REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SECOND DIVISION

PHILIPPINE BANK OF COMMUNICATIONS, *Petitioner,*	**C.T.A. CASE NO. 7435**
	Members:
- versus -	CASTAÑEDA, JR., Chairperson UY, and PALANCA-ENRIQUEZ, JJ.
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	**Promulgated:** OCT 2 9 2009 3:55 p.m.

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AMENDED DECISION

PALANCA-ENRIQUEZ, J.:

This resolves:

1) petitioner's "Motion For Reconsideration" filed on August 28, 2009; and

2) respondent's "Opposition (Motion for Reconsideration dated August 28, 2009)" filed on September 22, 2009.

The motion is partly meritorious.

Petitioner contends that the presentation of its Quarterly Income Tax Returns for the 1st, 2nd, and 3rd quarters of succeeding taxable year is

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not necessary to prove its entitlement to the refund of its excess creditable withholding tax, citing the case of Philippine Asset Management, Inc. vs. CIR (G.R. No. 156637 and 162004, December 14, 2005); that petitioner's income upon which the creditable withholding taxes were withheld, was included in its annual income tax return for the year 2003; and that the creditable withholding taxes for the year 2003 were properly supported by BIR returns and other documents evidencing remittances of the taxes withheld and paid to the BIR.

On the other hand, respondent counter-argues that the Philam case has no relation with the instant case; in the Philam case, there is no doubt on the withholding tax statements of petitioner which is essential to a claim for refund of excess withholding tax, as provided in RR 12-94 and 6-85; in the instant case, there is substantial misinformation and lack of evidence with the withholding tax statements which now necessitates the Final Adjusted Return for the succeeding year to clarify the ambiguity; there is no proof from the various documents presented by petitioner that the income allegedly withheld was declared as part of its gross income; lastly, in an action for refund, the burden of proof is on the taxpayer to establish its right to refund and failure to sustain the burden is fatal to the claim for tax refund/credit.

To start, the denial of petitioner's claim for refund was primarily anchored on its failure to present the Quarterly Income Tax Returns for the first, second, and third quarters of taxable year 2004. We ruled that without the presentation of such returns, the Court cannot determine whether petitioner had carried over/applied the claimed 2003 excess tax credits of P17,578,318.00 to the succeeding first three quarters of 2004 and later amended the said returns, such that no amount of the 2003 excess credits is reflected therein and in the 2004 Annual Income Tax Return.

After taking a second hard look at petitioner's "Motion for Reconsideration", with the attached Quarterly Income Tax Returns for the first, second, and third quarters of taxable year 2004, and in the light of the ruling of the Supreme Court in the case of *Philam Asset Management Incorporated vs. Commissioner of Internal Revenue (477 SCRA 761, 773),* we rule in favor of petitioner. In the Philam Asset case, the Supreme Court ruled that the succeeding returns need not be presented in Court to determine whether the claimed excess tax credits were not utilized in the succeeding years. Thusly:

> "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, Sec. 5 of RR 12-94, amending Section 10(a) of RR 6-85, 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 amount paid and the income tax withheld from that amount.

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The established procedure is that a taxpayer that wants a cash refund shall make a written request for it, and the ITR showing the excess expanded withholding tax credits shall then be examined by the BIR. For the grant of refund, RRs 12-94 and 6-85 state that all pertinent accounting records should be submitted by the taxpayer. These records, however, actually refer only to (1) the withholding tax statements; (2) the ITR of the present quarter to which the excess withholding tax credits are being applied; and (3) the ITR of the quarter for the previous taxable year in which the excess credits arose. To stress, these regulations implementing the law do not require the proffer of the FAR for the taxable year following the period to which the *tax credits* are being applied.

Third, there is no automatic grant of a *tax refund*. As a matter of procedure, the BIR should be given the opportunity

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"to investigate and confirm the veracity" of a taxpayer's claim, before it grants the refund. Exercising the option for a tax refund or a tax credit does not *ipso facto* confer upon a taxpayer the right to an immediate availment of the choice made. Neither does it impose a duty on the government to allow tax collection to be at the sole control of a taxpayer.

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. Its failure to present this vital document to support its contention against the grant of a *tax refund* to petitioner is certainly fatal."

