REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC
****

MINDANAO II GEOTHERMAL PARTNERSHIP, Petitioner,	**CTA EB No. 1045** (CTA Case No. 8094)
	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:** MAR 30 2015 11:45 a.m.

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DECISION

UY, *J*.:

The instant Petition for Review[1] was filed on August 5, 2013 by petitioner, Mindanao II Geothermal Partnership, against respondent, Commissioner of Internal Revenue, seeking a reconsideration of the Decision dated May 2, 2013[2] and the Resolution dated July 1, 2013[3], both promulgated by the Special Third Division of this Court ("Court in Division" for brevity) in CTA

[1]EB Docket, pp. 23 to 51.
[2]Decision dated May 2, 2013; Ponencia of Associate Justice Lovell R. Baustista, Chairman, of the CTA Special Third Division, concurred by Associate Justice Amelia Contangco-Manalastas, Senior Member; EB Docket, pp, 63 to 75. In the instant Petitioner for Review, petitioner erroneously indicated the date as "3 May 2013" on pages 1, 2 and 28 of the said Petition, and as"6 May 2013"on page 10 thereof; Refer to EB Docket, pp. 23, 24, 50, and 32, respectively.
[3]EB Docket, pp. 77 to 79.

Case No. 8094, entitled *"Mindanao II Geothermal Partnership, Petitioner, versus Commissioner of Internal Revenue, Respondent"*, the dispositive portions of which respectively read as follows:

<u>Decision dated May 2, 2013</u>:

> "**WHEREFORE,** the Petition for Review is hereby **DENIED** for insufficiency of evidence.
>
> **SO ORDERED.**"

<u>Resolution dated July 1, 2013</u>:

> "**WHEREFORE,** petitioner's 'Motion for Reconsideration/New Trial' is hereby **DENIED** for lack of merit.
>
> **SO ORDERED.**"

THE FACTS

Petitioner is a partnership, between Marubeni Pacific Energy Holdings Corporation ("MPEHC") and Marubeni Pacific II Energy Holding Corporation ("MP2EHC"), duly registered with the Securities and Exchange Commission ("SEC"), with principal address at Barangay Ilomavis, Kidapawan City. It is primarily engaged in the development, financing, construction, ownership, operation, maintenance and transfer of geothermal electrical generation plant located at Mindanao Geothermal Reservation, North Cotobato.

Respondent, on the other hand, is the duly appointed Commissioner of Bureau of Internal Revenue ("BIR"), empowered to perform duties of her office, including among others, the duty to act upon and approve claims for refund or tax credit as provided by law, with office address at the 4th Floor, BIR National Office Building, Agham Road, Diliman, Quezon City.

On April 15, 2008, petitioner filed its corporate Annual Income Tax Return (ITR) for the calendar year ended December 31, 2007.

The following year, specifically on April 15, 2009, petitioner filed its corporate Annual Income Tax Return for the calendar year ended December 31, 2008.

On December 22, 2009, the Board of Directors and Stockholders of MPEHC and MP2EHC approved their merger with Axia Power Holdings Philippines Corporation ("APHPC"), with the latter as the surviving entity. On account of the merger, MPEHC withdrew as a partner in petitioner.

The SEC, on March 29, 2010, approved the merger and the withdrawal of MPEHC, which effectively dissolves petitioner as a corporate entity.

On April 12, 2010, petitioner filed with respondent a written request for refund or issuance of a tax credit certificate of its excess or unutilized creditable withholding tax.

Thereafter, upon the belief that it would be preserving its right to pursue its claim for tax refund or the issuance of a tax credit certificate by judicial action and would be tolling the running of the two-year prescriptive period,[4] petitioner filed a Petition for Review on April 15, 2010 before the Court in Division docketed as CTA Case No. 8094, praying that judgment be rendered ordering the BIR to refund or issue a tax credit certificate to petitioner in the total amount of ₱22,867,594.00, representing its excess creditable withholding tax for calendar year ended December 31, 2007.[5]

On May 31, 2010, respondent filed her Answer[6] in said case, interposing, among others, certain special and affirmative defenses, to wit: petitioner should fully comply with the provisions stated in Revenue Regulations [No.] 6-86 and the requirements enumerated in the case of *CIR vs. PERF Realty Corporation, G.R. No. 163345 dated July 4, 2008;* petitioner's alleged claim for refund is subject to administrative routinary investigation/ examination by the Bureau; petitioner is mandated to present evidence to support its administrative claim and such evidence will be used as basis for the decision of the quasi-judicial body. If there is lack of evidence, then the decision will probably be contrary to petitioner.

