REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

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COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus -

AXIA POWER HOLDINGS PHILIPPINES CORPORATION,
Respondent.

CTA EB No. 1135
(CTA Case No. 8464)

Present:

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

Promulgated:
SEP 21 2015

x - x

DECISION

UY, ***J.:***

This Petition for Review[1] filed on March 21, 2014, seeks the setting aside of the Decision dated November 12, 2013[2] and the Resolution dated February 14, 2014[3], both promulgated by the Second Division of this Court (Court in Division) in CTA Case No. 8464, entitled *"Axia Power Holdings Philippines Corporation, Petitioner, versus Commissioner of Internal Revenue, Respondent,"* the dispositive portions of which respectively read:

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[1] EB Docket, pp. 5 to 16.
[2] EB Docket, pp. 20 to 30; Penned by Associate Justice Caesar A. Casanova, and concurred in by Associate Justice Juanito C. Castañeda, Jr. and Associate Justice Amelia R. Cotangco-Manalastas.
[3] EB Docket, pp. 31 to 33; *supra.*

Decision dated November 12, 2013:

"**WHEREFORE,** premises considered, the instant Petition for Review is hereby **GRANTED.** Accordingly, respondent is hereby **ORDERED** to **REFUND** or to **ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner the amount of P11,106,080.00, representing petitioner's excess creditable withholding taxes for taxable year 2009.

SO ORDERED."

Resolution dated February 14, 2014:

"**WHEREFORE,** respondent's **'Motion for Reconsideration'** is **DENIED** for lack of merit.

SO ORDERED."

THE FACTS

Petitioner is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR), vested by law with the power and authority to act and decide upon applications for refund or tax credit of excess internal revenue tax payments, and in general to enforce the provisions of the 1997 Tax Code, as amended and other laws.

Respondent is a corporation duly organized and existing under the laws of the Philippines, with principal office located at Unit 700-C, 20th Drive Corporate Center, 20th Drive McKinley Business Park, Fort Bonifacio, Taguig City. It is a duly registered taxpayer under the Certificate of Registration No. 9RC0000291524 dated April 4, 2005.

On December 22, 2009, respondent, as the surviving corporation, and Marubeni Pacific Energy Holdings Corporation, Marubeni Pacific II Energy Holdings Corporation, and Marubeni Energy Services Corporation (MESC), as the absorbed corporations, entered into an Articles of Merger and Plan of Merger, which was approved by the Securities and Exchange Commission (SEC) on March 29, 2010.

MESC is a duly registered taxpayer under the Certificate of Registration No. 9RC0000048978 dated May 8, 2000. It filed its income tax returns for taxable year 2009, as follows:

	Date Filed
1st Quarterly Income Tax Return	May 13, 2009
Amended 1st Quarterly Income Tax Return	November 20, 2009
2nd Quarterly Income Tax Return	August 13, 2009
Amended 2nd Quarterly Income Tax Return	November 20, 2009
3rd Quarterly Income Tax Return	November 19, 2009
Annual Income Tax Return	April 13, 2010

MESC sent the Letter dated April 13, 2010 to petitioner requesting for the cancellation of its TIN and the issuance of a Tax Clearance Certificate (TCC/TCL) in its favor. Attached to the said letter is MESC's Application for Tax Credits/Refunds.

Consequently, the BIR (Revenue District Office [RDO] No. 47 – East Makati) issued a Letter of Authority dated May 24, 2010, authorizing RO Ferdinand Apalisoc and RO Myrabel dela Cruz/GS Jane C. Denosta to examine responent's books of accounts and other accounting records in connection with the latter's closure of business and claim for refund.

Pursuant to the First Request for Presentation of Records issued by the BIR dated June 18, 2010, MESC transmitted its pertinent documents to BIR (RDO No. 47) on August 26, 2010.

Due to inaction of the petitioner, respondent, being the surviving entity after the merger, filed a Petition for Review before the Court in Division on April 12, 2012. The case was docketed as CTA Case No. 8464.

Petitioner filed her Answer on May 31, 2012, interposing, among others, certain special and affirmative defenses, to wit: that petitioner's claim for refund or issuance of a tax credit certificate in the amount of P11,106,080.00, as alleged unutilized creditable withholding taxes for calendar year ending December 31, 2009 was not fully substantiated by proper documents, such as sales invoices, official receipts and others; and that it is incumbent upon herein respondent, Axia Power Holdings Phils. Corporation to show that it has complied with the provision of Section 204 (C) in relation to Section 229 of the 1997 NIRC, as amended, for in an action for refund, the burden is upon the taxpayer to prove that he is entitled thereto, and failure to discharge the burden is fatal to the claim of the taxpayer.

