2006[28] fails to convince Us that the subject income payments, which were supposedly subjected to withholding

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[24] *People of the Philippines vs. Dela Cruz*, G.R. No. 171272, June 7, 2007.
[25] *Government Service Insurance System vs. Court of Appeal, et al.*, G.R. No. L-52080, May 28, 1993.
[26] Par. 1.5, Petition for Review, Docket, p. 7.
[27] Section 3, Rule 13 of the Revised Rules of the Court of Tax Appeals.
[28] Exhibit "B", Division Docket (CTA Case No. 7912), pp. 153 to 158.

tax, were declared as part of petitioner's gross income.

Undisputedly, in the said Annual ITR, petitioner declared *"Sales/Revenues/Receipts/Fees"* in the amount of P93,212,492.00,[29] and *"Creditable Withholding Tax"* in the total amount of P9,188,619.96 (consisting of P7,087,172.37 for the first three quarters of CY 2006, and P2,101,447.59 for the fourth quarter thereof).[30] However, under Schedule 1, Section A of the same Annual ITR or the *"Schedule of Sales/Revenues/Receipts/Fees"*, there is no entry whatsoever in the *"Creditable Tax Withheld"* and *"Taxable Amount"* columns.[31] Based on such information, there is no indication that any portion of the reported *"Sales/ Revenues/ Receipts /Fees"* in the amount of P93,212,492.00 was ever subjected to creditable withholding tax. To emphasize, the absence of any entry in the *"Creditable Tax Withheld"* column is to the effect, or at the very least, may be taken to mean, that no part of the gross income reported was ever subjected to creditable withholding tax.

Considering that the aforesaid second condition is to the effect that there must be a showing **<u>on the return</u>** of petitioner that the income payment subjected to withholding tax was declared as part of the gross income, it is logical that the first and foremost document to be closely examined and scrutinized is the Annual ITR of petitioner for CY 2006, particularly the information indicated therein. Thus, such examination and scrutiny must not only be confined to a particular entry or item in the said return, but must be made in its entirety.

In fine, it must be emphasized that as cases filed before this Court are litigated *de novo*, party-litigants should prove **every minute aspect** of their cases.[32]

Tax refund entitlement is for the taxpayer to prove, and not for the government to disprove. Substantial evidence is required.

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[29] Division Docket (CTA Case No. 7912), p. 153.
[30] Division Docket (CTA Case No. 7912), p. 154.
[31] Division Docket (CTA Case No. 7912), p. 155.
[32] *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.

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Anent the contention of petitioner of respondent's failure to present evidence to controvert the documentary and testimonial evidence of petitioner, and with regard to petitioner's argument that only preponderance of evidence is required in refund claims, the same are of no moment.

In *Commissioner of Internal Revenue vs. Far East Bank & Trust Company, etc.,*[33] the Supreme Court said:

> "**Entitlement to a tax refund is for the taxpayer to prove and not for the government to disprove.**
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> xxx xxx xxx
>
> Moreover, **the fact that the petitioner** *[Commissioner of Internal Revenue]* **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 of 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.
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> Hence, for failing to prove its entitlement to a tax refund, respondent's claim must be denied. Since 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." *(Emphases and underscoring supplied)*

Needless to state, substantial evidence has been construed to mean not necessarily preponderant proof as is required in ordinary civil action, but such kind of "relevant evidence as a reasonable man

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

might accept as adequate in support of a conclusion."[34] Petitioner fell short of this requirement.

WHEREFORE, in view of the foregoing considerations, the Petition for Review is hereby **DENIED** for lack of merit. The Decision dated January 12, 2012 and Resolution dated March 20, 2012 promulgated by the Court in Division in CTA Case No. 7912, are hereby **AFFIRMED**.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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

LOVELL R. BAUTISTA
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

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

(On Leave)
AMELIA R. COTANGCO-MANALASTAS
Associate Justice

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

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[34] *Commissioner of Internal Revenue vs. Manila Machinery and Supply Company, et al.*, G.R. No. L-25653, February 28, 1983.

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the conclusions in the above decision were reached in consultation before the case was assigned to the writer of the opinion of the Court *En Banc*.

ROMAN G. DEL ROSARIO
Presiding Justice