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[4] Petition for Review (CTA Case No. 8094), Par. 12, Division Docket-Volume 1, p. 4.
[5] Division Docket-Volume 1 (CTA Case No. 8094), p. 5.
[6] Division Docket-Volume 1 (CTA Case No. 8094), pp. 83 to 87.

On August 12, 2010, both parties filed their Joint Stipulation of Facts and Issues before the Court in Division. Thereafter trial ensued wherein petitioner and respondent presented and offered their respective documentary and testimonial evidence. On August 12, 2012, CTA Case No. 8094 was submitted for decision.

On May 2, 2013, the Court in Division rendered the assailed Decision denying the Petition for Review filed in CTA Case No. 8094 for insufficiency of evidence.

Petitioner filed a Motion for Reconsideration/New Trial[7] on May 21, 2013, praying for the reconsideration of the assailed Decision, or in the alternative, that petitioner be granted a new trial to allow it to properly/clearly explain the alleged discrepancy, and a new judgment be rendered granting petitioner's Petition for Review. Respondent filed her Comment[8] thereto on June 17, 2013, praying for the denial of petitioner's motion for lack of merit.

The Court in Division promulgated the assailed Resolution on July 1, 2013, denying petitioner's Motion for Reconsideration/ New Trial for lack of merit.

On July 19, 2013, petitioner filed before the Court *En Banc* a Motion for Additional Time To File Petition for Review,[9] praying for an additional period of fifteen (15) days from July 20, 2013, or until August 4, 2013, within which to file a Petition for Review. The said motion was granted by Court *En Banc* and petitioner was given a final and non-extendible period of fifteen (15) days from July 20, 2013 or until August 4, 2013, within which to file its Petition for Review.[10]

On August 5, 2013, petitioner timely filed the instant Petition for Review (considering that August 4, 2013 fell on a Sunday). In the Resolution dated October 8, 2013,[11] the Court *En Banc* ordered respondent to file her Comment to the instant Petition for Review within ten (10) days from receipt thereof.

[7] Division Docket-Volume 2 (CTA Case No. 8094), pp. 655 to 678.
[8] Division Docket-Volume 2 (CTA Case No. 8094), pp. 692 to 702.
[9] EB Docket, pp. 1 to 3.
[10] Minute Resolution dated July 24, 2013, EB Docket, p. 21.
[11] EB Docket, p. 397.

On November 7, 2013, however, respondent filed a Motion for Extension of Time to File Comment (Re: Petitioner's Petition for Review),[12] praying for an additional period of ten (10) days from November 8, 2013 or until November 18, 2013, within which to file Comment. The Court *En Banc* granted respondent's Motion and was given a final and non-extendible period of ten (10) days from November 8, 2013 or until November 18, 2013, within which to file her comment on the Petition for Review.[13]

On November 18, 2013, respondent filed her Comment (To Petitioner's Petition for Review).[14]

Thereafter, the Court *En Banc* resolved to give DUE COURSE to the instant Petition for Review and ordered the parties to file their respective memorandum within a period of thirty (30) days from notice.[15] On May 22, 2014, respondent filed her Memorandum;[16] while Petitioner filed its Memorandum on May 22, 2014.[17] The instant case was submitted for decision on July 24, 2014.[18]

Hence, this Decision.

ASSIGNMENTS OF ERRORS

In this Petition for Review, petitioner assigns the following errors allegedly committed by the Court in Division:

"I.

THE HONORABLE THIRD DIVISION ERRED IN HOLDING THAT PETITIONER'S PRIOR YEAR'S EXCESS CREDITS IN THE AMOUNT OF P26,832,190.00 HAVE PRESCRIBED IN THAT THERE IS NO PRESCRIPTIVE PERIOD FOR THE CARRYING OVER OF EXCESS INCOME TAXES.

II.

