REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

FIRST DIVISION

ORIX AUTO LEASING PHILIPPINES CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 8001

Members:

ACOSTA, *Chairperson*
UY, *and*
FABON-VICTORINO, *JJ.*

Promulgated:

NOV 28 2012 ; 11:30 a.m.

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DECISION

UY, *J*.:

Before the Court is a Petition for Review filed on November 23, 2009 by Orix Auto Leasing Philippines Corporation, seeking the issuance of tax credit certificate (TCC) in its favor in the amount of ₱ 10,232,898.33, allegedly representing its unutilized creditable withholding taxes for taxable year 2007.

THE FACTS

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.[1]

Petitioner is duly registered as an income taxpayer with the Bureau of Internal Revenue (BIR), with Tax Identification No. 000-445-654-000.[2]

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.[3]

On January 11, 2008, petitioner filed its Annual Income Tax Return[4] (ITR) for fiscal year ended September 30, 2007, reflecting, among others, the following information:[5]

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

[1] Par. 1.2, Admitted Facts, Joint Stipulation of Facts and Issues (JSFI), Docket, p. 69.
[2] Par. 1, Additional Admitted Facts, Supplemental Joint Stipulation of Facts, Docket, pp. 371 to 372. Exhibit "G", Docket, p. 370.
[3] Par. 1.3, Admitted Facts, JSFI, Docket, p. 69.
[4] Exhibit "B".
[5] Par. 1.4, Admitted Facts, JSFI, Docket, pp. 69 to 70.

₱ 10,232,898.33 for its supposed unutilized creditable withholding tax for fiscal year 2007.[6]

Due to respondent's alleged failure to act on the said administrative claim,[7] petitioner filed the instant Petition for Review on November 23, 2009.

Respondent filed her Answer[8], 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,[9] which the Court approved in the Resolution dated March 22, 2010.[10] In the same Resolution, the pre-trial was terminated.

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[6] Par. 1.5, Admitted Facts, JSFI, Docket, p. 70. Exhibits "A" and "A-1".
[7] Refer to Par. 8, Petition for Review, Docket, p. 4.
[8] Docket, pp. 41 to 42.
[9] Docket, pp. 68 to 73.
[10] Docket, p. 90.

Parenthetically, a Supplemental Joint Stipulation of Facts[11] was also submitted by the parties on December 16, 2011 which was likewise approved by this Court in the Resolution dated February 15, 2012.[12]

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.[13]

On May 16, 2012, the case was submitted for decision,[14] taking into consideration only petitioner's Memorandum filed on May 7, 2012[15] as respondent failed to file a Memorandum despite the opportunity granted.[16]

THE ISSUES

The parties submitted the following issues for this Court's resolution, viz:

> "A.
> WHETHER OR NOT PETITIONER HAS UNUTILIZED CREDITABLE WITHHOLDING TAX IN THE AMOUNT OF PHP TEN MILLION TWO HUNDRED THIRTY TWO THOUSAND EIGHT HUNDRED NINETY EIGHT AND 33/100 PESOS (PHP10,232,898.33) FOR TAXABLE YEAR ENDED SEPTEMBER 30, 2007, WHICH IS THE PROPER SUBJECT OF A CLAIM FOR REFUND/ISSUANCE OF A TCC PURSUANT TO SECTION 76 OF THE TAX CODE.
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> B.
> WHETHER OR NOT THE INCOME UPON WHICH THE SUBJECT UNUTILIZED CREDITABLE WITHHOLDING TAXES

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[11] Docket, pp. 371 to 372.
[12] Docket, pp. 395 to 406, at p. 397.
[13] Minutes of the hearing held on March 1, 2012, Docket, p. 407. Resolution dated March 1, 2012, Docket, p. 409.
[14] Resolution dated May 16, 2012, Docket, p. 450.
[15] Docket, pp. 421 to 447.
[16] Docket, p. 448.

WERE WITHHELD WERE DECLARED AS PART OF PETITIONER'S GROSS INCOME IN ITS ANNUAL INCOME TAX RETURN FOR TAXABLE YEAR ENDED SEPTEMBER 30, 2007.

C.