In the recent case of *Commissioner of Internal Revenue vs. PERF Realty Corporation (G.R. No. 163345, July 4, 2008),* the Supreme Court ruled, as follows:

"III. The failure of respondent to present in evidence the 1998 ITR is not fatal to its claim for refund.

The CIR takes the view that the CA erred in considering the 1998 ITR of PERF. It was not formally offered in evidence. Section 34, Rule 132 of the Revised Rules of Court states that the court shall consider no evidence which has not been formally offered.

The reasoning is specious.

PERF attached its 1998 ITR to its motion for reconsideration. The 1998 ITR is a part of the records of the case and clearly showed that income taxes in the amount of ₱1,280,504.00 were not claimed as tax credit in 1998.

In *Filinvest Development Corporation v. Commissioner of Internal Revenue*, the Court held that the

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1997 ITR attached to the motion for reconsideration is part of the records of that case and cannot be simply ignored by the CTA. Moreover, technicalities should not be used to defeat substantive rights, especially those that have been held as a matter of right. We quote:

> In the proceedings before the CTA, petitioner presented in evidence its letter of claim for refund before the BIR to show that it was made within the two-year reglementary period; its Income Tax Returns for the years 1995 and 1996 to prove its total creditable withholding tax and the fact that the amounts were declared as part of its gross income; and several certificates of income tax withheld at source corresponding to the period of claim to prove the total amount of the taxes erroneously withheld. More importantly, petitioner attached its 1997 Income Tax Return to its Motion for Reconsideration, making the same part of the records of the case. The CTA cannot simply ignore this document.
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> Thus, we hold that petitioner has complied with all the requirements to prove its claim for tax refund. The CA, therefore, erred in denying the petition for review of the CTA's denial of petitioner's claim for tax refund on the ground that it failed to present its 1997 Income Tax Return.
>
> **The CA's reliance on Rule 132, Section 34 26 of the Rules on Evidence is misplaced. This provision must be taken in the light of Republic Act No. 1125, as amended, the law creating the CTA, which provides that proceedings therein shall not be governed strictly by technical rules of evidence. Moreover, this Court has held time and again that technicalities should not be used to defeat substantive rights, especially those that have been established as a matter of fact.**
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> We must also point out that, simply by exercising the CIR's power to examine and verify petitioner's claim for tax exemption as granted by law, respondent CIR could have easily verified petitioner's claim by presenting the latter's 1997 Income Tax Return, the original of which it has in its files. However, records show that in the proceedings before the CTA, respondent CIR failed to comment on petitioner's formal offer of evidence, waived its right to present its own evidence, and failed to file its memorandum. Neither did it

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> file an opposition to petitioner's motion to reconsider the CTA decision to which the 1997 Income Tax Return was appended.
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> That no one shall unjustly enrich oneself at the expense of another is a long-standing principle prevailing in our legal system. This applies not only to individuals but to the State as well. In the field of taxation where the State exacts strict compliance upon its citizens, the State must likewise deal with taxpayers with fairness and honesty. The harsh power of taxation must be tempered with evenhandedness. Hence, under the principle of *solutio indebiti*, the Government has to restore to petitioner the sums representing erroneous payments of taxes.
>
> Further, We sustain the CA that there is no need to rule on the issue of the admissibility of the 1998 ITR since the CTA ruled that PERF already complied with the requisites of applying for a tax refund. The verification process is not incumbent on PERF; it is the duty of the CIR to verify whether or not PERF had carried over the 1997 excess income taxes."

Clearly, therefore, taxpayers are not mandated to prove whether they had carried over their claimed excess tax credits to the succeeding taxable years, as long as they have proven their entitlement to the refund sought for the particular taxable year.

Even so, a careful perusal of the returns attached to petitioner's Motion For Reconsideration reveals that only the amount of P40,211,676.00 was reflected in its 1st, 2nd, and 3rd Quarterly Income Tax Returns for taxable year 2004. This clearly shows that petitioner did not carry over the claimed excess tax credits in the amount of P17, 578,318.00.

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We now consider the other evidence adduced by petitioner in support of its claim for refund. To reiterate, petitioner must be able to prove full compliance with the following requisites in order to be entitled to a claim for refund or issuance of a tax credit certificate of excess creditable withholding tax at source, as prescribed under *Section 2.58.3 of Revenue Regulations No.2-98*, otherwise known as the *Withholding Tax Regulations,* to wit:

1) That the claim for refund was filed within the two-year reglementary 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 the statement duly issued by the payor (withholding agent) to the payee (BIR Form No. 1743-A), 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 declared in the income tax return of the recipient *(Citibank N.A. vs. Court of Appeals and Commissioner of Internal Revenue, 280 SCRA 459).*

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As regards the first requisite, this Court has already ruled that petitioner has complied with the prescriptive period for filing its claim.