THE HONORABLE THIRD DIVISION ERRED IN

[12] EB Docket, pp. 399 to 402.
[13] Minute Resolution dated November 12, 2013, EB Docket, p. 409.
[14] EB Docket, pp. 411 to 423.
[15] Minute Resolution dated March 31, 2014, EB Docket, pp. 439 to 440.
[16] EB Docket, pp. 441 to 451.
[17] EB Docket, pp. 454 to 479.
[18] Resolution dated July 24, 2014, EB Docket, pp. 522 to 523.

HOLDING THAT PETITIONER FAILED TO PROVE THE FACT OF WITHHOLDING AND THAT THE INCOME UPON WHICH THE TAXES WERE WITHHELD WERE INCLUDED IN ITS ANNUAL INCOME TAX RETURN.

III.

THE HONORABLE THIRD DIVISION ERRED IN HOLDING THAT PETITIONER FAILED TO RECONCILE THE REFLECTED INCOME PAYMENTS IN ITS 2007 ANNUAL INCOME TAX RETURN AS AGAINST THE CREDITABLE WITHHOLDING CERTIFICATES."[19]

THE ISSUE

Based on the foregoing assignments of errors, the issue for the resolution of the Court *En Banc* is whether or not, the Court in Division committed the aforementioned assigned errors that would warrant a reversal or modification of the assailed Decision dated May 2, 2013 and Resolution dated July 1, 2013.

Petitioner's arguments:

Petitioner argues that while it opted to carry-over its excess creditable withholding tax for the year 2007 covering petitioner's prior years, its claim for refund is not subject to the two-year prescriptive period under Section 229 of the National Internal Revenue Code (NIRC), as amended, considering that the option to carry over is imprescriptible, unlike the option for refund of excess income tax which prescribes after two years.

Petitioner further contends that claim for refund or the issuance of a tax credit is proper in the present case in view of the peculiar circumstance of petitioner brought about by its dissolution on account of the merger and withdrawal of MPEHC as approved by the Securities and Exchange Commission on March 29, 2010, and also for consideration of equity as petitioner will no longer be able to use its excess creditable withholding tax.

According to petitioner, it was impossible for petitioner to file a claim for refund of its prior year's excess credits on April 15,

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[19] EB Docket, p. 33.

2009 because it was still in active operations and had already opted to carry over the said excess credits. Furthermore, petitioner contends that it was not yet a dissolved corporation on April 15, 2009 considering that the merger which effectively dissolved petitioner as a corporate entity occurred on December 22, 2009 and approved by the Securities and Exchange Commission on March 29, 2010.

According to petitioner, it has established its claim for refund and has complied with the requisites for claiming a refund or issuance of a tax credit of excess creditable withholding taxes under the law, and that the discrepancy referred to by the Court in Division in its Decision pertains to the variance of the total amount of income as reflected in petitioner's Annual Income Tax Return and the amount of payment as declared by petitioner's sole client, Philippine National Oil Company – Energy Development Corporation (PNOC-EDC). Such discrepancy has allegedly been explained by petitioner during the testimony of its witness, Ivy P. Acosta.

Lastly, petitioner points out that it was able to establish the fact of withholding and that certificates of creditable tax withheld at source were duly issued by PNOC-EDC showing the amount paid and the amount of tax withheld therefrom.

Respondent's counter-arguments:

Respondent counter-argues that petitioner is not entitled to claim for refund or issuance of tax credit certificate of its creditable withholding taxes for taxable year 2007 for having chosen to carry-over the excess income tax, and that the same has become irrevocable pursuant to Section 76 of the National Internal Revenue Code.

Furthermore, respondent asserts that petitioner's claim for refund for its prior year's excess credit carried over for taxable year 2006 and prior year has already prescribed, as it was filed beyond the two (2) year prescriptive period by virtue of Section 204 in relation Section 229 of the NIRC of 1997.

Lastly, respondent avers that petitioner failed to submit all the documentary requirements to support its claim for refund pursuant to Revenue Memorandum Order No. 53-98 dated June

1, 1998, which deprives the respondent the opportunity to examine and investigate its claim for refund.

THE RULING OF THE COURT *EN BANC*

The instant Petition for Review lacks merit.