WHETHER OR NOT PETITIONER'S UNUTILIZED CREDITABLE WITHHOLDING TAXES FOR TAXABLE YEAR ENDED SEPTEMBER 30, 2007 IN THE AMOUNT OF PHP TEN MILLION TWO HUNDRED THIRTY TWO THOUSAND EIGHT HUNDRED NINETY EIGHT AND 33/100 PESOS (PHP10,232,898.33) ARE DULY SUBSTANTIATED BY DOCUMENTARY EVIDENCE.

D.

WHETHER OR NOT PETITIONER'S UNUTILIZED CREDITABLE WITHHOLDING TAXES FOR TAXABLE YEAR ENDED SEPTEMBER 30, 2007 WERE CARRIED OVER AND CLAIMED AS 'PRIOR YEAR'S EXCESS TAX CREDITS' DURING THE SUCCEEDING TAXABLE YEARS.

E.

WHETHER OR NOT PETITIONER IS ENTITLED TO ITS CLAIM FOR REFUND OR ISSUANCE OF TCC FOR ITS UNUTILIZED CREDITABLE WITHHOLDING TAXES FOR TAXABLE YEAR ENDED SEPTEMBER 30, 2007 IN THE AMOUNT OF PHP TEN MILLION TWO HUNDRED THIRTY TWO THOUSAND EIGHT HUNDRED NINETY EIGHT AND 33/100 PESOS (PHP10,232,898.33)."[17]

Petitioner's arguments

Petitioner argues that it incurred/paid creditable withholding taxes in taxable year 2007 in the total amount of ₱ 10,232,898.33; that it was unable to apply or utilize the said creditable withholding taxes during the same taxable year; and that such unutilized creditable withholding taxes are duly substantiated by documentary evidence and was not carried over and claimed as "prior year's excess tax credits" during the succeeding taxable years.

Furthermore, petitioner contends that the option to be issued a TCC was clearly indicated in the original and amended 2007 Annual ITR of petitioner, and

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[17] Docket, pp. 72 to 73.

therefore, makes the amount of ₱ 10,232,898.33 proper subject of the instant claim under Section 76 of the Tax Code.

Moreover, petitioner asserts that the income from which the excess creditable withholding taxes in the amount of ₱ 10,232,898.33 were imposed were declared as part of its gross income in its Annual ITR for taxable year 2007.

Lastly, petitioner emphasizes that it is entitled to the issuance of a TCC for its excess creditable withholding taxes for taxable year 2007 in the amount of ₱ 10,232,898.33.

Respondent's counter-arguments

In her Answer, respondent asserts that petitioner failed to demonstrate that the tax subject of the case at bar was erroneously or illegally collected; and that taxes paid and collected are presumed to have been made in accordance with law and implementing regulations, hence, not refundable.

Respondent points out that 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 such action. Thus, it is allegedly incumbent upon petitioner to show that it has complied with the provisions of Section 76 in relation to Sections 204 and 229 of the Tax Code, as amended, including Revenue Regulations No. 2-98, as amended.

Finally, respondent maintains that claims for refund are construed strictly against petitioner for the same partakes the nature of exemption from taxation, and as such, they are looked upon with disfavor.

THE COURT'S RULING

The central issue in this case is whether petitioner is entitled to the issuance of a TCC in the amount of ₱ 10,232,898.33, representing its purported unutilized creditable withholding taxes for fiscal year ended September 30, 2007.

Taxpayer's options under Section 76 of the NIRC of 1997 in case of excess income payment.

In instances where there is excess income tax paid, Section 76 of the National Internal Revenue Code (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 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."

Pursuant to the above-quoted provision, the corporate taxpayer's excess tax credits or overpaid income tax in a given taxable year may either be refunded (either in the form of cash or tax credit certificate) or carried over/applied to the succeeding taxable years. The carry-over option, however, once taken, actually or constructively, is irrevocable for that taxable period.[18]

A perusal of petitioner's Annual ITR for fiscal year ended September 30, 2007[19] shows that petitioner had total tax credits of ₱ 12,361,472.00, which consisted of the prior year's excess credits in the amount of ₱ 8,623,891.00 and creditable taxes withheld during the fiscal year ended September 30, 2007 in the amount of ₱ 10,232,898.00. Petitioner claims that the fiscal year 2007 income tax due in the amount of ₱ 6,495,317.00 was applied using a portion of its prior year's excess credits of ₱ 8,623,891.00, leaving the prior year's excess credits in the amount of ₱ 2,128,574.00 (₱ 8,623,891.00 less ₱ 6,495,317.00) and creditable taxes withheld during fiscal year 2007 in the amount of ₱ 10,232,898.00 or a total of ₱ 12,361,472.00 unutilized as of September 30, 2007, as shown below, which petitioner marked as "To be issued a Tax Credit Certificate"[20]:

Aggregate Income Tax Due	₱ 6,495,317.00
Less: Prior Year's Excess Credits	8,623,891.00
Balance of Prior Year's Excess Credits	₱ 2,128,574.00
Add: Creditable Taxes Withheld – FY 2007	**10,232,898.00**
Excess Creditable Taxes Withheld as of September 30, 2007	₱ 12,361,472.00

Inasmuch as only the prior year's excess credits of ₱ 2,128,574.00 were carried over to fiscal year 2008,[21] the creditable taxes withheld for fiscal year 2007 in the amount of ₱ 10,232,898.00 may be a proper subject of a claim for refund or issuance of a TCC, by virtue of Section 76 of the NIRC of 1997.

It must be emphasized, however, that it is still necessary for petitioner to

[18] *Philam Asset Management, Inc. vs. Commissioner of Internal Revenue*, G.R. Nos. 156637 and 162004, December 14, 2005.
[19] Exhibit "B".
[20] Exhibit "B", Line 31.
[21] Exhibits "C", "C-1", "C-2", "C-3", and "C-4".

show compliance with the conditions for the refund or issuance of TCC for its supposed unutilized creditable withholding taxes.

Conditions for the grant of a claim for refund of creditable withholding tax.

In accordance with settled jurisprudence and Section 2.58 of Revenue Regulations (RR) No. 2-98, as amended, the refund or issuance of TCC for unutilized creditable withholding taxes is dependent on the taxpayer's compliance with the following conditions:

1. That the claim for refund was filed within the two-year prescriptive period prescribed under Section 204(C), in relation to Section 229 of the NIRC of 1997, as amended;

2. That the fact of withholding is established by a copy of a statement duly issued by the payor (withholding agent) to the payee, showing the amount paid and the amount of tax withheld therefrom; and

3. That it is shown on the return of the recipient that the income payment received was declared as part of the gross income.[22]

Thus, this Court shall determine whether petitioner was able to satisfy the foregoing requirements.

As regards the first requisite, Sections 204(C) and 229 of the NIRC of 1997 provides as follows, to wit:

> "SEC. 204. *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.* - The Commissioner may -
>
> xxx xxx xxx

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[22] Section 2.58 of Revenue Regulations No. 2-98, as amended. See also *Citibank N.A. vs. Court of Appeals, et al.*, G.R. No. 107434, October 10, 1997; *ACCRA Investments Corporation vs. The Honorable Court of Appeals, et al.*, G.R. No. 96322, December 20, 1991.

> (C) Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two (2) years after the payment of the tax or penalty: *Provided, however*, That a return filed showing an overpayment shall be considered as a written claim for credit or refund."
>
> "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 clearly to have been erroneously paid."

In the case of *ACCRA Investments Corporation vs. The Honorable Court of Appeals, et al.*,[23] the Supreme Court said that the reckoning of the two-year prescriptive period for the filing of a claim for refund or tax credit of excess income tax paid/withheld provided in the above-quoted provisions should commence from the date of filing of the final adjustment return.

Records show that the claimed excess creditable withholding taxes involve fiscal year ended September 30, 2007, for which petitioner filed its corresponding

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[23] G.R. No. 96322, December 20, 1991.

Annual ITR on January 11, 2008.[24] Counting from the said date, petitioner had two years to file its claim for refund or issuance of TCC for fiscal year 2007, both in the administrative and judicial levels. Petitioner's administrative claim for refund was filed on March 4, 2009[25] and its judicial claim through the instant Petition for Review was filed on November 23, 2009. Clearly, both the administrative and the judicial claims for refund were filed well within the two-year prescriptive period.

