REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

UNITED AIRLINES, INC.,
Petitioner,

C.T.A. EB NO. 227
(C.T.A. Case No. 6449)

Present:

-versus-

Acosta, P.J.
Castañeda, Jr.
Bautista,
Uy,
Casanova, and
Palanca-Enriquez, JJ.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
JUL 0 5 2007

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D E C I S I O N

BAUTISTA, J.:

The Case

Before the Court *En Banc* is a Petition for Review filed pursuant to Section 18 of Republic Act No. 1125, as amended by Republic Act No. 9282, assailing the Decision dated May 18, 2006 and the subsequent Resolution dated November 8, 2006, both issued by the First Division of the Court ("Court in Division") in C.T.A. Case No. 6449 entitled *"United Airlines, Inc. v. Commissioner of Internal Revenue."*

Antecedent Facts

Antecedent facts to set us on a proper perspective are those lucidly set out by the Court in Division:

> "Petitioner, a foreign corporation organized and existing under the laws of the State of Delaware, U.S.A., is engaged in the business of international air transportation.
>
> Pursuant to Securities and Exchange Commission ('SEC') Registration No. 1094 dated June 7, 1984, petitioner was licensed to establish and operate a branch in the Philippines and to 'open an office as off-line carrier.' However, on June 2, 1986, petitioner's SEC License was amended to allow petitioner to act as 'an on-line carrier of persons, property and mail between the United States and the Philippines.'
>
> In a letter dated January 23, 1998, petitioner informed the Philippine Civil Aeronautics Board ('CAB') that it was discontinuing its passenger flights to and from Manila after February 20, 1998, but would continue its thrice weekly freighter (cargo) flights to Osaka and the U.S. as previously approved by the CAB.
>
> On April 1, 1998, petitioner appointed Aerotel Ltd., Corporation as its General Sales Agent ('GSA') in the Philippines for both passenger and cargo operations. Aerotel is an independent GSA acting as such for several international airline companies. As GSA, Aerotel's functions include solicitation, promotion and sale of petitioner's air passenger and cargo transportation services. Its responsibilities likewise include filing all necessary tax returns and paying the tax thereon on behalf of petitioner. Aerotel is duly authorized by the CAB to act as a GSA on behalf of petitioner.
>
> Although it allegedly stopped its passenger and cargo flights to and from the Philippines effective February 21, 1998 and January 31, 2001, respectively, petitioner, through Aerotel, allegedly continued to pay 1.5% income tax on revenues from tickets/passage documents sold in the Philippines covering passenger/cargo flights originating outside of the Philippines.
>
> For taxable year 1999, petitioner through Aerotel, duly filed its Quarterly Income Tax Returns within the legally prescribed periods. In its 1999 Annual Income Tax Return filed on April 17, 2000, petitioner declared Gross Philippine Billings ('GPB') in the amount of P1,075,582,677.00 with the corresponding 1.5% GPB tax due of P16,133,740.00 which was offset against the creditable taxes withheld of P7,811.00. The remaining amount of P16,125,929.00 was paid by petitioner on a quarterly basis.
>
> Pursuant to Section 28(A)(3)(a) of the National Internal Revenue Code ('NIRC') of 1997 in relation to Article 4(7) of the Convention between the Government of the Republic of the Philippines and the Government of the United

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States of America with respect to Income Taxes (RP-US Tax Treaty), petitioner filed with the Bureau of Internal Revenue an administrative claim for refund on April 12, 2002, in the amount of P15,916,680.69 pertaining to income taxes paid on gross passenger and cargo revenues for the taxable years 1999 to 2001. The said claim for refund included the amount of P5,028,813.23 allegedly representing income taxes paid by petitioner in 1999 on passenger revenue from tickets sold in the Philippines, the uplifts of which did not originate in the Philippines, detailed as follows:

Period Covered	Passenger Revenue	Income Tax Paid on Gross Passenger Revenue (at 1.5%)
1st quarter 1999	P 65,536,459.00	P 983,046.90
2nd quarter 1999	119,727,482.73	1,795,912.24
3rd quarter 1999	85,836,895.44	1,287,553.43
4th quarter 1999	64,153,377.15	962,300.66
TOTAL	**P335,254,214.32**	**P5,028,813.23**

Not wanting to be barred by prescription, petitioner elevated its claim to this Court through this instant Petition for Review filed on April 15, 2002.