On June 28, 2012 and July 2, 2012, the Court in Division received petitioner's Pre-Trial Brief and respondent's Pre-Trial Brief, respectively. Thereafter, the parties submitted their Joint Stipulation of Facts and Issues on July 30, 2012, which was approved by the Court in Division in the Resolution dated August 1, 2012.

During trial, respondent presented its sole witness, Ivy P. Acosta, and submitted its Formal Offer of Documentary Evidence on January 17, 2013.

At the hearing held on May 15, 2013, petitioner's counsel manifested that they are submitting the case for decision, considering that there is no report submitted to their office. The parties were given thirty (30) days therefrom within which to file their respective memorandum. In compliance therewith, respondent filed its Memorandum on July 9, 2013, while petitioner's Memorandum was submitted on July 22, 2013. Thereafter the case was submitted for decision on July 30, 2013.

In the assailed Decision,[4] the Court in Division granted respondent's Petition for Review, ordering petitioner to refund or to issue a tax credit certificate in favor of respondent in the amount of ₱11,106,080.00, supposedly representing respondent's excess creditable withholding taxes for taxable year 2009.

Aggrieved, petitioner filed her "Motion for Reconsideration" through registered mail on November 28, 2013,[5] to which respondent filed its Comment on December 27, 2013,[6] in compliance with the Court in Division's Resolution dated December 5, 2013.[7]

In the assailed Resolution dated February 14, 2014,[8] the said Motion for Reconsideration was denied by the Court in Division for lack of merit.

Undaunted, petitioner filed before the Court *En Banc, a Motion for Extension of Time to File Petition for Review*[9] through registered mail on March 6, 2014. The Court *En Banc* granted petitioner a final

[4] EB Docket, pp. 20 to 30; and Division Docket, (CTA Case No. 8464), pp. 538 to 548.
[5] Division Docket, (CTA Case No. 8464), pp. 549 to 557.
[6] Division Docket, (CTA Case No. 8464), pp. 561 to 567.
[7] Division Docket, (CTA Case No. 8464), p. 560.
[8] EB Docket, pp. 31 to 33; Division Docket, (CTA Case No. 8464), pp. 571 to 573.
[9] EB Docket, pp. 1 to 3.

and non-extendible period of fifteen (15) days from March 6, 2014 or until March 21, 2014, within which to file her Petition for Review.[10]

Petitioner filed the instant Petition for Review[11] before the Court *En Banc* through registered mail on March 21, 2014. Petitioner prays for the reconsideration and setting aside of the said Decision dated November 12, 2013 and Resolution dated February 14, 2014; and that a new one be rendered, denying respondent's claim for refund or issuance of tax credit in the amount of ₱11,106,080.00, allegedly representing unutilized creditable withholding taxes for taxable year 2009.

In the Resolution dated June 4, 2014,[12] petitioner was directed to submit an Affidavit of Service as proof of proper service by registered mail, within ten (10) days from receipt thereof. Thereafter, petitioner filed her Compliance[13] through registered mail on June 26, 2014, which the Court *En Banc* took note of on July 7, 2014.[14]

Without necessarily giving due course to the Petition for Review, respondent was ordered by the Court *En Banc* to file its Comment thereon.[15] Accordingly, respondent filed its Comment through registered mail on September 12, 2014.[16] However, considering that the Comment filed was found to be insufficient in number of copies as required under A.M. 11-9-4-SC, the Court *En Banc* ordered respondent to submit an additional eight (8) copies of the said Comment, within ten (10) days from notice.[17] Thereafter, respondent filed its Manifestation on September 24, 2014.[18] On September 30, 2014, the Court *En Banc* took note of the filing thereof.[19]

The instant Petition for Review was submitted for decision on October 23, 2014.[20]

Hence, this Decision.

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[10] Minute Resolution dated March 20, 2014, EB Docket, p. 4.
[11] EB Docket, pp. 5 to 16.
[12] EB Docket, pp. 45 to 47.
[13] EB Docket, pp. 48 to 50.
[14] Minute Resolution dated July 7, 2014, EB Docket, p. 52.
[15] Resolution dated August 7, 2014, EB Docket, pp. 54 to 55.
[16] EB Docket, pp. 57 to 65.
[17] EB Docket, pp. 67 to 68.
[18] EB Docket, pp. 69 to 80.
[19] EB Docket, p. 81.
[20] EB Docket, pp. 83 to 84.