Anent the second requisite, the Court-commissioned Independent Certified Public Accountant (CPA), Mr. Enrico T. Pizarro of PMC Consultants and Partners Co., presented two Reports dated August 26, 2010[26] and September 30, 2010[27]. In the Supplemental Report dated September 30, 2010, the Independent CPA summarized his findings as follows:[28]

PARTICULARS	EXHIBIT NO.	GROSS INCOME	TOTAL CREDITABLE WITHHOLDING TAXES
2007 Excess Tax Credits:			
a. Without Exceptions	I-2-1	₱ 264,823,708.18	₱ 10,520,710.41
b. Without Exceptions-digital signature	I-2-1.1	14,985.00	299.70
Total Without Exceptions		**₱ 264,838,693.18**	**₱ 10,521,010.11**
d. Exceptions Noted:			
1. Not Original	I-2-2-1	₱ 265,832.00	₱ 7,215.12
2. Stamp signature	I-2-2-2	6,053,083.50	121,061.67
3. No tax identification number	I-2-2-3	213,020.20	10,651.01
4. VAT withholding Taxes	I-2-2-4	485,269.64	20,419.19
Total With Exceptions		**₱ 7,017,205.34**	**₱ 159,346.99**
Total		**₱ 271,855,898.52**	**₱ 10,680,357.10**

The Independent CPA[29] noted that there is an unclaimed amount of

[24] Exhibit "B"; Par. 1.4, Admitted Facts, JSFI, Docket, pp. 69 to 70.
[25] Par. 1.5, Admitted Facts, JSFI, Docket, p. 70.
[26] Exhibit "L".
[27] Exhibit "N".
[28] Exhibit "N", p. 5.
[29] Exhibit "N", p. 6.

₱ 288,111.78 from comparison of the total amount of excess tax credit properly supported by creditable certificates against the total amount claim for tax credit, to wit:

PARTICULARS	EXHIBIT NO.	AMOUNT
2007 Excess Tax Credits Properly supported by Certificate of Creditable (BIR Form 2307 with no exceptions as noted above)	I-2-1 and I-2-1.1	₱ 10,521,010.11
2007 Excess Tax Credits which is subject for claim for refund		10,232,898.33
Unclaimed 2007 Excess Tax Credits		**₱ 288,111.78**

Even though the Independent CPA provided a schedule of creditable taxes withheld with no exceptions more than the amount of claim, the total amount with exceptions found by the Independent CPA in the amount of ₱ 159,346.99 should still be deducted from the claim, since the Court cannot ascertain whether this is not actually part thereof.

Furthermore, upon a careful examination of the said Reports and petitioner's supporting documents, the Court finds that the creditable withholding tax in the amount of ₱ 10,521,010.11, which was found by the Independent CPA to be without exceptions, includes the amount of ₱ 174,798.46, which should be disallowed for the following reasons, and as itemized below:

	Exhibit	PAYOR	Period	Gross Income	CWT
1. Supported by certificates dated outside the period of claim.					
467	I-2-1.58	GREEN ICON INC.	07/01/06 to 12/31/06	₱ 860,849.79	₱ 43,042.49
634	I-2-1.59	HERBALIFE INTERNATIONAL PHILS., INC.	01/01/06 to 12/31/06	150,651.50	3,013.03
638	I-2-1.63	INTERNATIONAL SOS (PHILS.) INC	01/01/06 to 12/31/06	189,160.00	3,783.20
641	I-2-1.71	MERCK, INC.	01/01/06 to 12/31/06	295,914.50	5,918.29
108	I-2-1.109	NEC PHILIPPINES INC	01/01/06 to 12/31/06	1,139,375.00	56,968.75
			Subtotal	***₱ 2,635,950.79***	***₱ 112,725.76***
2. Supported by certificates not in petitioner's name.					
195	I-2-1.240	CP KELCO PHILS. INC.	02/01/07 to 02/28/07	₱ 95,869.00	₱ 4,793.45
196	I-2-1.241	CP KELCO PHILS. INC.	03/01/07 to 03/31/07	287,097.80	14,354.89
213	I-2-1.284	JPMED ASIAN PACIFIC, INC.	02/01/07 to 02/28/07	18,000.00	900.00
594	I-2-1.106	MIZUHO CORPORATE BANK, LTD. - MANILA BRANCH	10/01/06 to 12/31/06	12,316.73	246.33
			Subtotal	***₱ 413,283.53***	***₱ 20,294.67***