Section 76 of the NIRC of 1997 provides as follows:

> "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:
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> (A) Pay the balance of tax still due; or
> (B) Carry-over the excess credit; or
> (C) Be credited or refunded with excess amount paid, as the case may be.

Based on Section 76, a taxpayer has the option to file a claim for refund or to carry-over its excess income tax payments. The option to carry-over, however, is irrevocable. Thus, once a taxpayer opted to carry-over its excess income tax payments, it can no longer seek refund of the unutilized excess income tax payments. The taxpayer, however, may apply the unutilized excess income tax payments as a tax credit to the succeeding taxable years until such has been fully applied pursuant to Section 76 of the NIRC. [20]

In other words, once the taxpayer opts to carry-over the excess income tax against the taxes due for the succeeding taxable years, such option is irrevocable for the whole amount of the excess income tax, thus, prohibiting the taxpayer from applying for a refund for that same excess income tax in the next succeeding taxable years. The unutilized excess tax credits will remain in the taxpayer's account and will be carried over and applied against the taxpayer's income tax liabilities in the

[20] Belle Corporation vs. Commissioner of Internal Revenue, G.R. No. 181298, March 2, 2011.

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succeeding taxable years until fully utilized.[21]

The application of the irrevocability rule under Section 76 was exemplified and clarified by the Supreme Court in the case of *Commissioner of Internal Revenue vs. PL Management International Philippines, Inc.*[22] in this light:

> "Inasmuch as the respondent (taxpayer) already opted to carry over its unutilized creditable withholding tax of ₱1,200,000.00 to taxable year 1998, the carry-over could no longer be converted into a claim for tax refund because of the irrevocability rule provided in Section 76 of the NIRC of 1997. **Thereby, the respondent** (taxpayer) **became barred from claiming the refund.**
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> However, in view of it(s) irrevocable choice, the respondent (taxpayer) remained entitled to utilize that amount of ₱1,200,000.00 as tax credit in succeeding taxable years until fully exhausted. In this regard, **prescription did not bar it from applying the amount as tax credit considering that <u>there was no prescriptive period for the carrying over of the amount as tax credit in subsequent taxable years</u>.**" *(Emphases and underscoring supplied)*

It is clear from the foregoing jurisprudential pronouncement that what is rendered imprescriptible is not the claiming of refund, but *"the carrying over of the amount as tax credit in subsequent taxable years"*.

Where, however, the corporation <u>permanently ceases its operation before full utilization</u> of the tax credits it opted to carry over, it may then be allowed to claim the refund of the remaining tax credits. In such a case, the <u>remaining</u> tax credits can no longer be carried over and the irrevocability rule ceases to apply. *Cessante ratione legis, cessant ipse lex.*[23] The reason of the law

[21] *Asiaworld Properties Philippine Corporation vs. Commissioner of Internal Revenue*, G.R. No. 171766, July 29, 2010.
[22] G.R. No. 160949, April 4, 2011.
[23] Footnote no. 23, *Systra Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 176290, September 21, 2007.

ceasing, the law itself also ceases.[24]

Nevertheless, in the case of *Bank of the Philippine Islands vs. Commissioner of Internal Revenue* (or the "*BPI* case"),[25] the Supreme Court ruled as follows:

> "The sole issue in this case is whether petitioner's claim is barred by prescription. The resolution of this question requires a determination of when the two-year period of prescription under §292 of the Tax Code[26] started to run. This provision states:
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> > *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 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.
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> > In any case, no such suit or proceeding shall be begun after the expiration of two

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[24] *People of the Philippines vs. Plateros, et al.*, G.R. No. L-37162, May 30, 1978.

[25] G.R. No. 144653, August 28, 2001.

[26] Now Section 229 of the NIRC of 1997, which provides as follows:

"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 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 to have clearly to have been erroneously paid."

> 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 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.

There is no dispute that FBTC ceased operations on June 30, 1985 upon its merger with petitioner BPI. The merger was approved by the Securities and Exchange Commission on July 1, 1985. Petitioner contends, however, that its claim for refund has not yet prescribed because the two-year prescriptive period commenced to run only after it had filed FEBTC's Final Adjustment Return on April 15, 1986, pursuant to §46(a) of the National Internal Revenue Code of 1977[27] (the law applicable at the time of this transaction) which provided that –

> *Sec. 46. Corporations returns.*—(a) *Requirement.* — Every corporation, subject to the tax herein imposed, except foreign corporations not engaged in trade or business in the Philippines shall render, in duplicate, a true and accurate quarterly income tax return and final or adjustment return in accordance with the provisions of Chapter X[28] of this Title. The return shall be filed by the president, vice-president, or other principal officer, and shall be sworn to by such officer and by the treasurer or assistant treasurer.