As regards the second requisite, records show that to prove the fact of withholding of creditable taxes, the Court-Commissioned Independent Certified Public Accountant (ICPA), Jerome Antonio B. Constantino of the Constantino Guadalquiver & Co., noted in his Reports dated December 3, 2007 and December 18, 2007 *(Exhibit "YYYY", pp. 3 to 5 and Exhibit "YYYY-15", p. 1)* the following findings:

Findings	Annex Ref.	Amount of CWT
A. Creditable withholding tax payments properly supported by original Withholding Tax Remittance Returns (BIR Form 1606), Capital Gains Tax Remittance (BIR Form 1706), Certificates of Creditable Tax Withheld at Source (BIR Form 2307), CAR-BIR Returns, PVS and other documents evidencing remittance of taxes withheld (remittance receipt).		
Sale of Property		
1. Creditable withholding tax payments supported by BIR Returns stamped as "Received" by the BIR agent and other documents evidencing remittance such as Bank Validated Deposit Slip or Bank Official Receipt	Annexes 1 and 8	P 13,001,191.27
2. Creditable withholding tax payments supported by BIR Returns not stamped as "Received" by the BIR agent but with other documents evidencing remittance such as Bank Validated Deposit Slip or Bank Official Receipt	Annex 2	171,000.00
3. Creditable withholding tax payments supported by Certified True Copy of BIR Returns stamped as "Received" by the BIR agent and other documents evidencing remittance such as Bank Validated Deposit Slip or Bank Official Receipt	Annex 3	173,400.00
4. Creditable withholding tax payments supported by Certified True Copy of BIR Returns not stamped as "Received" by the BIR agent but with other documents evidencing remittance such as Bank Validated Deposit Slip or Bank Official Receipt	Annex 4	54,000.00
5. Creditable withholding tax payments supported by CAR and PVS	Annex 5	1,776,000.00

6. Creditable withholding tax payments supported by CAR and Bank Validated Deposit Slip or Bank Official Receipt	Annex 6	52,488.00
Lease of Office Space		
1. Creditable withholding tax payments supported by Certificate of Creditable Tax Withheld at Source (BIR Form 2307)	Annex 7	758,964.11
Subtotal		**P 15,987,043.38**
B. Other Findings		
Sale of Property		
1. Creditable withholding tax payments without available supporting documents	Annex 9	1,590,824.62
Lease of Office Space		
1. Creditable withholding tax payments without available supporting documents	Annex 10	450.00
Subtotal		**P 1,591,274.62**
TOTAL		**P 17,578,318.00**

As regards the third requisite, this Court finds that in petitioner's Annual Income Tax Return for taxable year 2003, petitioner reflected a gross income amount of P1,401,140,111.00 *(Exhibit "A", Line 14C)*. However, as regards the substantiation to prove that the income withheld was declared as part of petitioner's gross income, the ICPA found that the amount of P10,496,972.58 was not duly supported, and it cannot be determined whether it was declared as part of petitioner's Annual ITR and in the Audited FS, thus:

Findings	**Annex Ref.**	**Amount of CWT**
A. Creditable withholding tax payments with related income included in the Company's Annual Income Tax Return		
Sale of Property		
1. Creditable withholding tax payments with related income included in the Company's Annual ITR as traced to Deed of Absolute Sale, Ticket, Subsidiary Ledger, Company-prepared Reconciliation of PLASE, Audited FS, Annual ITR, and Official Receipt	Annex 11	P 4,309,980.00

