REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

BUSINESS PROCESS OUTSOURCING INTERNATIONAL, INC., Petitioner,	C.T.A. EB No. 826 (C.T.A. CASE NO. 7605)
	Members:
- versus -	CASTAÑEDA, JR. BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, and COTANGCO-MANALASTAS, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: JAN 28 2013 3:10 p.m.

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DECISION

Fabon-Victorino, J.:

The instant Petition for Review dated September 30, 2011 originated from the appeal taken by petitioner Business Process Outsourcing International, Inc. on its claim for refund of P13,253,645.00, allegedly representing excess/unutilized creditable withholding income taxes (CWTs) for taxable years 2004 and 2005, which the Court in Division denied in the assailed Decision of May 18, 2011 and effectively affirmed in the similarly assailed Resolution of August 24, 2011.

The salient facts as established during the trial on the merits remain undisputed.

Petitioner is a duly organized and existing domestic corporation with principal office at 6758 Ayala Avenue, 1226 Makati City. It was incorporated primarily to engage in the business of providing, design, supply, implement, and operate all forms of outsourced business processes and services to enable clients to sharpen their strategic business focus and to assist them in running their businesses, including their accounting units, by providing people and/or systems and other outsourced services.

Respondent, on the other hand, is the Commissioner of the Bureau of Internal Revenue (BIR), with the authority to grant or deny claims for refund or tax credit as provided by law, with office address at the BIR National Office Building, Agham Road, Diliman, Quezon City.

On March 10, 2006, petitioner filed its Final and Corporate Annual Income Tax Return (ITR) for taxable year 2004 reflecting a taxable income of P12,928,353.55 with an income tax due in the amount of P4,137,073.00. The income tax due was offset against the prior year's excess credits and creditable taxes for four quarters of 2004 in the amount of P13,519,311.00, leaving an excess tax credit of P9,382,238.00, for which amount, petitioner opted "*To be refunded.*"

On May 2, 2006, petitioner filed its Final Corporate Annual Income Tax Return for taxable year 2005 in which it declared a taxable income of P18,646,884.00, with an income tax due of P6,060,237.00. Adopting the same procedure, petitioner deducted from its income tax due its creditable taxes for all the quarters of year 2005, hence, a difference or an overpayment of P3,871,407.00. For the said amount, petitioner again chose "*To be refunded*".

On March 30, 2007, petitioner filed with respondent its administrative claim for refund/tax credit of its alleged excess or unutilized CWTs for taxable years 2004 and 2005 in the sum of P13,253,645.00, broken down as follows:

Unutilized balance from taxable year 2004 after offsetting against 2004 tax	P9,382,238.00
Unutilized balance from taxable year 2005 after offsetting against 2005 tax	3,871,407.00
TOTAL	**P13,253,645.00**

On April 13, 2007, petitioner filed a Petition for Review with the Court in Division, alleging respondent's inaction on its claim for refund/tax credit.

On June 12, 2007, respondent filed the required Answer raising the following special and affirmative defences:

> 6. Granting but without admitting that Petitioner filed a claim for refund, the same is still subject to investigation by the Bureau of Internal Revenue:
>
> 7. Petitioner failed to demonstrate that the tax, which is the subject of this case, was erroneously or illegally collected;
>
> 8. Taxes paid and collected are presumed to be made in accordance with the laws and regulations, hence, not creditable or refundable;
>
> 9. It is incumbent upon the Petitioner to show that it has complied with the provisions of Sections [sic] 204(C) in relation to Section 229 of the 1997 Tax Code, as amended;
>
> 10. In an action for tax credit or refund, the burden is upon the taxpayer to prove that it is entitled thereto, and failure to discharge the said burden is fatal to the claim(*Emmanuel & Zenaida Aguilar v. Commissioner, CA-GR No. Sp. 16432, March 30, 1990 cited in Aban, Law of Basic Taxation in the Philippines, 1st Edition p. 206*);
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> 11. Claims for refund are construed strictly against the claimant, the same partake the nature of exemption from taxation (*Commissioner of Internal Revenue vs.*

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

In the assailed Decision of May 18, 2011, the Court in Division denied petitioner's claim for refund of its alleged excess/unutilized CWTs in the amount of P13,253,645.00 due to its inability to prove that the income payment received, from which the taxes were withheld, was declared as part of its gross income. In addition, the Court in Division noted that petitioner failed to present its originally filed 2006 and 2007 Annual Income Tax Returns which would show that it did not carry over the alleged excess creditable withholding tax of the previous taxable years, as claimed.