On May 3, 2002, respondent filed his Answer raising the following Special and Affirmative Defenses:

> 6. Petitioner's alleged claim for refund is subject to administrative routine investigation/examination by the respondent's Bureau;
>
> 7. Petitioner failed to substantiate its claim for refund/tax credit of the alleged income tax paid for the period covering the 1st, 2nd, 3rd and 4th quarters of 1999;
>
> 8. Assuming without admitting that a foreign law is applicable in the instant case, the same must be proven as a fact;
>
> 9. Taxes paid and collected by the Bureau of Internal Revenue are presumed to have been paid in accordance with law, and the burden of proof to prove otherwise is upon the petitioner;
>
> 10. Assuming but without admitting the fact that petitioner is entitled to tax refund, it is incumbent upon the latter to show that it has complied with the provisions under Section 204 (C) and 230 of the Tax Code. Otherwise, its failure to prove the same is fatal to the claim for refund;
>
> 11. Claims for refund are construed strictly against the claimant for 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 disfavor *(Western Monolco Corp vs. Commissioner of Internal Revenue 124 SCRA 1211)*; and
>
> 12. Petitioner alleges in paragraph 7 of its petition for review *[sic]* that "On 31 January 2001, petitioner discontinued all cargo flights to and from the Philippines." It is incumbent upon the petitioner to prove that the income generated during the period in issue was purely from the sale of passage documents in the Philippines covering cargo flights outside the Philippines.

> With respondent and petitioners' filing of Memoranda on May 18, 2005 and May 20, 2005, respectively, this case was submitted for decision on July 18, 2005."[1] *(Citations omitted)*

The Ruling of the Court in Division

On May 18, 2006, the Court in Division rendered its Decision denying petitioner's claim for refund of alleged erroneously paid income taxes covering taxable year 1999 in the total amount of ₱5,028,813.23.

In arriving at its Decision, the Court in Division made the following findings:

1. Petitioner paid the income tax of ₱5,028,813.23 on passenger revenue from tickets sold in the Philippines covering the 1st, 2nd, 3rd and 4th quarters of 1999 which is the subject of the claim of refund;
2. Petitioner, being an off-line international carrier, as authorized to operate by the Civil Aeronautics Board ("CAB") and having no passenger flights originating from the Philippines in a continuous and uninterrupted flight in 1999, cannot be taxed under Section 28(A)(3)(a) of the National Internal Revenue Code ("NIRC") of 1997 on its passenger revenue from tickets sold in the Philippines, covering flights originating outside the Philippines; and
3. Petitioner is not entitled to refund considering petitioner's underpayment of ₱31,431,171.09 representing the 1.5% Gross Philippine Billings ("GPB") tax on cargo revenue for the year 1999 which is significantly higher than the 1.5% GPB tax of ₱5,028,813.23 on passenger revenue paid by petitioner. Petitioner erroneously deducted from cargo revenue, the commissions and other incentives paid to its agent, which amounted to ₱141,786,993.85 and ₱1,982,068,006.26, respectively. The gross revenue referred to under Section

[1] Assailed Decision, pages 1 to 4.

28(A)(3)(a) of the 1997 NIRC is total revenue before any deduction of commissions and other incentives.

The *fallo* of the aforementioned Decision reads as follows:

> "**WHEREFORE**, premises considered, the Petition for Review is hereby **DENIED**.
>
> **SO ORDERED.**"

Unperturbed, petitioner moved for a reconsideration of the said Decision which was denied for lack of merit by the Court in Division in its Resolution promulgated on November 8, 2006.

Hence, this recourse.

The Issues

In this Petition for Review, petitioner raises the following grounds:

I. THE FIRST DIVISION OF THE HONORABLE COURT ERRED IN HOLDING THAT PETITIONER IS NOT ENTITLED TO REFUND OF INCOME TAX PAID ON PASSENGER REVENUE FOR THE TAXABLE YEAR 1999 CONSIDERING PETITIONER'S ALLEGED UNDERPAYMENT OF GROSS PHILIPPINE BILLINGS TAX ON CARGO REVENUE FOR THE SAME TAXABLE YEAR. WELL-SETTLED IS THE RULE THAT OFFSETTING OF TAX LIABILITIES IS NOT ALLOWED;

II. ASSUMING *ARGUENDO* THAT PETITIONER'S CLAIM FOR REFUND CAN BE OFFSET AGAINST ITS TAX LIABILITY, THE RECORDS DO NOT SHOW THAT PETITIONER HAS BEEN ASSESSED BY THE BUREAU OF INTERNAL REVENUE FOR ANY DEFICIENCY GROSS PHILIPPINE BILLINGS TAX;

III. THE FIRST DIVISION OF THE HONORABLE COURT HAS NO AUTHORITY UNDER THE LAW TO MAKE ANY ASSESSMENTS FOR DEFICIENCY TAXES; AND

IV. ANY ASSESSMENT AGAINST PETITIONER FOR DEFICIENCY INCOME TAX FOR THE TAXABLE YEAR 1999 IS ALREADY BARRED BY PRESCRIPTION.

