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

***EN BANC***

**ORIX AUTO LEASING PHILIPPINES CORPORATION,**
Petitioner,

-versus-

**COMMISSIONER OF INTERNAL REVENUE,**
Respondent.

**CTA EB Case No. 1016**
(CTA Case No. 8001)

Present:

DEL ROSARIO, *P.J.*,
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA,
FABON-VICTORINO,
MINDARO-GRULLA,
COTANGCO-MANALASTAS, and
RINGPIS-LIBAN *JJ.*

**Promulgated:**

DEC 09 2013 8:35 a.m.

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# DECISION

**CASANOVA, *J.*:**

This is an appeal, by way of Petition for Review[1] filed by Orix Auto Leasing Corporation, from the Decision[2] dated November 28, 2012 (Assailed Decision) and Resolution[3] dated May 2, 2013 (Assailed Resolution), both promulgated by the Court of Tax Appeals (CTA) Special First Division, in the case docketed as CTA

[1] CTA En Banc Rollo, pp. 1-25.
[2] Annex "B", Petition for Review, CTA En Banc Rollo, pp. 32-47.
[3] Annex "A", Petition for Review, CTA En Banc Rollo, pp. 26-30.

Case No. 8001 and entitled *Orix Auto Leasing Philippines Corporation vs. Commissioner of Internal Revenue.*

The facts of the case, as found by the CTA First Division (now Special First Division), are as follows:

"Petitioner Orix Auto Leasing Philippines Corporation is a domestic corporation duly organized and existing under and by virtue of the laws of the Philippines, with principal office at the 21st Floor, GT Tower International, Ayala Avenue corner H.V. dela Costa Street, Makati City. It is engaged mainly in the vehicle rental and leasing business, either as a common carrier or private carrier in the transportation of passengers, merchandise, freight or cargo.

Petitioner is duly registered as an income taxpayer with the Bureau of Internal Revenue (BIR), with Tax Identification No. 000-445-654-000.

On the other hand, respondent Commissioner of Internal Revenue is the chief of the BIR, the government agency vested with authority to administer and enforce national internal revenue taxes, including, among others, the power to credit or refund internal revenue taxes erroneously/excessively or illegally paid, assessed or collected. She holds office at the BIR National Office Building, BIR Road Diliman, Quezon City.

On January 11, 2008, petitioner filed its Annual Income Tax Return (ITR) for fiscal year ended September 30, 2007, reflecting among others, the following information:

| | | |
|---|---|---|
| Aggregate Income Tax Due | | 6,495,317 |
| Less: Tax Credits/Payments | | |
| Prior Year's Excess Credits other than MCIT | 8,623,891 | |
| Creditable Tax Withheld for the First Three Quarters | 7,700,048 | |
| Creditable Tax Withheld per BIR Form No. 2307 for the Fourth Quarter | 2,532,850 | |

| | | |
|---|---|---|
| Total Tax Credits/Payments | | 18,856,789 |
| **Total Amount Payable/ (Overpayment)** | | **(12,361,472)** |

On March 4, 2009, through a letter dated March 2, 2009, petitioner filed with the Revenue District Office (RDO) No. 50, Revenue Region No. 08 of the BIR, an administrative claim for the issuance of TCCs in the total amount of P10,232,898.33 for its supposed unutilized creditable withholding tax for fiscal year 2007.

Due to respondent's alleged failure to act on the said administrative claim, petitioner filed the instant Petition for Review on November 23, 2009.

Respondent filed her Answer, through registered mail, on January 11, 2010 and interposed the following Special and Affirmative Defenses, to wit:

> '4. Petitioner failed to demonstrate that the tax subject of the case at bar was erroneously or illegally collected.
>
> 5. Taxes paid and collected are presumed to have been made in accordance with law and regulations, hence, not refundable.
>
> 6. In an action for tax refund/credit, the burden of proof is on the taxpayer to establish its right to refund and failure to adduce sufficient proof is fatal to the action for tax refund/credit.
>
> 7. It is incumbent upon the petitioner to show that it has complied with the provisions of Section 76 in relation to Sections 204 and 229 of the 1997 Tax Code, as amended, including Revenue Regulations No. 2-98, as amended.
>
> 8. Claims for refund are construed strictly against the claimant for the same partakes the nature of exemption from taxation **(Commissioner of Internal Revenue vs. Ledesma, G.R. No. L-13509, January 30, 1979,**

**31 SCRA 95)** and as such, they are looked upon with disfavor **(Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 121).**"

On March 19, 2010, the parties filed their Joint Stipulation of Facts and Issues, which the Court approved in the Resolution dated March 22, 2010. In the same Resolution, the pre-trial was terminated.