On the other hand, the Court of Tax Appeals

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[27] Now Section 52(A) of the NIRC of 1997, which provides as follows:

"SEC. 52. *Corporation Returns.*—

(A) *Requirements.*— Every corporation subject to tax herein imposed, except foreign corporations not engaged in trade or business in the Philippines, shall render, in duplicate, a true and accurate quarterly income tax return and final or adjustment return in accordance with the provisions of Chapter XII of this Title. The return shall be filed by the president, vice-president or other principal officer, and shall be sworn to by such officer and by the treasurer or assistant treasurer."

[28] Now Chapter XII of Title II of the NIRC of 1997.

ruled that the prescriptive period should be counted from July 31,1985, 30 days after the approval by the SEC of the plan of dissolution in view of §78 of the Code[29], which provided that –

> Every corporation shall, within thirty days after the adoption by the corporation of a resolution or plan for the dissolution of the corporation or for the liquidation of the whole or any part of its capital stock, including corporations which have been notified of possible involuntary dissolution by the Securities and Exchange Commission, render a correct return to the Commissioner of Internal Revenue, verified under oath, setting forth the terms of such resolution or plan and such other information as the Minister of Finance shall, by regulations, prescribe. The dissolving corporation prior to the issuance of the Certificate of Dissolution by the Securities and Exchange Commission shall secure a certificate of tax clearance from the Bureau of Internal Revenue which certificate shall be submitted to the Securities and Exchange Commission.
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> Failure to render the return and secure the certificate of tax clearance as above-mentioned shall subject the officer(s) of

[29] Now Section 52[C] of the NIRC of 1997, and it provides as follows:

"SEC. 52. *Corporation Returns.*—

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(C) *Return of Corporation Contemplating Dissolution or Reorganization.*— Every corporation shall, within thirty (30) days after the adoption by the corporation of a resolution or plan for its dissolution, or for the liquidation of the whole or any part of its capital stock, including a corporation which has been notified of possible involuntary dissolution by the Securities and Exchange Commission, or for its reorganization, render a correct return to the Commissioner, verified under oath, setting forth the terms of such resolution or plan and such other information as the Secretary of Finance, upon recommendation of the Commissioner, shall, by rules and regulations, prescribe.

The dissolving or reorganizing corporation shall, prior to the issuance by the Securities and Exchange Commission of the Certificate of Dissolution or Reorganization, as may be defined by rules and regulations prescribed by the Secretary of Finance, upon recommendation of the Commissioner, secure a certificate of tax clearance from the Bureau of Internal Revenue which certificate shall be submitted to the Securities and Exchange Commission."

> the corporation required by law to file the return under Section 46(a) of this Code[30], to a fine of not less than Five Thousand Pesos or imprisonment of not less than two years and shall make them liable for all outstanding or unpaid tax liabilities of the dissolving corporation.

Its ruling was sustained by the Court of Appeals.

After due consideration of the parties' arguments, we are of the opinion that, in case of the dissolution of a corporation, the period of prescription should be reckoned from the date of filing of the return required by §78 of the Tax Code[31]. Accordingly, we hold that petitioner's claim for refund is barred by prescription.

First. Generally speaking, it is the Final Adjustment Return, in which amounts of the gross receipts and deductions have been audited and adjusted, which is reflective of the results of the operations of a business enterprise. It is only when the return, covering the whole year, is filed that the taxpayer will be able to ascertain whether a tax is still due or a refund can be claimed based on the adjusted and audited figures. Hence, this Court ruled that, at the earliest, the two year prescriptive period for claiming a refund commences to run on the date of filing of the adjusted final tax return.