Petitioner's Arguments

Petitioner contends that its claim for refund of erroneously paid GPB tax on off-line passenger revenue cannot be denied based on the finding of the Court in Division that petitioner had allegedly underpaid the GPB tax on cargo revenue by ₱31,431,171.09, which underpayment is allegedly higher than ₱5,028,813.23, the amount of the instant claim. The denial of the instant claim for refund on such ground amounts to an offsetting of petitioner's claim for refund of erroneously paid GPB tax against an alleged tax liability. It is settled that taxes cannot be the subject of compensation because the government and taxpayers are not mutually creditors and debtors of each other and a claim for taxes is not such a debt, demand, contract or judgment as is allowed to be set-off.

Petitioner also avers that the Court in Division effectively assessed petitioner for deficiency GPB tax on cargo revenues by denying the claim for refund based on a finding that petitioner has allegedly underpaid the GPB tax on its cargo revenues. The Court has no authority under the law to make any assessments for deficiency taxes. Such authority is vested by law exclusively on the respondent.

Lastly, petitioner posits that even the respondent cannot assess petitioner for deficiency GPB tax on cargo revenues for taxable year 1999 because the prescriptive period within which an assessment can be legally made has already prescribed. Under Section 203 of the 1997 NIRC, internal revenue taxes such as the GPB tax, may only be assessed within three (3) years after the last day prescribed by law for the filing of the return, or if the return was filed beyond the period prescribed by law, within 3 years from the day the return was filed. Petitioner filed its Annual Income Tax Return for 1999 on April 17, 2000. Thus, the 3-year prescriptive period within which an assessment may be made has already prescribed on April 17, 2003.

Respondent's Counter-arguments

Respondent, in his Memorandum, submits that as correctly ruled by the Court in Division in its assailed Resolution, there is no set-off to speak of in this case. To set-off would imply that the government and the taxpayer are mutually creditors and debtors of each other. However, in the instant case, it must be stressed that although it was found that petitioner is indeed not liable for the GPB tax on its passenger revenues, petitioner is liable for the GPB tax on its cargo revenue.

Respondent also maintains that the GPB tax under Section 28(A)(3)(a) of the NIRC applies to gross revenues derived by international carriers from their carriage of cargoes originating from the Philippines. Petitioner's tax deficiency arose from its computation of gross cargo revenues for the taxable year 1999 as it had erroneously deducted the commissions and other incentives therefrom. The gross revenue referred to under Section 28(A)(3)(a) of the NIRC is total revenue before any deduction of commissions and other incentives. Thus, since petitioner is not entitled to its claim, there arises no obligation on the part of respondent to refund. In effect, there is no mutual creditor and debtor relationship between petitioner and respondent.

Lastly, respondent asserts that the Court in Division did not make any assessment for deficiency taxes. The Court in Division made it clear that what it did was only determine whether petitioner, under the set of undisputed facts, is entitled to its claim for refund. Consequently, the Court in Division had to determine the nature and character of petitioner's business and the taxes which it had paid, and by necessity, to determine whether such taxes which it had paid were legally due from petitioner. This is an inherent function of the Court. It is thus clear that no reversible error was committed by the Court in Division when it rendered the assailed Decision.

The Ruling of the Court En Banc

The petition is devoid of merit.

An examination of the instant Petition for Review revealed that the issues raised by petitioner have been discussed at length and directly ruled upon in the assailed Decision and in the subsequent Resolution.

It is undisputed that petitioner, being an off-line international carrier and having no passenger flights originating from the Philippines in a continuous and uninterrupted flight in taxable year 1999, cannot be held liable for the GPB tax imposed under Section 28(A)(3)(a) of the 1997 NIRC, on its passenger revenues from tickets sold in the Philippines, covering flights originating outside the Philippines.