The Resolution of August 24, 2011 denying petitioner's Motion for Reconsideration dated May 7, 2011 for lack of merit sealed the fate of petitioner's case as it effectively affirmed the assailed Decision of May 18, 2011.

In the said Resolution of August 24, 2011, the Court in Division clarified that granting that petitioner was able to present its originally filed 2006 and 2007 Annual Income Tax Return, the same is inconsequential as it would merely fortify the ground for the denial of the petition.

Unconvinced, petitioner filed the instant Petition for Review with the Court *En Banc* on September 30, 2012 and despite the Resolution of August 24, 2011 attached thereto its originally filed Annual ITRs for the years 2006 and 2007. Petitioner speculated that by so doing it was able to establish that it did not carry over its unutilized/excess creditable withholding taxes subject of refund to the subsequent years or periods.

Petitioner also claims that it is flawed on the part of the Court in Division to conclude that the P6,707,527.71 disallowed CWT was not sufficiently backed-up for Exhibit series N contains the complete inventory of all CWT certificates for all the quarters of 2004 and 2005. To convince the Court *En Banc,* petitioner attached to its Memorandum dated February 16, 2012 Exhibits N-984 to N-1712 to substantiate the disallowed amount of P6,707,527.71. Petitioner believes that the documents are admissible even at this stage of the proceeding as the summary prepared by the Independent CPA marked and admitted as Exhibits J-1 to J-45 make reference to Exhibit Series N, which included Exhibits N-984 to N-1712.

Anent the discovered discrepancy in its declared gross income as appearing in Schedule of Certificates of Taxes Withheld at Source[1] for the years 2004 and 2005 and in its ITRs for the same years, petitioner plainly states that the result of the comparison is inconclusive as it failed to consider other factors affecting the same. Among others, petitioner's books recognize the amounts of CWT only upon receipt of the corresponding certificates from its clients. Besides, not all reported revenues for that particular year were actually collected in the same year. Petitioner also reported revenues even if their corresponding CWT certificates were not retrieved from the clients. Moreover, this discrepancy have been reconciled by the Independent Certified Public Accountant (ICPA) as shown in page 7 of her Report dated May 26, 2008, marked as Exhibit FF.

Petitioner also surmises that such discrepancy may be due to inadvertence, if not honest mistake. In view thereof, the Court in Division should have made adjustments, i.e., remove the multiple entries and intrinsically defective CWT certificates from the schedule of certificates submitted. This action would significantly reduce the discrepancy from P56,292,760.12 to only P20,021,671.71, which amount could be attributed to prior year's income.

Even assuming that the discrepancy is correct, it should not affect the entire claim since petitioner was able to substantiate its CWTs for the years 2004 and 2005 in the amount of P14,588,077.01.

Despite the opportunity granted, respondent did not file the required comment[2] and memorandum.[3]

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[1] Exhibits J-20 to J-45.
[2] Record Verification dated November 29, 2011, docket p. 134.

The instant petition is anchored on the following grounds, to wit:

> THE HONORABLE THIRD DIVISION OF THE COURT OF TAX APPEALS ERRED WHEN IT RULED THAT PETITIONER FAILED TO PROVE THAT THE INCOME FROM WHICH THE TAXES WERE WITHHELD WERE INCLUDED IN THE RETURN OF THE PETITIONER.
>
> THE HONORABLE THIRD DIVISION OF THE COURT OF TAX APPEALS ERRED WHEN IT RULED THAT PETITIONER CANNOT CLAIM FOR REFUND THE UNUTILIZED EXCESS CREDITABLE WITHHOLDING TAXES FOR THE TAXABLE YEARS 2004 AND 2005.

