REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

PHILAM INSURANCE AGENCY AND CALL CENTER SERVICES, INC., Petitioner,	**CTA EB No. 792 (CTA CASE No. 7904)**
	Present:
- versus -	**ACOSTA,** *P.J.* **CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, PALANCA-ENRIQUEZ,**
COMMISSIONER OF INTERNAL REVENUE, Respondent.	**FABON-VICTORINO, MINDARO-GRULLA,** *and* **COTANGCO-MANALASTAS,** *JJ.*
	Promulgated:
	JAN 2 0 2012 ... 3:10 p.m.

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DECISION

UY, *J*.:

Before Us is a Petition for Review, seeking the reconsideration of the Decision dated March 21, 2011[1] and Resolution dated June 2, 2011, both rendered by the Second Division of this Court (hereinafter referred to as the "Court in Division") in CTA Case No. 7904, entitled *"Philam Insurance Agency and Call Center Services, Inc., petitioner, vs. Commissioner of Internal Revenue, respondent"*, the dispositive portions of which read:

[1] Penned by Associate Justice Juanito C. Castañeda, Jr, and concurred by Associate Justices Caesar A. Casanova and Cielito Mindaro-Grulla. Docket, pp. 17 to 30.

Decision dated March 21, 2011

> "**WHEREFORE,** premises considered, the instant Petition for Review is hereby **DENIED** due to insufficiency of evidence.
>
> **SO ORDERED.**"

Resolution dated June 2, 2011

> "**WHEREFORE,** the instant Motion for Reconsideration is hereby **DENIED** for lack of merit."

THE FACTS

The established facts of this case are as follows.

Petitioner, Philam Insurance Agency and Call Center Services, Inc., is a corporation duly organized and existing under and by virtue of the laws of the Philippines, with principal office at 5th Floor, Philamlife Bldg., UN Avenue, Ermita, Manila.

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

On April 16, 2007, petitioner filed its Corporate Annual Income Tax Return for taxable year 2006 which reflected excess tax credits of ₱ 7,976,197.00, prior year's excess credits of ₱ 7,247,300.00, creditable taxes withheld during the year 2006 in the amount of ₱ 877,000.00, and a net loss amounting to ₱ 15,908,715. In the same Annual Income Tax Return, petitioner has chosen the tax refund option. Considering the existence of the alleged creditable withholding taxes for taxable year 2006, petitioner filed an administrative claim for refund with the BIR

Revenue District Office No. 33 in the amount of ₱ 742,937.12 on March 23, 2009.

Due to respondent's failure to act on the said administrative claim, petitioner filed a Petition for Review before the Court of Tax Appeals in Division on April 13, 2009 docketed as CTA Case No. 7904.

An Answer was filed therein on May 13, 2009 by respondent alleging that petitioner's claim for refund was still pending administrative investigation; that petitioner must prove compliance with the legal requirements; and that it was unclear whether petitioner had exercised an option as required under Section 76 of the 1997 Tax Code.

After the pre-trial conference held on June 26, 2009, the parties submitted their Joint Stipulation of Facts and Issues on July 3, 2009, and the same was approved by the Court in Division in the Resolution dated July 13, 2009.

During trial, petitioner presented testimonial and documentary evidence. On the other hand, respondent's counsel, Atty. Gerlo C. Cacatian manifested during the hearing held on June 2, 2010 for the presentation of respondent's evidence that he has no witness to present and that respondent is submitting the case for decision based on the pleadings. Thus, the Court in Division directed the parties to file their respective Memorandum. Respondent and petitioner respectively filed their Memoranda on July 16, 2010 and July 27, 2010, respectively, and CTA Case No. 7904 was considered submitted for decision in the court *a quo's* Resolution dated July 30, 2010.

As aforestated, the Court in Division denied the Petition for Review due to insufficiency of evidence.