The exact language of Section 28(A)(3)(a) is as follows:

> **"Sec. 28. Rates of Income Tax on Foreign Corporations.---**
>
> **(A) Tax on Resident Foreign Corporations.---**
>
> (1) xxx
> (2) xxx
> **(3) International Carrier.---** An international carrier doing business in the Philippines shall pay a tax of two and one-half percent (2 ½%) on its ***'Gross Philippine Billings'*** as defined hereunder:
>
> **(a) International Air Carrier**.--- ***'Gross Philippine Billings'*** refers to the **amount of gross revenue derived from carriage of persons, excess baggage, cargo and mail originating from the Philippines in a continuous and uninterrupted flight, irrespective of the place of sale or issue and the place of payment of the ticket or passage document**, Provided, That tickets revalidated, exchanged and/or indorsed to another international airline form part of the Gross Philippine Billings if the passenger boards a plane in a port or point in the Philippines; Provided, further, That for a flight which originates from the Philippines, but transshipment of passengers takes place at any port outside the Philippines on another airline, only the aliquot portion of the cost of the ticket corresponding to the leg flown from the Philippines to the point of transshipment shall form part of Gross Philippine Billings." *(Emphasis supplied)*

However, based on the afore-quoted legal provision and as correctly determined by the Court in Division, petitioner is subject to the GPB tax on its cargo flights to and from the Philippines in taxable year 1999. On petitioner's cargo revenues, We quote with approval the Court in Division's findings, *viz*:

"It must be stressed that the 2.5% income tax (reduced to 1.5% pursuant to the RP-US Tax Treaty) imposed on Gross Philippine Billings under Section 28(A)(3)(a) of the NIRC of 1997, applies to gross revenues derived by an international carrier not only from the carriage of persons but also from the carriage of cargoes originating from the Philippines. **Petitioner had cargo flights to and from the Philippines in 1999. In fact, petitioner paid the amount of P11,104,927.00 as 1.5% GPB tax on its cargo revenues amounting to P740,328,462.00. But in computing for the cargo revenue amount of P740,328,462.00, petitioner erroneously deducted the commissions and other incentives it paid to its agent.** Based on the net cargo revenue amount of P711,816,490.07 which was verified to be duly supported by airway bills by the Court commissioned auditing firm, the commissions and other incentives deducted by petitioner amounted to P141,786,993.85 and P1,982,068,006.26, respectively, as follows:

	PETITIONER'S CARGO REVENUE PER CPA REPORT			
1999	GROSS CARGO REVENUE	COMMISSION	OTHER INCENTIVES	NET CARGO REVENUE
January	P 37,618,708.64	P 1,880,935.62	P 16,035,579.00	P 19,702,193.63
February	58,814,456.54	2,940,722.87	24,917,017.94	30,956,715.73
March	71,455,577.46	3,572,779.17	30,425,132.84	37,454,519.20
April	75,984,425.37	3,799,221.16	32,708,474.85	39,476,729.36
May	90,783,764.68	4,539,188.23	38,008,328.67	48,215,955.09
June	86,887,791.21	4,344,389.47	36,171,268.51	46,372,133.23
July	119,977,308.72	5,998,865.80	46,376,556.79	67,600,716.54
August	117,332,343.70	5,866,616.71	41,687,258.66	69,778,467.54
September	159,029,948.28	7,951,497.22	57,882,967.88	93,195,482.80
October	1,085,763,498.96	54,288,174.89	936,264,355.01	95,210,969.06
November	160,092,487.66	8,004,624.65	55,208,537.09	96,879,325.93
December	771,999,561.97	38,599,978.06	666,382,529.02	66,973,281.54
Total	P2,835,739,873.19	P141,786,993.85	P1,982,068,006.26	P711,816,489.65 [2]

As correctly pointed out by respondent, the gross revenue referred to under Section 28(A)(3)(a) of the NIRC of 1997 is total revenue before any deduction of commissions and other incentives. In the case entitled ***EVA AIRWAYS vs. COMMISSIONER OF INTERNAL REVENUE, CTA CASE NO. 6708, AUGUST 24, 2005***, this Court held thus:

Nowhere in the above-quoted law can it be found that discounts are considered deductions from Gross Philippine Billings. On the contrary, the Gross Philippine Billings represent the total amount of gross revenue derived from passage of persons, excess baggage, cargo and/or mail. Therefore, Gross Philippine Billings are based on the gross revenue without consideration of any deduction. Consequently, petitioner should

[2] should be P711,884,873.06.

have included the discounts as part of its Gross Philippine Billings for purposes of computing its 2.5% final income tax liability.