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xxx. After it ceased operations on June 30, 1985, its taxable year was shortened to six months, from January 1, 1985 to June 30, 1985. The situation of FBTC is precisely what was

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[30] Now Section 52 (A) of the NIRC of 1997, and it provides as follows:

"Section 52. *Corporation Returns.* –

"*(A) Requirements.* – Every corporation subject to the tax herein imposed, except foreign corporations not engaged in trade or business in the Philippines, shall render, in duplicate, a true and accurate quarterly income tax return and final or adjustment return in accordance with the provisions of Chapter XII of this Title. The return shall be filed by the president, vice president or other principal officer, and shall be sworn to by such officer and by the treasurer or assistant treasurer."

[31] *Supra.*

contemplated under §78 of the Tax Code[32]. It thus became necessary for FBTC to file its income tax return within 30 days after approval by the SEC of its plan or resolution of dissolution. Indeed, it would be absurd for FBTC to wait until the fifteenth day of April, or almost 10 months after it ceased its operations, before filing its income tax return.

Thus, §46(a) of the Tax Code[33] applies only to instances in which the corporation remains subsisting and its business operations are continuing. In instances in which the corporation is contemplating dissolution, §78 of the Tax Code[34] applies. It is a rule of statutory construction that '[w]here there is in the same statute a particular enactment and also a general one which in its most comprehensive sense would include what is embraced in the former, the particular enactment must be operative, and the general enactment must be taken to affect only such cases within its general language as are not within the provisions of the particular enactment.'

Petitioner argues that to hold, as the Court of Tax Appeals and the Court of Appeals do, that §78[35] applies in case a corporation contemplates dissolution would lead to absurd results. It contends that it is not feasible for the certified public accountants to complete their report and audited financial statements, which are required to be submitted together with the plan of dissolution to the SEC, within the period contemplated by §78. It maintains that, in turn, the SEC would not have sufficient time to process the papers considering that §78 also requires the submission of a tax clearance certificate before the SEC, can approve the plan of dissolution.

As the Court of Tax Appeals observed, however, petitioner could have asked for an extension of time to file its income tax return under

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[32] Id.
[33] Now Section 52(A) of the NIRC of 1997 (*supra*).
[34] Now Section 52(C) of the NIRC of 1997 (*supra*).
[35] Id.

§47 of the NIRC[36] which provides:

> *Extension of time to file returns.*— The Commissioner of Internal Revenue may, in meritorious cases, grant a reasonable extension of time for filing returns of income (or final and adjustment returns in the case of corporations), subject to the provisions of section fifty-one of this Code.

Petitioner further argues that the filing of a Final Adjustment Return would fall due on July 30, 1985, even before the due date for filing the quarterly return. This argument begs the question. It assumes that a quarterly return was required when the fact is that, because its taxable year was shortened, the FBTC did not have to file a quarterly return. In fact, petitioner presented no evidence that the FBTC ever filed such quarterly return in 1985.

Finally, petitioner cites a hypothetical situation wherein the directors of a corporation would convene on June 30, 2000 to plan the dissolution of the corporation on December 31, 2000, but would submit the plan for dissolution earlier with the SEC, which, in turn, would approve the same on October 1, 2000. Following §78 of the Tax Code[37], the corporation would be required to submit its complete return on October 31, 2000, although its actual dissolution would take place only on December 31, 2000.

Suffice it to say that such a situation may likewise be remedied by resort to §47 of the Tax Code[38]. The corporation can ask for an extension of time to file a complete income tax return until December 31, 2000, when it would cease operations. This would obviate any difficulty which

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[36] Now Section 53 of the NIRC of 1997, which provides as follows:

"SEC. 53. *Extension of Time to File Returns.*— The Commissioner may, in meritorious cases, grant a reasonable extension of time for filing returns of income (or final and adjustment returns in case of corporations), subject to the provisions of Section 56 of this Code."

[37] Now Section 52(C) of the NIRC of 1997 (*supra*).

[38] Now Section 53 of the NIRC of 1997 (*supra*).

may arise out of the discrepancies not covered by §78 of the Tax Code[39].

In any case, as held in *Commissioner of Internal Revenue v. Santos*[40], 'Debatable questions are for the legislature to decide. The courts do not sit to resolve the merits of conflicting issues.'

Second. Petitioner contends that what §78 required was an information return, not an income tax return. It cites Revenue Memorandum Circular No. 14-85, of then Acting Commissioner of Internal Revenue Ruben B. Ancheta, referring to an 'information return' in interpreting Executive Order No. 1026, which amended §78[41].