Parenthetically, a Supplemental Joint Stipulation of Facts was also submitted by the parties on December 16, 2011 which was likewise approved by this Court in the Resolution dated February 15, 2012.

Trial proceeded, giving both parties the opportunity to present documentary and testimonial evidence to support their claims. However, it was only petitioner that presented its documentary and testimonial evidence; while respondent's counsel manifested during the hearing held on March 1, 2012 that he is submitting the case for decision since there was no report of investigation from RDO No. 50.

On May 16, 2012, the case was submitted for decision, taking into consideration only petitioner's Memorandum filed May 7, 2012, as respondent failed to file a Memorandum despite the opportunity granted."[4]

On November 28, 2012, the CTA Special First Division promulgated the Assailed Decision, the dispositive portion of which reads as follows:

"**WHEREFORE**, premises considered, the instant Petition for Review is hereby **DENIED** for lack of merit.

**SO ORDERED.**"

[4] *En Banc* Rollo, pp. 32-35.

On December 21, 2012, petitioner filed a Motion for Reconsideration[5], praying for reconsideration of the Assailed Decision, and another one entered ordering respondent to refund or issue a Tax Credit Certificate in favor of petitioner in the total amount of Ten Million Two Hundred Thirty Two Thousand Eight Hundred Ninety Eight Pesos (P 10,232,898.33) representing its excess creditable withholding taxes for the taxable year 2007.

Respondent filed her COMMENT/OPPOSITION (To Petitioner's Motion for Reconsideration)[6] on February 15, 2013, arguing that the Honorable Court has sufficient legal basis to justify the denial of instant claim for refund because petitioner failed to prove its entitlement to the refund being claimed.

On May 2, 2013, this Honorable Court issued the Assailed Resolution[7] denying petitioner's Motion for Reconsideration for lack of merit.

Hence, this Petition for Review.

In a Resolution[8] dated July 8, 2013 , this Honorable Court ordered respondent to file her Comment to the present petition within ten (10) days from receipt thereof. As per Records Verification[9] dated September 2, 2013, respondent failed to file her Comment to the Petition for Review.

On September 11, 2013, this Honorable Court issued a Resolution[10] submitting the instant Petition for Review for decision.

Petitioner raised the following assignment of errors in its petition:

[5] Docket, pp. 000468-000487.
[6] *Ibid.*, pp. 000495-000503.
[7] See Note 3.
[8] Rollo, pp. 57-58.
[9] *Ibid.*, p. 59.
[10] *Id.*, p. 61-62.

> "I. The Honorable First Division erred in denying Petitioner's claim on the ground that there is no entry in the "Creditable Tax Withheld" column of Schedule 1 of Petitioner's Annual ITR.
>
> II. The First Division erred in deducting the amounts of P159,346.99 and P174,798.46 from the total amount being claimed by Petitioner.
>
> III. The income upon which the subject unutilized creditable withholding taxes were withheld was declared as part of Petitioner's gross income in its annual income tax return for taxable year ended September 30, 2007.
>
> IV. Petitioner is entitled to the issuance of TCC for its excess creditable withholding taxes for taxable year 2007 in the amount of P10,232,898.33."

Petitioner argued that contrary to the finding of the CTA Special First Division, it was able to prove its compliance with the third requisite for the grant of a claim for refund of creditable withholding tax. The full amount of revenue reported in petitioner's 2007 Audited Financial Statements was reported in its Annual Income Tax Return. Petitioner further argued that the fact that there was no entry in the Creditable Tax Withheld column of Schedule 1 of the annual ITR cannot be used as a ground to deny its claim as the third requisite merely requires the reporting of the income, and not the reporting of the creditable withholding taxes; the column Creditable Taxes Withheld in the annual ITR is only required to facilitate tax administration.