In a most recent decision of the Supreme Court entitled ***Commissioner of Internal Revenue vs. Bank of Commerce, G.R. No. 149636, June 08, 2005***, it categorically defined the term "gross", stressing that:

> "The word 'gross' must be used in its plain and ordinary meaning. It is defined as 'whole, entire, total, without deduction'. A common definition is 'without deduction'. 'Gross' is also defined as 'taking in the whole; having no deduction or abatement; whole, total as opposed to a sum consisting of separate and specified parts'. Gross is the antithesis of net. . xxx"

It is a settled rule in statutory construction that when the language of the law is clear and unequivocal, the law must be taken to mean exactly what it says (***Asian Transmission Corporation vs. Court of Appeals, March 15, 2004; Marin vs. Nacianceno, 19 Phil. 238 [1911]***). Construction and interpretation come only after it has been demonstrated that application is impossible or inadequate without them (***People vs. Mapa, 20 SCRA 1164 [1967]***).

Moreover, in ***Qantas Airways Limited vs. The Commissioner of Internal Revenue, CTA Case No. 4459, June 23, 1993***, which was affirmed by the Court of Appeals in ***CA-G.R. SP No. 32109, June 7, 1995***, this Court had the opportunity to expound on the meaning of "Gross Philippine Billings", elucidating:

> "Petitioner's contention that 'the amount actually received by the petitioner as consideration for its ticket is its revenue which should be subject to the 2-1/2% GPB tax and not the face value of the ticket' (see Petitioner's Memorandum, p. 7) is unacceptable. The law is explicit on imposing the 2-1/2% GPB tax on 'gross revenue realized from uplifts of passengers . . .'. By 'gross revenue' it means 'whole, entire, total' (Appeal of Braun, 105 Pa. 415, 41'5) 'without deductions. . . .' (First Trust Co. of St. Paul v. Commonwealth Co., C.C.A.S.D., 98 F. 2d 27, 31). It is synonymous with 'gross income'. The Tax Code defines 'gross income' thus:
>
> xxx xxx xxx
>
> Such contention is based neither in law nor in jurisprudence. It is erroneous because GPB tax is considered a tax on gross income (Commissioner of Internal Revenue vs. British Overseas Airways Corporation, April 30, 1987, 149 SCRA 395) meaning the income based on the price of the ticket on its face value, whole, entire, total and without deductions. In the sale of shares of stocks, value by itself is verily not an income, as correctly put by the petitioner since the market sales price is beyond the control of the seller. It is erratic and unpredictable. But 'value by itself is not an income' is not absolute and was wrongfully compared with the sales of tickets since the face value of the ticket can be realized had the petitioner chosen to. But it did not. Petitioner could have sold the tickets using its own resources rather than give discounts to travel agencies. But it did not. Instead, it opted to avail of the services of travel agencies as a marketing strategy thereby giving them discounts. The respondent cannot question the generosity of the petitioner to these travel agencies. However, it was absolutely right for the respondent to protect the interest of the government in seeing to it that its share, by way of taxes on the

given discounts, would not be given away but should be shouldered by the petitioner.

The petitioner, when it gave away discounts to travel agencies, was also giving away the share of the government by way of taxes on the said discounts. If ever the petitioner would like to show magnanimity of resources to its marketing arm (i.e., the travel agencies), it should not be at the expense of the government." (Underscoring ours)

Petitioner's contention that Revenue Regulations No. 15-02 supports its stand on the matter is untenable. While it is true that the respondent has the power of subordinate legislation effected by its issuances of implementing rules and regulations, such as Revenue Regulations No. 15-02, said power is not without any limitation. The administrative regulation must not be in sharp conflict with the governing statute it seeks to implement (Nestle Philippines, Inc. vs. Court of Appeals, et al., 203 SCRA 504 [1991]). Under Revenue Regulations No. 15-02, the term "gross revenue" was given a new meaning. For income on passengers, it was interpreted to mean as actual amount derived for transportation services . . . It is computed based on the average net fare of all the tax coupons of plane tickets issued for the month. For income on cargoes, it is the amount appearing on the airway bill after deducting the amount of discounts granted. (Emphasis Ours)

Therefore, when the law speaks of gross revenue, the term "gross" contemplated therein only means income based on the price of the ticket on its face value, whole, entire, total and without deductions.