THE ISSUES

Petitioner raises the following issues for resolution, to wit:

"1. Whether or not the presentation of succeeding quarterly income tax returns/annual income tax return is indispensable to respondent's claim for refund of its excess/unutilized creditable withholding taxes (CWT) for taxable year 2009 in order to prove that it did not utilize or carry-over its claimed excess CWT to the succeeding quarters/year; and

2. Whether or not respondent is entitled to the subject claim for refund in light of respondent's non-compliance with the requisite *(that the income upon which taxes were withheld was declared as part of respondent's gross income in its tax return for taxable year 2009)* in the claim for refund or issuance of TCC for unutilized CWT inasmuch as there was no entry in the Creditable Tax Withheld column of Schedule 1 of respondent's 2009 annual income tax return."[21]

Petitioner's Arguments:

Petitioner contends that the non-presentation of respondent's quarterly income tax returns/annual income tax return for 2010 is fatal to its claim for refund, inasmuch as respondent failed to prove with reasonable certainty that its excess tax credits for 2009 were not utilized or carried-over and applied against its quarterly/annual income tax liabilities, as provided for under Section 76 of the 1997 Tax Code.

According to petitioner, as construed from the provisions of Section 76 of the 1997 Tax Code, the fact that there is no utilization or carry-over in the succeeding taxable quarters/years of the excess and unutilized creditable withholding taxes is a condition *sine qua non* for the taxpayer to qualify for a tax refund.

Furthermore, petitioner argues that the absence of any entry in the *"Creditable Tax Withheld"* column in respondent's 2009 income tax return would mean that no part of the gross income reported therein were ever subjected to creditable withholding tax; thus, the

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[21] EB Docket, p. 8.

supposed income payments to which taxes were withheld – the subject of the present claim – cannot be said to have been declared as part of the gross income.

Finally, petitioner emphasizes that cases filed before this Court are litigated *de novo*; party-litigants should prove every minute aspect of their cases; and that actions for tax refund are in the nature of a claim for exemption and the law is not only construed in *strictissimi juris* against the taxpayer, but also the pieces of evidence presented entitling a taxpayer to an exemption is *strictissimi* scrutinized and must be duly proven.

Respondent's counter-arguments:

Respondent counter-argues that the non-presentation of the quarterly income tax returns/annual income tax return for 2010 does not affect its claim for refund, citing as basis the case of *Philam Asset Management, Inc. vs. Commissioner of Internal Revenue* (hereinafter referred to as the "*Philam* case")[22].

Moreover, according to respondent, there is neither law nor jurisprudence that supports petitioner's contention that the failure to fill up the *"Creditable Tax Withheld"* column of the income tax return would necessarily mean that respondent failed to declare the income upon which the taxes were withheld as part of the gross income in its 2009 income tax return.

Lastly, respondent stresses that technicalities and legalisms should not be misused by the Government to keep money not belonging to it and thereby enrich itself at the expense of its law-abiding citizens.

THE COURT *EN BANC*'S RULING

The instant Petition for Review lacks merit.

The non-presentation of succeeding quarterly income tax returns/annual income tax returns is not fatal to respondent's claim for refund.

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[22] G.R. Nos. 156637/162004, December 14, 2005.

Petitioner claims that the presentation of the succeeding quarterly income tax returns/annual income tax return is indispensable to prove that respondent did not utilize or carry-over its claimed excess creditable withholding tax to the succeeding quarters/year.

We are not convinced.

The non-presentation of the annual income tax return or the final adjustment return (FAR) for purposes of determining whether the concerned taxpayer utilized or carried over excess creditable withholding tax to the succeeding quarters/years has already been settled by the Supreme Court.

In the the *Philam* case, the Supreme Court ruled as follows:

> "**Requiring that the ITR or the FAR of the *succeeding* year be presented to the BIR in requesting a *tax refund* has no basis in law and jurisprudence.**
>
> *First*, Section 76 of the Tax Code does not mandate it. The law merely requires the filing of the FAR for the preceding – not the succeeding – taxable year. Indeed, any refundable amount indicated in the FAR of the preceding taxable year may be credited against the estimated income tax liabilities for the taxable quarters of the succeeding taxable year. However, nowhere is there even a tinge of a hint in any of the provisions of the Tax Code that the FAR of the taxable year following the period to which the tax credits are originally being applied should also be presented to the BIR.
>
> *Second*, Section 5 of RR 12-94, amending Section 10(a) of RR 6-85,[23] merely provides that claims for the refund of income taxes deducted and withheld from income payments shall be given due course only (1) when it is shown on the ITR that the income payment received is being declared part of the taxpayer's gross income; and (2) when the fact of withholding is established by a copy of the withholding tax statement, duly issued by the payor to the payee, showing the

[23] Now Section 2.58.3 of Revenue Regulations No. 2-98, as amended.

amount paid and the income tax withheld from that amount.

xxx xxx xxx

Fourth, the BIR ought to have on file its own copies of petitioner's FAR for the succeeding year, on the basis of which it could rebut the assertion that there was a subsequent credit of the excess income tax payments for the previous year. xxx."