Separating the chaff from the grain, the real issue on hand is whether petitioner was able to satisfy or meet the conditions for the grant of refund/tax credit of CWT sought.

The Supreme Court in a number of cases enumerated the legal requirements for claiming refund/tax credit of CWT, to wit: 1) The claim must be filed within two years from the date of payment of the tax as mandated by law; 2) The fact of withholding must be 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; 3) It must be shown on the return that the income received was declared as part of the gross income.[4]

The timeliness of petitioner's filing of both the administrative and judicial claims for refund/tax credit is a non-issue. It is not disputed that petitioner filed its Final Corporate Annual Income Tax Returns for taxable years 2004 and 2005 on March 10, 2006 and May 2, 2006, respectively. Within two (2) years from such filing, petitioner seasonably

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[3] Record Verification dated March 01, 2012, docket p. 896.

[4] Commissioner of Internal Revenue vs. Mirant (Philippines) Operations, Corporation, G.R. No. 171742, June 15, 2011; Mirant (Philippines) Operations Corporation (Formerly: Southern Energy Asia-Pacific Operations (Phils.), Inc.) vs. Commissioner of Internal Revenue, G.R. No. 176165; Banco Filipino Savings and Mortgage Bank v. CA, et al., Gr. No. 155682, March 27, 2007.

lodged its administrative claim for refund for both 2004 and 2005 on March 30, 2007, and timely sought judicial intervention for respondent's alleged inaction on April 13, 2007, guided by the provisions of Sections 76 and 229 of the National Internal Revenue Code (NIRC), as amended, which read 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:
>
> (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.
>
> SEC. 229. ***Recovery of Tax Erroneously or Illegally Collected. –*** No suit or proceeding shall be maintained in any court for the recovery of an 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 of 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.

While petitioner ably complied with the two-year prescriptive period for the filing of both the administrative and judicial claims for refund, it failed to fully meet the second condition, namely, to establish the fact of withholding 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.

Petitioner submitted as part of its evidence Schedule of Certificate of Taxes Withheld at Source/BIR Forms 2307[5] and Certificates of Taxes Withheld at Source/BIR Forms 2307.[6]

After audit, the Court-commissioned Independent CPA (ICPA) concluded in her Report dated May 26, 2008, that out of P13,253,645.00 claimed CWT only the amount of P12,667,730.33 is substantiated. The amount of P585,914.67 was disallowed in the absence of corresponding Certificates of Taxes Withheld at Source or BIR Form 2307, as shown below:

Amount of disallowed creditable taxes withheld in 2004 and 2005 per audit	P	585,914.67
Amount of excess creditable taxes withheld which are being claimed for issuance of tax credit certificates per		

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[5] Exhibits J-1 to J-45.
[6] Exhibits N-1 to N-983.

Petition for Review	13,253,645.00
Should-be excess creditable taxes withheld for the issuance of tax credit certificates based on audit findings and verification	**P 12,667,730.33**

Further examination reveals that BIR Form 2307 submitted to support CWT of P15,437,244.62, marked as Exhibits N-1 to N-983, cover only the four quarters of 2004 and the first quarter of 2005. In other words, there were no BIR Form 2307 to cover the CWT for the 2nd up to the 4th quarters of 2005. In the absence of such supporting documents, a further disallowance of P6,707,527.71, detailed as follows:

CWT	**2004**	**2005**	**Total**
Per Schedule of Certificate of Taxes Withheld at Source/BIR Forms 2307 (*Exh. J-20 and J-45*)	P12,559,398.03	P9,585,374.30	P22,144,772.33
With FOE of supporting documents (*Exh. N-1 to N-763 and N-764 to 983*)	P12,559,398.03	P2,877,846.59	P15,437,244.62
CWT without FOE of supporting documents	**P**	**P6,707,527.71**	**P6,707,527.71**

To scrub off the *faux pas insofar as* the amount of P6,707,527.71 is concerned, petitioner attached to its Memorandum dated February 16, 2012 filed with the Court *En Banc* Exhibits N-984 to N-1712 to allegedly substantiate the stated disallowed amount found to be without Certificates of Taxes Withheld at Source or BIR Forms 2307. But these documents cannot simply be admitted and considered at this late stage of the proceedings before the Court *En Banc* without violating the rules of procedure, pregnant as it is with remedies to address the lapses. Tragically, petitioner failed to take appropriate measures under the rules at first instance to its prejudice.