Accordingly, petitioner's reported gross cargo revenues should have been P2,835,739,873.19 with the related 1.5% GPB tax of P42,536,098.09 instead of the net cargo revenue amount of P740,328,462.00 with the related 1.5% GPB tax of P11,104,927.00. In other words, **petitioner's underpayment of P31,431,171.09 GPB tax on cargo revenues is a lot higher than the GPB tax of P5,028,813.23 on passenger revenues paid by petitioner per return, subject of the instant petition.** Considering so, there is no excess or erroneous payment of GPB tax under Section 28(A)(3)(a) of the NIRC of 1997 that may be proper subject of a claim for refund under Section 229 of the same Code. Well-entrenched is the legal precept that a claim for refund is in the nature of a claim for exemption. As such, they are regarded as a derogation of sovereign authority and is therefore to be construed *strictissimi juris* against the taxpayer."[3] *(Emphasis supplied)*

It is an elementary rule in taxation that the factual findings of the Court of Tax Appeals, when supported by substantial evidence, will not be reversed on appeal unless it is clear that the said Court has committed gross error in the appreciation of facts.[4] In the instant case, We find that the assailed Decision of the Court in Division did not deviate from this rule.

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[3] Pages 10 to 13, Assailed Decision, C.T.A. Case No. 6449.

[4] Commissioner of Internal Revenue v. Court of Appeals, Court of Tax Appeals and Young Men's Christian Association of the Philippines, Inc., 298 SCRA 83 (1998).

Moreover, We cannot give credence to petitioner's argument that the Court in Division made an assessment against it. As aptly stated by the Court in Division in its assailed Resolution, what the Court did was only to determine whether the petitioner, under the facts as duly established, is entitled to its claimed refund. In the process, the Court in Division had to determine the nature and character of petitioner and the taxes which it had paid, and by necessity, to determine whether such taxes paid are correct. Indubitably, this is an inherent function of this Court. The Court in Division did not issue an assessment but only limited its findings on the merit of the claim for refund.

Furthermore, We find no merit in petitioner's contention that there was an off-setting of tax liabilities. The rule is that internal revenue taxes cannot be the subject of set-off or compensation[5] for the reason that the government and taxpayer are not mutually "creditors and debtors of each other" under Article 1278 of the New Civil Code, as a claim for taxes is not such a debt, demand, contract or judgment which is allowed to be set-off.[6] In the instances where the Supreme Court allowed legal compensation or set-off of taxes, such taxes were already due and demandable, thus compensation under Article 1279 of the Civil Code, took place by operation of law.

It bears emphasis that in the case at bar, while it was found that petitioner cannot be taxed for GPB tax on its off-line passenger flights, petitioner is liable for GPB tax on its cargo flights to and from the Philippines in 1999. As aptly found by the Court in Division, petitioner's underpayment arose from its computation of gross cargo revenues for the taxable year 1999 as it had erroneously deducted its agent's commissions and other incentives therefrom. Hence, since petitioner is not entitled to

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[5] Republic of the Philippines v. Mambulao Lumber Company, Et.Al., 4 SCRA 622 (1962).
[6] In the Matter of the Testate Estate of Patricio Ponferrada, deceased, Joaquin Cordero, Administrator, v. Jose Gonda, 18 SCRA 331 (1966).

its claim, there arises no obligation on the part of the respondent to refund. In effect, there is no mutual creditor and debtor relationship between the parties.

It is also apt to add that it has always been the rule that those seeking tax refunds or credits bear the burden of proving the bases of their claims. This is because tax refunds are in the nature of tax exemptions, the statutes of which are construed *strictissimi juris* against the taxpayer and liberally in favor of the taxing authority. Taxes are the lifeblood of the nation, therefore statutes that allow exemptions are construed strictly against the grantee and liberally in favor of the government.[7] Nothing that petitioner has raised justifies a tax refund.

In sum, We find no cogent reason to reverse the assailed Decision promulgated on May 18, 2006 and the Resolution dated November 8, 2006.

WHEREFORE, the instant petition is hereby **DISMISSED.** Accordingly, the assailed Decision and Resolution are hereby **AFFIRMED**.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

[7] Philippine Phosphate Fertilizer Corporation v. Commissioner of Internal Revenue, 461 SCRA 369 (2005).

(Inhibited)
JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

OLGA PALANCA-ENRIQUEZ
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 this Court.

ERNESTO D. ACOSTA
Presiding Justice