3. Supported by certificates not signed by payor.					
52	I-2-1.245	DEPARTMENT OF FOREIGN AFFAIRS-RCO	01/01/07 TO 01/31/07	₱ 36,000.00	₱ 1,800.00
53	I-2-1.246	DEPARTMENT OF FOREIGN AFFAIRS-RCO	03/01/07 TO 03/31/07	36,000.00	1,800.00
199	I-2-1.245	DEPARTMENT OF FOREIGN AFFAIRS-RCO	01/01/07 TO 01/31/07	36,000.00	1,800.00
200	I-2-1.246	DEPARTMENT OF FOREIGN AFFAIRS-RCO	03/01/07 TO 03/31/07	36,000.00	1,800.00
201	I-2-1.247	DEPARTMENT OF FOREIGN AFFAIRS-RCO	02/01/07 TO 02/28/07	36,000.00	1,800.00
			Subtotal	***₱ 180,000.00***	***₱ 9,000.00***
4. Supported by certificate but pertains to other transaction.					
379	I-2-1.667	DEPARTMENT OF FOREIGN AFFAIRS-MINDANAO	09/01/07 TO 09/30/07	₱ 36,000.00	₱ 1,800.00
			Subtotal	***₱ 36,000.00***	***₱ 1,800.00***
5. Cannot ascertain the actual amount of tax withheld.					
694	I-2-1.279	HITACHI HIGH TECHNOLOGIES (S) PTE. LTD.	01/01/07 to 03/30/07	₱ 4,710.00	₱ 4,710.00
			Subtotal	***₱ 4,710.00***	***₱ 4,710.00***
6. Certificates not found in the records.					
710	I-2-1.337	MITSUI & CO. LTD.-MANILA BRANCH		₱ 223,390.00	₱ 4,467.80
892	I-2-1.172	TORRENT PHARMA PHILIPPINES, INC.		678,600.00	19,788.00
1	I-2-1.1.1	SUBIC POWER CORPORATION		14,985.00	299.70
591	I-2-1.247	DEPARTMENT OF FOREIGN AFFAIRS-RCO	02/01/07 TO 02/28/07	1,807.50	32.28
			Subtotal	***₱ 918,782.50***	***₱ 24,587.78***
7. Overclaimed creditable withholding taxes.					
590	I-2-1.866	QUINTILES PHILS. INC.	10/01/06 to 12/31/06		
		per claim		₱ 144,996.50	₱ 2,899.93
		per actual certificate		(60,984.00)	(1,219.68)
			Subtotal	***₱ 84,012.50***	***₱ 1,680.25***
			TOTAL	**₱ 4,272,739.32**	**₱ 174,798.46**

Therefore, petitioner was able to substantiate its compliance with the second requisite by proper withholding tax certificates only the creditable withholding taxes in the amount of ₱ 9,898,752.88 for fiscal year ended September 30, 2007, computed as follows:

Total Creditable Withholding Taxes Claim	₱ 10,232,898.33
Less: Disallowances	
Per ICPA	159,346.99
Per this Court's further verification	174,798.46
Valid Creditable Withholding Taxes	**₱ 9,898,752.88**

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This brings us to the third requirement as to whether or not the income upon which the subject taxes were withheld was included and reported by petitioner in its Income Tax Return for fiscal year ended September 30, 2007.

It is observed that in petitioner's Annual ITR for fiscal year 2007,[30] specifically under Schedule 1 thereof or the *"Schedule of Sales/Revenues/Receipts/Fees"*, which states taxable amounts pertaining to Sale of Goods/Properties in the amount of ₱ 21,848,938.00 and to Lease of Properties in the amount ₱ 315,537,200.00, 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 ₱ 10,232,898.33), 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)[31], Summary of Matching of Official Receipts against the Recorded Statement of Account[32], 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

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[30] Exhibit "B".
[31] Exhibit "I-3".
[32] Exhibit "I-4".

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.[33]

As cases filed before this Court are litigated *de novo*, party-litigants should prove **every minute aspect** of their cases.[34]

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, this 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 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.[35]

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

SO ORDERED.

ERLINDA P. UY
Associate Justice

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[33] Exhibits "B".
[34] *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.
[35] *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue*, G.R. No. 159490, February 18, 2008.

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

ESPERANZA FABON-VICTORINO
Associate Justice

CERTIFICATION

I hereby certify that this Decision was reached after due consultation among the members of this Division in accordance with the provisions of Section 13, Article VIII of the Constitution.

ERNESTO D. ACOSTA
Chairperson
Presiding Justice