In the assailed Decision, while the Court in Division found that petitioner opted to refund the excess creditable withholding tax for calendar year 2006, and that the administrative and judicial claims were made within the two-year prescriptive period, it was decreed that petitioner was able to substantiate by proper Certificates of Creditable Tax Withheld at Source only the amount of ₱ 721,114.59 (and not the whole amount of ₱ 742,937.12). Notably, the Court in Division treated Exhibits "Q" and "R", and Exhibits "K" and "L", as the same Certificates of Creditable Tax Withheld at Source, respectively.

It was further ruled by the Court *a quo* that petitioner failed to comply with the third requisite in granting a claim for refund of excess creditable withholding income tax, *i.e.*, it must be shown on the return of the recipient that the income payment received was declared as part of the gross income. Relative thereto, it was also held that there is a discrepancy between the income payments per Income Tax Return and per Certificates of Creditable Tax Withheld at Source. According to the Court *a quo*, petitioner failed to present proof, such as, but not limited to, detailed general ledger, sales register, reconciliation schedules or any other document whereby it can trace said discrepancy, and that the income payments related to the claimed creditable withholding taxes formed part of petitioner's taxable gross income in its 2006 Annual Income Tax Return.

On April 6, 2011, petitioner filed a Motion for Reconsideration of said Decision, arguing that it was able to sufficiently establish, allegedly through both documentary and testimonial evidence, that the income payments from which taxes were withheld were reported as income in its corporate income tax return for calendar year 2006. Petitioner also expressed its disagreement with the findings of the Court in Division that Exhibits "K" and "L", and Exhibits "Q" and "R", are respectively the same Certificates of Creditable Tax Withheld at Source.

In respondent's Comment to petitioner's Motion for Reconsideration filed on April 25, 2011, respondent contends that petitioner's must be denied because it failed to sufficiently proved its claim for refund.

In the Resolution dated June 2, 2011 of the Court in Division, petitioner's Motion for Reconsideration was denied for lack of merit.

Hence, this recourse before the Court *En Banc* by way of the instant Petition for Review, wherein petitioner prays that the assailed Decision be reconsidered, and that judgment be rendered ordering respondent to refund in favor of petitioner the total amount of ₱ 742,937.12 for the year ended December 31, 2006.

In Our Resolution dated July 7, 2011,[2] respondent was directed to file a Comment to the instant Petition for Review within ten (10) days from receipt thereof. On July 29, 2011, petitioner filed said Comment,[3] contending that petitioner is not entitled to the amount of excess/unutilized creditable withholding taxes being claimed.

Subsequently, the Court *En Banc* gave due course to the instant petition in the Resolution dated August 17, 2011,[4] and required the parties to file their respective memorandum within a period of thirty (30) days from receipt thereof.

Respondent filed her Memorandum on September 30, 2011. On the other hand, upon motion filed by petitioner on October 6, 2011[5], this Court granted

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[2] Docket, pp. 75 to 76.
[3] Docket, pp. 77 to 81.
[4] Docket, pp. 83 to 84.
[5] Docket, pp. 94 to 95.

petitioner a final and non-extendible period of twenty (20) days from October 8, 2011 or until October 28, 2011, within which to file its Memorandum.[6] Petitioner filed its Memorandum on October 28, 2011.

The case was deemed submitted for decision on November 15, 2011.[7]

Hence, this Decision.

THE ISSUES

The issues presented for the resolution of the Court *En Banc* are as follows:

> "1. Whether the Second Division of the Court of Tax Appeals erred when it denied the claim for refund on the ground that Petitioner allegedly failed to establish that the income payments which were subject to creditable tax formed part of the taxable income recorded in its CY 2006 annual corporate income tax return by virtue of a discrepancy between the total income payments per income tax return and the certificates of tax withheld at source for CY 2006
>
> 2. Whether the Second Division of the Court of Tax Appeals erred when it did not give any evidentiary weight to Certificates of Tax Withheld At Source Identified as Exhibits 'K', 'L', 'Q' and 'R' ".[8]

<u>Petitioner's Arguments</u>

Petitioner insists that: (1) it had sufficiently established that the income payments which were subject to creditable withholding taxes for calendar year 2006 formed part of its taxable income as recorded in its annual corporate income tax return through both testimonial and documentary evidence; and (2) Certificates of Tax Withheld at Source duly marked as Exhibits "K", "L", "Q" and "R", were properly identified by petitioner's witness and should be given evidentiary weight.