After a careful and thorough evaluation and consideration of the records of the case, including both parties' arguments in their respective pleadings, this Court finds no merit in the instant petition.

The principal issue in the present petition is whether or not the CTA Special First Division erred in denying petitioner's claim for the issuance of a TCC, in light of the petitioner's alleged non-compliance with the third requisite in the claim for refund or issuance of TCC for unutilized creditable withholding tax.

We affirm the CTA Special First Division's ruling in the Assailed Decision and Assailed Resolution denying petitioner's claim for the issuance of a TCC due to its failure to comply with the third requisite. Petitioner failed to adequately show on its 2007 Annual Income Tax Return that the income payment received subjected to the claimed unutilized creditable withholding tax was declared as part of its gross income.

Contrary to the position taken by petitioner, this Honorable Court finds the fact that the *"Creditable Tax Withheld"* portion of the Annual Income Tax Return of petitioner which was left blank should not be taken lightly. It is well-settled that much credence is imbued in the Annual Income Tax Return. The taxpayer asserts the truth and correctness in the declarations made therein, explicitly stating that the same are made under the penalties of perjury.[11] Such declaration is made pursuant to the provisions of Section 267 of the 1997 NIRC which states:

> **"SEC. 267.** ***Declaration under Penalties of Perjury.*** **-** Any declaration, return and other statement required under this Code, shall, in lieu of an oath, contain a written statement that they are made under the penalties of perjury. Any person who willfully files a declaration, return or statement containing information which is not true and correct as to every material matter shall, upon conviction, be subject to the penalties prescribed for perjury under the Revised Penal Code."

Applying the abovequoted provision to the instant petition, petitioner's failure to fill up the *"Creditable Tax Withheld"* portion, coupled by the inability of the pieces of evidence it submitted to prove that the income subjected to the claimed unutilized creditable withholding tax was declared as part of its gross income, led to its non-compliance with the third requisite. This proved to be fatal to its

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[11] Annual Income Tax Return

xxx xxx xxx

We declare, under the penalties of perjury, that this return has been made in good faith, verified by us, and to the best of our knowledge and belief, is true and correct, pursuant to the provisions of the National Internal Revenue Code, as amended.

claim for issuance of TCC on its unutilized creditable withholding tax.

At the risk of being repetitive, We reiterate the pertinent portions of the Assailed Decision, to wit:

> "It is observed that in petitioner's Annual ITR for fiscal year 2007, xxx, there is no corresponding entry whatsoever in the *"Creditable Tax Withheld"* column.
>
> This declaration, at the very least, can be taken to mean, that no part of the gross income reported therein were ever subjected to creditable withholding tax. Correspondingly, the supposed income payments to which taxes were allegedly withheld (in the total amount of P10,232,898.33), cannot be said to have been declared as part of the gross income for fiscal year ended September 30, 2007.
>
> Moreover, the Court finds petitioner's submitted Summary of Matching of Official Receipts against Creditable Withholding Taxes (BIR Form No. 2307), Summary of Matching of Official Receipts against the Recorded Statement of Account, various official receipts and statements of account, insufficient to establish petitioner's compliance with the third requisite. Petitioner should have presented proofs such as detailed general ledger, sales register, reconciliation schedules or any other document whereby the Court can trace if the income payments related to the claimed creditable taxes withheld indeed formed part of its gross income reflected in its Annual ITR for fiscal year ended September 30, 2007.
>
> As cases filed before this Court are litigated *de novo* party-litigants should prove **every minute aspect** of their cases.
>
> In view of petitioner's failure to comply with the third requisite for the refund or issuance of TCC for unutilized creditable withholding taxes as provided by law and jurisprudence, the Court is left with no

recourse but to deny the instant claim for issuance of TCC.

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 *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."