Section 8 of RA 1125 describes the CTA as a court of record.[7] Thus, only documents formally offered to it can be

[7] Dizon vs. CTA, G.R. No. 140944, April 30, 2008.

considered and given evidentiary value pursuant to Section 34, Rule 132 of the Revised Rules on Evidence. Documents albeit identified and marked but not formally offered in evidence must be excluded and rejected.[8] To do otherwise, is to deprive respondent of her right to object and rebut the same by countervailing evidence.

Admittedly, these documents were available during the trial on the merits. Evidently, they were not newly found evidence that merit a new trial pursuant to Section 5, Rule 15 of the 2005 Revised Rules of the Court of Tax Appeals. It is against the orderly administration of justice to allow a party to submit forgotten evidence which it could have offered with the exercise of ordinary diligence, more so when a decision has already been rendered,[9] as in the case at bar.

Still on the second requisite, the CWT of P849,167.61, while supported with Certificates of Taxes Withheld at Source/BIR Forms 2307, must as well be disallowed due to some infirmities or defects as follows:

Exh.	**Period Covered**	**Payor**		**CWT**
1) No signature of authorized representative of payor				
N-7	Jan-04	Australia and New Zealand Banking Group Ltd.	P	700.00
N-8	Feb-04	Australia and New Zealand Banking Group Ltd.		700.00
N-9	Mar-04	Australia and New Zealand Banking Group Ltd.		700.00
N-12	Jan-Mar 2004	Ayala Corporation		2,300.00
N-34	Jan-Mar 2004	Calyon Corporate and Investment Bank		1,258.36
N-57	Feb-04	Finacor Finance Corporation		61.60
N-58	Mar-04	Finacor Finance Corporation		61.60
N-77	Jan-04	Japan PNB Leasing & Finance Corp.		565.00
N-78	Feb-04	Japan PNB Leasing & Finance Corp.		565.00
N-79	Mar-04	Japan PNB Leasing & Finance Corp.		565.00
N-80	Jan-Mar 2004	Jardine Davies, Inc.		14,471.50
N-116	Jan-Mar 2004	Paragon Travel Ltd.		1,500.00
N-117	Jan-Mar 2004	Perfetti Van Melle Phils. Inc.		459.00

[8] People vs. Villanueva, G.R. No. 181829, September 01, 2010.
[9] Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue, G.R. No. 159490, February 18, 2008.

N-127	Jan-Mar 2004	PTT Phils., Inc.	450.00
N-154	Jan-Jun 2004	ABN Amro Bank, Inc.	1,150.00
N-767	Apr-Jun 2005	Duracom Mobile Power Corporation	5,229.00
N-770	Apr-Jun 2005	East Asia Dieselpower Corporation	5,103.00
N-778	Jan-Mar 2005	Ayala Aviation Corporation	1,292.00
N-808	Jan-Mar 2005	Calyon Corporate and Investment Bank	901.00
N-816	Jan-Mar 2005	CitiFinancial Corp.	1,177.40
N-838	Jan-Mar 2005	eTelecare Global Solutions, Inc. (PH)	3,820.00
N-843	Mar-05	Finacor Finance Corporation	62.70
N-898	Jan-Mar 2005	Meridian Telekoms, Inc.	4,068.00
N-946	Jan-Mar 2005	Quezon Power (Phils.) Ltd. Company	5,602.26
N-952	Jan-Mar 2005	Schering Plough Animal Health, Inc.	1,377.60
N-959	Jan-Mar 2005	Sykes Asia, Inc.	3,780.00
N-960	Jan-Mar 2005	Syngenta Philippines, Inc.	2,460.00
		Sub-total	*P 60,380.02*