[6] Minute Resolution dated October 7, 2011, Docket, p. 97.
[7] Resolution dated November 15, 2011, Docket, pp. 108 to 109.
[8] Docket, p. 100.

Respondent's Counter-arguments

Respondent submits that the petitioner has effectively exercised the option to carry-over its 2006 excess and unutilized creditable withholding taxes to the succeeding taxable year 2007 due to petitioner's failure to present as its documentary evidence, its quarterly income tax returns for taxable year 2007.

Moreover, petitioner allegedly violated Section 76 of the 1997 Tax Code due to multiplicity of options as it filed a claim for refund on one hand and the automatic carry-over on the other thereby creating chaos. Additionally, considering that it filed a partial claim for refund of its claim for overpayment, the remaining overpayment amount is deemed waived.

THE COURT EN BANC'S RULING

We shall first resolve the second issue as to whether or not the Second Division of the Court of Tax Appeals erred when it did not give any evidentiary weight to Certificates of Tax Withheld At Source Identified as Exhibits 'K', 'L', 'Q' and 'R' "[9]

Exhibits "K" and "L", and Exhibits "Q" and "R", are not the same Certificates of Creditable Tax Withheld at Source.

A closer examination of Exhibits "K" and "L" and Exhibits "Q" and "R" would reveal that they are indeed not the same Certificates of Creditable Tax Withheld at Source. Exhibits "K" and "L" should not be considered the same because there are two (2) different signatories for each Certificate. Exhibits "Q" and "R" should not also be deemed the same because they respectively bear different control numbers on the lower right hand portion. With the foregoing

[9] Docket, p. 100.

observations, while it may be true that Exhibits "K" and "L" and Exhibits "Q" and "R" respectively involve the same period, the same nature of tax payments and the same amount of taxes withheld, there is no indication that they respectively cover the same transactions.

Relative thereto, considering that respondent ought to know the tax records of all taxpayers,[10] she could have easily disproven petitioner's allegation that the said Exhibits are respectively not the same. Having failed to do so, We find no basis to respectively treat the subject Exhibits as the same, in view of the difference noted above.

Be that as it may, the instant Petition for Review must still fail.

Petitioner failed to comply with all the conditions for the grant of a claim for refund of excess creditable withholding tax.

The Supreme Court ruled, in a number of cases[11], that there are three (3) conditions for the grant of a claim for refund of creditable withholding income tax, to wit: 1) the claim is filed with the Commissioner of Internal Revenue within the two-year period from the date of payment of the tax;[12] 2) the fact of withholding is established by a copy of a statement duly issued by the payor to the payee showing the amount paid and the amount of the tax withheld therefrom;[13] and 3)

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[10] *Commissioner of Internal Revenue vs. Ironcon Builders and Development Corporation,* G.R. No. 180042, February 8, 2010.

[11] *Banco Filipino Savings and Mortgage Bank vs. Court of Appeals, et al.*, G.R. No. 155682, March 27, 2007; *Commissioner of Internal Revenue vs. Perf Realty Corporation*, G.R. No. 163345, July 4, 2008, and *Commissioner of Internal Revenue vs. Far East Bank & Trust Co. (Now Bank of the Philippine Islands)*, G.R. No. 173854, March 15, 2010.

[12] Sections 204(C) and 229, NIRC of 1997; Jose C. Vitug and Ernesto D. Acosta, Tax Law and Jurisprudence, 329 (2006), citing *Gibb v. Collector,* 107 Phil. 230 (1960).

[13] Section 2.58.3(B) of Revenue Regulations No. 2-98.

it is shown on the return of the recipient that the income payment received was declared as part of the gross income.[14]

The Court in Division ruled that petitioner failed to comply with the above-stated third requisite.

We agree.