We, likewise quote, with approval the relevant portions of the Assailed Resolution:

"Considering that the aforequoted third condition is to the effect that there must be a showing **on the return** 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 final adjustment return or annual ITR of petitioner for the fiscal year ending September 30, 2007, particularly the entries made 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 the same vein, compliance with the said third condition cannot entirely be dependent on the validation of the Independent CPA, but must only be corroborative of the said final adjustment return or annual ITR of petitioner. After all, the findings and conclusions of the Independent CPA is not conclusive upon this Court.

Petitioner's declarations in the said final adjustment return or annual ITR are for all intents and purposes presumed to be made in good faith and are true and correct considering it was made and executed under penalties of perjury. Specifically, petitioner, through its President, Mr. Protacio C. Bantayan, Jr., and Comptroller/Assistant to the President, Mr. Nolan Dapul, declared, in its final adjustment return or annual ITR for fiscal year ending September 30, 2007, as follows:

> 'We declare, under the penalties of perjury, that the return has been made in good faith, verified by us, and **to the best of our knowledge and belief, true and correct,** pursuant to the provisions of the National Internal Revenue Code, as amended.' *(Emphasis supplied)*

Thus, a blank entry in one item in the return should be taken to mean that petitioner has solemnly declared that there is indeed no entry or information for such an item. If We allow petitioner's line of reasoning that a blank entry in the tax return does not mean anything, despite its being declared under the penalties of perjury, would put into serious doubt the credibility of the said return, in its entirety.

Correspondingly, these questions would come to mind: If petitioner failed to supply the respective entry in Schedule 1 under the *'Creditable Tax Withheld'* column, what other information in the same return did it fail to provide?; and if We cannot rely on the information therein, how then can it be certainly said that there is a showing on the return of petitioner that the income payment subjected to withholding tax was declared as part of the gross income? In other words, if petitioner has failed to provide specific information in its return, it is possible that the figures and other information therein indicated are not exact, and can be deemed as unreliable.

The column for 'Creditable Tax Withheld' in Schedule 1 of the annual ITR Form is precisely to provide an *information as to how much taxes were withheld for each type/nature of income'*. Thus, a blank entry in the said column means that no part of the gross income reported therein was ever subjected to creditable withholding tax. Such being the case, the supposed income payments to which taxes were allegedly withheld (in the total amount of P10,232,898.33) cannot be said to have been declared as part of the gross income for fiscal year ended September 30, 2007.

> To reiterate, as cases filed before this Court are litigated *de novo*, party-litigants should prove **every minute aspect** of their cases. Actions for tax refund 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."

Anent the other issues raised by petitioner in the present petition, this Honorable Court likewise affirms the ruling of the CTA Special First Division resolving the same.

**WHEREFORE**, the instant Petition for Review is hereby **DENIED** for lack of merit. The Assailed Decision dated November 28, 2012 and Assailed Resolution dated May 2, 2013 are both **AFFIRMED** ***in toto.***

**SO ORDERED.**

**CAESAR A. CASANOVA**
Associate Justice

WE CONCUR:

**ROMAN G. DEL ROSARIO** - see concurring & dissenting opinion
Presiding Justice

Juanito C. Castañeda, Jr.

*(Joins PJ Del Rosario's Concurring and Dissenting Opinion)*

**JUANITO C. CASTAÑEDA, JR.**
Associate Justice

**LOVELL R. BAUTISTA**
Associate Justice

**ERLINDA P. UY**
Associate Justice

**ESPERANZA R. FABON-VICTORINO**
Associate Justice

Cielito N. Mindaro-Grulla

**CIELITO N. MINDARO-GRULLA**
Associate Justice

**AMELIA R. COTANGCO-MANALASTAS**
Associate Justice

**MA. BELEN M. RINGPIS-LIBAN**
Associate Justice

## CERTIFICATION

Pursuant to Article VIII, Section 13 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.