Anent the presentation of the quarterly income tax returns, in *Winebrenner & Iñigo Insurance Brokers, Inc. vs. Commissioner of Internal Revenue,*[24] the Supreme Court categorically stated that succeeding quarterly income tax returns are not necessary to prove the fact of not having carried over the excess credits to the subsequent quarters or taxable year, to wit:

"xxx. What Section 76 requires, just like in all civil cases, is to prove the *prima facie* entitlement to a claim, including the fact of not having carried over the excess credits to the subsequent quarters or taxable year. **It does not say that to prove such a fact, succeeding quarterly ITRs are absolutely needed**." *(Emphasis supplied.)*

Moreover, a similar pronouncement was also made in the case of *Republic of the Philippines vs. Team (Phils.) Energy Corporation,*[25] to wit:

"We are likewise unmoved by the assertion of the petitioner that the respondent should have submitted the quarterly returns of the respondent to show that it did not carry-over the excess withholding tax to the succeeding quarter. xxx. **Indeed, the petitioner ought to have its own copies of the respondent's quarterly returns on file, on the basis of which it could rebut the respondent's claim that it did not carry over its unutilized and excess creditable withholding taxes for the immediately succeeding quarters. xxx**." *(Emphasis supplied.)*

[24] G.R. No. 206526, January 28, 2015.
[25] G.R. No. 188016, January 14, 2015.

Based on the foregoing jurisprudential pronouncements, it is clear that the presentation of the taxpayer of its quarterly/annual income tax returns for the succeeding years is unnecessary.

The failure to make an entry in the "Creditable Tax Withheld" column of Schedule 1 of the Annual Income Tax Return is not fatal to respondent's claim for refund.

Petitioner argues that there was non-compliance with the second requisite for a claim for refund or the issuance of a tax credit certificate involving excess withholding taxes, because there was no entry in the *"Creditable Tax Withheld"* column of Schedule 1 of respondent's 2009 Annual Income Tax Return[26].

We disagree.

There is neither law nor jurisprudence that states that the taxpayer's failure to fill up the entry in the *"Creditable Tax Withheld"* column of Schedule 1 of the Annual Income Tax Return would be fatal to a claim for refund. What Section 2.58.3[27] of Revenue Regulations No. 2-98 and the applicable jurisprudence require is that the taxpayer be able to declare as part of its gross income in the Annual Income Tax Return the income payment from which the withholding was made.

An entry into the *"Creditable Tax Withheld"* column found in page 2 of the Annual Income Tax Return (BIR Form 1702),

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[26] Exhibit "T", Division Docket (CTA Case No. 8464), pp. 405 to 407.

[27] "SECTION 2.58.3. *Claim for Tax Credit or Refund.—*

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

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

xxx xxx xxx." *(Emphasis supplied)*

specifically Schedule 1 or the *"Schedule of Sales/Revenues/Receipts/ Fees"* may expedite the determination of respondent's compliance with the requirement that the income payments from which the withholding of taxes were made formed part of its gross income declared in its Annual Income Tax Return. It does not, however, follow that the Court should immediately deny respondent's claim for refund only because it failed to make such entry, with the Court looking at the evidence submitted.

In other words, failure on the part of a taxpayer to make an entry in the *"Creditable Tax Withheld"* column under Schedule 1 of the Annual Income Tax Return, is not a sufficient basis to conclude that the taxpayer failed to comply with the requirement that *"the income upon which the taxes were withheld were included in the return of the recipient"* when the taxpayer has offered, and this Court has admitted, other evidence to establish its compliance with this requirement.

In this connection, it must be emphasized that the means of ascertainment of a fact is best left to the party that alleges the same. The Court's power is limited only to the appreciation of that means pursuant to the prevailing rules of evidence.[28]

WHEREFORE, all the foregoing considered, the Petition for Review is hereby **DENIED** for lack of merit.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

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[28] *Winebrenner & Iñigo Insurance Brokers, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 206526, January 28, 2015.

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

ON LEAVE
AMELIA R. COTANGCO-MANALASTAS
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
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.*

ROMAN G. DEL ROSARIO
Presiding Justice