In the Court *a quo*, the evidence offered by petitioner merely composed of the following: petitioner's Articles of Incorporation,[15] its Annual Income Tax Returns for taxable year 2005, 2006 and 2007,[16] summary of creditable withholding tax for calendar year 2006,[17] Certificates of Creditable Tax Withheld at Source for the months and quarters of 2006,[18] and the letter dated March 23, 2009 regarding the request for refund filed with the BIR.[19]

After a careful evaluation of these exhibits, it is noteworthy that they fail to explain the discrepancy between the income payments per Income Tax Return and per Certificates of Creditable Tax Withheld at Source. Thus, the Court in Division was correct when it made the following observations in the assailed Decision and its Resolution dated June 2, 2011, respectively, *viz*:

> "...Petitioner failed to present proof, such as, but not limited to, detailed general ledger, sales register, reconciliation schedules or any other document whereby the Court can trace the discrepancy and that the income payments related to the claimed creditable withholding taxes formed part of its taxable gross income in its 2006 Annual Income Tax Return."[20]

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[14] Id.; *Calamba Steel Center, Inc. v. Commissioner on Internal Revenue*, G.R. No. 151857, April 28, 2005, 457 SCRA 482.
[15] Exhibit "A", and its submarkings.
[16] Exhibits "KK", "B" and "C", and their respective submarkings.
[17] Exhibit "D".
[18] Exhibits "E", "F", "G", "H", "I", "J", "K", "L", "M", "N", "O", "P", "Q", "R", "S", "T", "U", "V", "W", "X", "Y", "Z", "AA", "CC", "DD", "EE", "FF", "LL", "MM", "NN", "OO", and their respective submarkings.
[19] Exhibit "GG", and its submarking.
[20] Docket, p. 28.

> "Petitioner should have presented proof, such as, but not limited to, detailed general ledger, sales register, reconciliation schedules or any other document whereby the Court can trace the discrepancy and can determine that the income payments related to the claimed creditable withholding taxes formed part of its taxable gross income in its 2006 ITR. Failure to present the foregoing documents in this Motion for Reconsideration is fatal to petitioner's claim."

We cannot simply rely on the supposed testimony of Ms. Paz L. Torregosa, as embodied in the judicial affidavit marked as Exhibit "H", because it is self-serving and is not substantiated by above-enumerated proof being required by the Court in Division.

More importantly, even if We confine our examination on the Annual Income Return of petitioner for taxable year 2006 for purposes determining its compliance with the said third requisite, *i.e.*, it is shown **on the return** of the recipient that the income payment received was declared as part of the gross income, We **cannot** really say that there is a showing therein that the income payments subjected to witholding tax were indeed declared as part of its gross income. In the said Annual Income Return, specifically Schedule 1, Section A thereof or the *"Schedule of Sales/Revenues/Receipts/Fees"*, stating a revenue in petitioner's Sale of Services in the amount of ₱ 40,042,227.00, there is no entry whatsoever in the *"Creditable Tax Withheld"* column.[21] Thus, this declaration is to the effect, or 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 withheld cannot be said to have been declared as part of the gross income for taxable year 2006.

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[21] Division Docket, p. 142.

As cases filed before this Court are litigated *de novo*, party-litigants should prove **every minute aspect** of their cases.[22] Thus, there should be no room for inconsistencies, especially on the part of the claimant, who has the burden of proof to establish the factual basis of its claim for tax refund.

In fine, We reiterate our consistent ruling that actions for tax refund, as in the instant case, are in the nature of a claim for exemption and the law is not only construed in *strictissimi juris* against the taxpayer, but also the pieces of evidence presented entitling a taxpayer to an exemption is *strictissimi* scrutinized and must be duly proven.[23]

WHEREFORE, all the foregoing considered, the instant Petition for Review is hereby **DENIED**. The assailed Decision dated March 21, 2011 and Resolution dated June 2, 2011 are hereby **AFFIRMED**.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

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[22] *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.

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

CAESAR A. CASANOVA
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

ESPERANZA R. FABON-VICTORINO
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 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*.

ERNESTO D. ACOSTA
Presiding Justice