2) CWT claimed twice or CWT claimed pertain to one supporting document only

N-45a	Jan-Mar 2004	Dart (Phils.) Inc.	P 533.80
N-49a	Jan-Mar 2004	Duracom Mobile Power Corporation	2,985.00
N-120	Jan-Mar 2004	Philip Morris Philippines Mfg., Inc.	63,604.08
N-123a	Jan-Mar 2004	Procter & Gamble Asia Pte. Ltd.	40,129.78
N-123b	Jan-Mar 2004	Procter & Gamble Asia Pte. Ltd.	40,129.78
N-123c	Jan-Mar 2004	Procter & Gamble Asia Pte. Ltd.	40,129.78
N-124a	Jan-Mar 2004	Procter & Gamble Distributing	2,477.98
N-124b	Jan-Mar 2004	Procter & Gamble Distributing	2,477.98
N-124c	Jan-Mar 2004	Procter & Gamble Distributing	2,477.98
N-150a	Jan-Mar 2004	Trust International Paper Corp.	2,016.00
N-151a	Dec. 28, 2003-Mar. 27, 2004	Tupperware Phils., Inc.	6,311.65
N-156a	Jan-Mar 2004	Visteon Phils., Inc.	3,315.00
N-774a	Jan-Mar 2005	AACI Transport, Inc.	217.00
N-786a	Jan-Mar 2005	Bank of America	1,100.00
N-828a	Jan-Mar 2005	Duracom Mobile Power Corporation	5,974.50

N-829a	Jan-Mar 2005	East Asia Dieselpower Corporation	5,836.50
N-853a	Jan-Mar 2005	Grand Plaza Hotel Corporation	2,309.00
N-883a	Jan-Mar 2005	L'Oreal Philippines, Inc.	6,849.75
N-919a	Jan-Mar 2005	Perfetti Van Melle Phils. Inc.	720.00
N-922a	Jan-Mar 2005	Philex Mining Corporation	3,600.00
N-941a	Jan-Mar 2005	Procter & Gamble Distributing	181,671.05
N-941b	Jan-Mar 2005	Procter & Gamble Distributing	181,671.05
N-941c	Jan-Mar 2005	Procter & Gamble Distributing	181,671.05
N-942a	Jan-Mar 2005	Procter & Gamble Distributing	2,532.36
N-942b	Jan-Mar 2005	Procter & Gamble Distributing	2,532.36
N-942c	Jan-Mar 2005	Procter & Gamble Distributing	2,532.36
		Sub-total	*P 785,805.79*
3) Name of payee not indicated in certificate of tax withheld			
N-45	Jan-Mar 2004	Dart (Phils.) Inc.	P 533.80
		Sub-total	*P 533.80*
4) No supporting documents			
N-21a	Jan-Mar 2004	Baxter Healthcare Phils. Inc.	P 2,448.00
		Sub-total	*P 2,448.00*
		TOTAL	**P849,167.61**

After computation, it appears that petitioner was able to substantiate a creditable withholding taxes for the years 2004 and 2005 in the total amount of P14,588,077.01, as detailed below:

Creditable tax withheld:				
2004	P	12,799,043.00		
2005		9,931,644.00	P	22,730,687.00
Less: Disallowances				
Per ICPA Findings	P	585,914.67		
CWT without FOE of supporting documents		6,707,527.71		
Additional disallowance per this Court's findings		849,167.61		8,142,609.99
Substantiated CWT for 2004 and 2005				**₱14,588,077.01**

Nonetheless, the petition must still fail. As found by the Court in Division, petitioner failed to establish that the income received from which the said creditable taxes were withheld have been declared as part of its gross income.

A revisit of petitioner's gross revenues as declared in its Annual Income Tax Returns for taxable years 2004 and 2005 and its total income payments for the same period per BIR Forms 2307 reveals significant discrepancies as follows:

Gross Income	**2004**	**2005**
Per Schedule of Certificate of Taxes Withheld at Source/BIR Forms 2307 (*Exh. J-20 and J-45*)	P 172,030,077.01	P 176,374,092.11
Gross revenue per ITR	139,784,325.00	152,327,084.00
Difference	**P 32,245,,752.01**	**P 24,047,008.11**

Unfortunately, petitioner failed to fully account for these discrepancies. Its inability to explain and reconcile the huge difference in its gross revenues for both 2004 and 2005 as appearing in its own documents justifies denial of the claim for refund/tax credit. To be sure, the estimates and surmises advanced by petitioner relative to the cited discrepancies cannot take the place of clear and logical explanation of the existence of the said discrepancies. *Sans* clarification and supporting documents will certainly exact an adverse ruling. These facts pieced together translates to an inevitable conclusion that petitioner is not entitled to the refund/tax credit sought.