The contention has no merit. The circular in question must be considered merely as an administrative interpretation of the law which in no case is binding on the courts. The opinion in question cannot be given any effect inasmuch as it is contrary to §244 of Revenue Regulation No. 2, as amended, which was issued by the Minister of Finance pursuant to the authority granted to him by §78 of the Tax Code[42]. This provision states:

> Sec. 244. *Return of corporations contemplating dissolution or retiring from business.—* All corporations, partnership, joint accounts and associations, contemplating dissolution or retiring from business without formal dissolution shall, within 30 days after the approval of such resolution authorizing their dissolution, and within the same period after their retirement from business, file their income tax returns covering the profit earned or business done by them from the beginning of the year up to the date of such dissolution or retirement and pay the corresponding income tax due thereon

[39] Now Section 52(C) of the NIRC of 1997 (*supra*).
[40] 277 SCRA 617, 630 (1997).
[41] Now Section 52(C) of the NIRC of 1997 (*supra*).
[42] Id.

> upon demand by the Commissioner of Internal Revenue. . .

This regulation prevails over the memorandum circular of the Acting Commissioner of Internal Revenue, which petitioner invokes.

Thus, as required by §244 of Revenue Regulation No. 2, any corporation contemplating dissolution must submit tax return on the income earned by it from the beginning of the year up to the date of its dissolution or retirement and pay the corresponding tax due upon demand by the Commissioner of Internal Revenue. Nothing in §78 of the Tax Code[43] limited the return to be filed by the corporation concerned to a mere information return.

It is noteworthy that §78 of the Tax Code was substantially reproduced first in §45(c), of the amendments to the same Tax Code, and later in §52(C) of the National Internal Revenue Code of 1997. Through all the re-enactments of the law, there has been no change in the authority granted to the Secretary (formerly Minister) of Finance to require corporations to submit such other information as he may prescribe. Indeed, Revenue Regulation No. 2 had been in existence prior to these amendments. Had Congress intended only information returns, it would have expressly provided so.

Third. Considering that §78 of the Tax Code[44], in relation to §244 of Revenue Regulation No. 2, applies to FBTC, the two-year prescriptive period should be counted from July 30, 1985, i.e., 30 days after the approval by the SEC of its plan for dissolution. In accordance with Section 292 of the Tax Code[45], July 30, 1985 should be considered the date of payment by FBTC of the taxes withheld on the earned income. Consequently, the two-year period of prescription ended on July 30, 1987. As petitioner's claim for tax refund before the Court of

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[43] Id.
[44] Id.
[45] Now Section 229 of the NIRC of 1997 (*supra*).

Tax Appeals was filed only on December 29, 1987, it is clear that the claim is barred by prescription." *(Underscoring supplied)*

It is noteworthy that the *BPI* case has not been overturned, reversed, or set aside by the Supreme Court.

Moreover, the cited legal provisions of the old Tax Code in the said case are still in existence under the present NIRC of 1997. Particularly, then Section 292 of the NIRC of 1977 is now Section 229 of the NIRC of 1997; Section 46(a) of the NIRC of 1977 is now the Section 52(A) of the NIRC of 1997; and Section 47 of the NIRC of 1977 is now the Section 53 of the NIRC of 1997.

Furthermore, the first paragraph of then Section 78 of the NIRC of 1977 is now the Section 52(C) of the 1997. Parenthetically, it must be noted that the second paragraph of Section 78 of the NIRC of 1977, imposing a penalty upon failure to render the return and secure the certificate of tax clearance, has already been omitted. Be that as it may, such omission may not be taken to mean that such failure is no longer punishable under the present state of the law, since such penal provision may still be deemed covered under the present Section 255 of the NIRC of 1997[46].

Thus, We see no reason not to apply the *BPI* case to the instant case.