**ROMAN G. DEL ROSARIO**
Presiding Justice

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

## *EN BANC*

**ORIX AUTO LEASING PHILIPPINES CORPORATION,**
Petitioner,

- versus -

**COMMISSIONER OF INTERNAL REVENUE ,**
Respondent.

**CTA EB NO. 1016**
(CTA Case No. 8001)

*Present*:

**DEL ROSARIO,** *P.J.,*
**CASTAÑEDA, JR.,**
**BAUTISTA,**
**UY,**
**CASANOVA,**
**FABON-VICTORINO,**
**MINDARO-GRULLA,**
**COTANGCO-MANALASTAS,**
**RINGPIS-LIBAN,** *J.J.*

Promulgated:

DEC 09 2013 [illegible] 8:25 a.m.

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# CONCURRING AND DISSENTING OPINION

***DEL ROSARIO, P.J.:***

I concur in the *ponencia* of my esteemed colleague, the Honorable Associate Caesar A. Casanova, affirming the denial of petitioner's claim for issuance of tax credit certificate in the total amount of Php10,232,898.33 representing its unutilized creditable withholding taxes for the fiscal year ending September 30, 2007, but solely on the ground that petitioner failed to present sufficient documentary evidence to prove that the income payments pertaining to the claimed creditable taxes withheld formed part of the gross income reflected in its 2007 Annual Income Tax Return.

As correctly pointed out in the assailed Decision of the former First Division of this Court, *"petitioner should have presented proofs such as detailed general ledger, sales register, reconciliation schedules or any other document whereby the Court can trace if the income payments related to the* *claimed creditable taxes withheld indeed formed part of its gross income as reflected in its Annual ITR for fiscal year ended September 30, 2007."*[1]

On the other hand, with utmost respect, I dissent on the *ponencia* in upholding the ruling of the former First Division of this Court that failure on the part of petitioner to fill up the entry in the *"Creditable Tax Withheld"* column in Schedule 1, page 2 of its 2007 Annual Income Tax Return is fatal to its claim for issuance of tax credit certificate.

There is neither law nor jurisprudence that states that a taxpayer's failure to fill up the entry in the *"Creditable Tax Withheld"* column in Schedule 1, page 2 of the Annual Income Tax Return would be fatal to its claim for refund. What Section 2.58.3 of RR No. 2-98[2] and the applicable jurisprudence require is that the taxpayer be able to declare as part of its gross income in the Annual Income Tax Return the income payment from which the withholding was made.

An entry into the *"Creditable Tax Withheld"* column found in page 2 of the Annual Income Tax Return (BIR Form 1702), specifically Schedule 1 or the *"Schedule of Sales/Revenues/Receipts/Fees"* may expedite the determination of petitioner's compliance with the requirement that the income payments from which the withholding of taxes were made formed part of petitioner's gross income declared in its Annual Income Tax Return. It does not, however, follow that the Court should immediately deny petitioner's claim for refund only because petitioner failed to make such entry, without the Court looking at the evidence submitted by petitioner.

Stated otherwise, failure on the part of a taxpayer to make an entry in the *"Creditable Tax Withheld"* column found in page 2 of the Annual Income Tax Return, specifically Schedule 1 or the *"Schedule of Sales/Revenues/Receipts/Fees"* is not a sufficient basis to conclude outright

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[1] Rollo, pp. 45 to 46.
[2] "SECTION 2.58.3. Claim for Tax Credit or Refund. —

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

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

Proof of remittance is the responsibility of the withholding agent.

that the taxpayer failed to comply with the requirement that *"the income upon which the taxes were withheld were included in the return of the recipient"* when the taxpayer has offered other evidence to establish its compliance with this requirement.

Taxes are the lifeblood of the government. Without taxes, the government can neither exist nor endure.[3] Nonetheless, if the State expects its taxpayers to observe fairness and honesty in paying their taxes, so must it apply the same standard against itself in refunding excess payments. When it is undisputed that a taxpayer is entitled to a refund, the State should not invoke technicalities to keep money not belonging to it. No one, not even the State, should enrich oneself at the expense of another. [4]

**ROMAN G. DEL ROSARIO**
Presiding Justice

[3] National Power Corporation v. City of Cabanatuan, G.R. No. 149110, 9 April 2003, 401 SCRA 259, 270.
[4] BPI-Family Savings Bank, Inc. vs. Court of Appeals, G.R. No. 122480, April 12, 2000, 330 SCRA 507.