The Court En Banc cannot also be oblivious to the fact that some of the invoices adduced during the trial pertain to income received by petitioner in previous years, detailed as follows:

Gross Income (Pertaining to Taxes Withheld at Source)

	2003	**2004**	**2005**
(1)	(a) 11,188,839.00		
(2)		(a) 11,698,273.00	
(3)	(b) 1,256,342.00	(a) 72,234,545.00	
(4)			(a) 84,518,533.00
Total for the year	**P 12,445,181.00**	**P 83,932,818.00**	**P 84,518,533.00**

Note:
(1a) 2003 invoices collected in 2004.
(2a) 2004 invoices collected in 2005.
(3a) 2004 invoices collected in 2004.
(3b) 2003 invoices collected in 2005.
(4a) 2005 invoices collected in 2005.

Insofar as the belated presentation of petitioner's originally filed 2006 and 2007 Annual ITRs is concerned, the assailed Resolution of August 24, 2011, could not be any clearer. The Court in Division sealed its ruling in this wise:

> On the argument that petitioner submitted its Final/Amended Annual Corporate ITRs for the taxable years 2006 and 2007 which proves that it did not carry over to the succeeding taxable years 2006 and 2007 any unutilized/excess creditable income taxes as of the end of December 31, 2004 and 2005, *We* are well aware of the presence of these ITR's which indicate on its face that petitioner did not carry over any unutilized/excess creditable income taxes from taxable years 2004 and 2005. However, what this Court stressed in the assailed *Decision*, as an additional circumstance that strengthened this Court's resolve to deny the claim, is that petitioner failed to present its **originally** filed 2006 and 2007 Annual Income Tax Returns, *i.e.,* 2006 and 2007 Annual ITR's which were initially filed with the Bureau of Internal Revenue (BIR), and not its **final/amended** Annual ITRs. This is for the purpose of ascertaining whether or not Petitioner originally carried over the claimed excess creditable withholding taxes.
>
> <u>However, albeit petitioner was able to present its **originally** filed 2006 and 2007 Annual ITR's and was able to prove that it did not carry over any unutilized/excess creditable income taxes from taxable years 2004 and 2005, this Court is of the well-considered view that the challenged *Decision* denying petitioner's claim for refund/tax credit still stands justified in law and in reason as **such denial is deep-seated on a ground which was intricately discussed in the *Decision***</u>

> **of this Court, *i.e.,* petitioner's failure o prove that the income from which the taxes were withheld were included in or declared as part of its gross income on the return.** (underscoring supplied)

On a final note, a taxpayer claiming a tax credit or refund has the burden of proof to establish the factual basis of that claim. In this, petitioner utterly failed. Tax refunds, like tax exemptions, are construed strictly against the taxpayer.[10] 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. x x x The taxpayer must still present substantial evidence to prove his claim for refund. As the Supreme Court has said, there is no automatic grant of a tax refund.[11]

WHEREFORE, the Petition for Review dated September 30, 2011, filed by petitioner Business Process Outsourcing International, Inc. is hereby **DENIED,** for lack of merit.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

We Concur:

JUANITO C. CASTAÑEDA, JR.
Acting Presiding Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

[10] Accenture, Inc. vs. Commissioner of Internal Revenue, G.R. No. 190102, July 11, 2012 citing Paseo Realty & Development Corporation v. Court of Tax Appeals, et al., 483 Phil. 254 (2004).
[11] Commissioner of Internal Revenue vs. Far East Bank, G.R. No. 173854, March 16, 2010.

CAESAR A. CASANOVA
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
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.

JUANITO C. CASTAÑEDA, JR.
Acting Presiding Justice