Correspondingly, the aforecited legal provisions and the ruling in the *BPI* case bring to the fore the following principles to aid Us in the disposition of the instant case, to wit:

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[46] "SEC. 255. *Failure to File Return, Supply Correct and Accurate Information, Pay Tax, Withhold and Remit Tax and Refund Excess Taxes Withheld on Compensation.*— Any person required under this Code or by rules and regulations promulgated thereunder to pay any tax, **make a return, keep any record,** or supply correct and accurate information, or withhold or remit taxes withheld, or refund excess taxes withheld on compensation, at the time or times required by law or rules and regulations shall, in addition to other penalties provided by law, upon conviction thereof, be punished by a fine of not less than Ten thousand pesos (P10,000) and suffer imprisonment of not less than one (1) year but not more than ten (10) years.

xxx xxx xxx." *(Emphasis supplied)*

1. Once the corporate taxpayer opts to carry-over the excess income tax against the income taxes due for the succeeding taxable years or quarters, such option is irrevocable for the whole amount of the excess income tax.

2. The unutilized excess tax credits will remain in the taxpayer's account and will be carried over and applied against the taxpayer's income tax liabilities in the succeeding taxable years until fully utilized.

3. If, however, said excess tax credits remain unutilized or have been partly utilized in the year the subject corporation permanently ceases its operation, the same may be the subject of a refund claim.

4. The said corporation must submit or file a tax return with the BIR on the income earned by it covering the shortened period or from the beginning of the year when the corporation was dissolved up to the date of its dissolution or retirement. It shall pay the corresponding tax due, if any, or reflect any excess tax credits from the previous year(s) or the shortened period.

5. The submission or filing of the said tax return, covering the income earned within the shortened period, must be made within thirty (30) days after the approval by the SEC of the plan or resolution of dissolution.

6. The counting of the two-year prescriptive period for filing a refund claim shall commence thirty (30) days after the approval by the SEC of its plan for dissolution.

In this case, it was established that petitioner opted to carry over its excess tax credits for taxable year 2007 in the amount of ₱22,867,594.00.[47] At the onset, this amount shall remain in petitioner's account, and shall, for all intents and purposes, be applied against the petitioner's income tax liabilities in the succeeding taxable years until fully utilized. Parenthetically, the said amount of excess tax credits appears unutilized for taxable year 2008.[48]

It is likewise established that petitioner permanently ceased its operation effective March 29, 2010.[49]

[47] Exhibit "A", Division Docket-Volume 1 (CTA Case No. 8094), p. 185.
[48] Exhibit "C", Division Docket-Volume 1 (CTA Case No. 8094), p. 231.
[49] Exhibit "A", Division Docket-Volume 1 (CTA Case No. 8094), p. 185.

What is lacking, however, is the shortened period ITR of petitioner covering the period from January 1, 2010 to March 29, 2010. It must be emphasized that while it is shown that petitioner permanently ceased its operation on March 29, 2010, when the SEC approved the merger and withdrawal of MPEHC, there is no indication that the excess tax credits for taxable year 2007 remain unutilized as of such date. Petitioner should have presented and offered in evidence, the said shortened period ITR and pertinent supporting accounting records and books of accounts to show that the said excess tax credits remained unutilized as of the said period. Petitioner's failure to do so is fatal to its refund claim in this case.

Anent the arguments of petitioner that it was able: (1) to prove the fact of withholding and that the income upon which taxes were withheld, were included in its Annual ITR, and (2) to reconcile the income payments reflected in its 2007 Annual ITR as against the certificates of tax withheld issued by PNOC-EDC, the same are untenable.

In support of the said arguments, petitioner merely relied on the bare testimony[50] and statements[51] of its witness, Ivy P. Acosta. However, the said testimony and statements fail to persuade Us to reverse the findings of the Court in Division, because the same are not supported by corroborative evidence, such as petitioner's accounting records and books of accounts relative to the noted discrepancies.

As cases filed before this Court are litigated *de novo*, party-litigants should prove **every minute aspect** of their cases.[52]

In fine, the Court in Division correctly denied petitioner's Petition for Review in CTA Case No. 8094 for insufficiency of evidence.

WHEREFORE, in light of the foregoing considerations, the

[50] Exhibit "N", Division Docket-Volume 1 (CTA Case No. 8094), pp. 329 to 330.
[51] Affidavit of Merit, Division Docket-Volume 2 (CTA Case No. 8094), pp. 680 to 682.
[52] *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.

Instant Petition for Review is hereby **DENIED** for lack of merit.

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

(On Leave)
CIELITO N. MINDARO-GRULLA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

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