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2. Creditable withholding tax payments with related income included in the Company's Annual ITR as traced to Deed of Absolute Sale, Ticket, Subsidiary Ledger, Company-prepared Reconciliation of PLASE, Audited FS, and Annual ITR	Annex 12		695,880.00
3. Creditable withholding tax payments with related income included in the Company's Annual ITR as traced to Deed of Absolute Sale, Subsidiary Ledger, Company-prepared Reconciliation of PLASE, Audited FS, Annual ITR and Official Receipt	Annex 13		18,000.00
4. Creditable withholding tax payments with related income included in the Company's Annual ITR as traced to Ticket, Subsidiary Ledger, Company-prepared Reconciliation of PLASE, Audited FS, Annual ITR and Official Receipt	Annex 14		1,713,000.00
Lease of Office Space			
1. Creditable withholding tax payments with related income included in the Company's Annual ITR as traced to Contract of Lease for Office Space, BIR Form 2307, Official Receipt, Partial Subsidiary Ledger, Company-prepared Reconciliation of Miscellaneous Income Rental, Audited FS, and Annual ITR	Annex 15		344,485.42
Subtotal		**P**	**7,081,345.42**

B. Other Findings

Sale of Property			
1. Creditable withholding tax payments with related income traced to Deed of Absolute Sale, Ticket, and Official Receipt	Annex 16	P	36,000.00
2. Creditable withholding tax payments with related income traced to Deed of Absolute Sale and Ticket	Annex 17		579,000.00
3. Creditable withholding tax payments with related income traced to Ticket	Annex 18		12,000.00
4. Creditable withholding tax payments with related income traced to Deed of Absolute Sale and Official Receipt	Annex 19		715,428.00
5. Creditable withholding tax payments with related income traced to Deed of Absolute Sale and incomplete Official Receipt	Annex 20		3,888.00
6. Creditable withholding tax payments with related income traced to Deed of Absolute Sale	Annex 21		690,048.00
7. Creditable withholding tax payments with related income traced to Official Receipt	Annex 22		383,277.00
8. Creditable withholding tax payments without available supporting document to trace the related income to the Company's Annual ITR	Annex 23		7,662,402.89

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1.	Creditable withholding tax payments with related income traced to Contract of Lease for Office Space, Certificate of Creditable Tax Withheld at Source (BIR Form 2307), and Official Receipt	Annex 24	127,499.48
2.	Creditable withholding tax payments with related income traced to Contract of Lease for Office Space, Certificate of Creditable Tax Withheld at Source (BIR Form 2307), and incomplete Official Receipt	Annex 25	93,859.14
3.	Creditable withholding tax payments without available supporting document to trace the related income to the Company's Annual ITR except for the Certificate of Creditable Tax Withheld at Source (BIR Form 2307)	Annex 26	193,570.07
	Subtotal		**P 10,496,972.58**
	TOTAL		**P 17,578,318.00**

The creditable withholding tax payments with related income traced to the Company's Annual ITR amounted to P7,081,345.42 xxx. However, out of the total amount of P7,081,345.42, only P6,805,421.42 were properly supported with BIR Returns and other documents evidencing remittance of creditable tax withheld. We were not able to check whether the related income of the withholding tax payments amounting to P10,496,972.58 were included in the Company's Audited FS and Annual ITR because the related documents were not available for examination as of the date of our report. xxx" *(Exhibit "YYYY", pp. 7 to 9)*

A further scrutiny of the records shows that the amount of P7,081,345.42 is broken down as follows:

	Payor		**CWT**
1	Abdulhamid Aleen Imran	P	54,000.00
2	Ang, Bernardo		90,000.00
3	Callao, Loreto		36,000.00
4	Cantomayor, Dorothy A.		44,280.00
5	Carpio, Daisy		12,000.00
6	Erce, Elma-Marilao Branch		48,000.00
7	GGO Summit Corp.		1,020,000.00
8	Hobitton, Inc.		780,000.00
9	KS Haulers Inc.		78,000.00
10	Lim, Ma. Michaela Diamzon Magtoto		180,000.00
11	Lu, Joaquin		600,000.00
12	Mangilet, Marilyn		48,000.00
13	Murphy, Celeste M.		67,500.00

14	Pasibalo, Roberto/Josephine	90,000.00
15	Potot, Jeffrey	4,200.00
16	Saavedra, Felix U.	78,000.00
17	Shogun Properties Holding Corp.	420,000.00
18	Teh, Maricon and Ronald	198,000.00
19	Urutia Marianne Borguyan	72,000.00
20	Villodres, Roberto & Venus	90,000.00
21	Yu, Edward	300,000.00
22	Chua, Charlie/Shi Shan Ling	480,000.00
23	Chua, Joselito Calipana	104,880.00
24	Tiu, Elena	60,000.00
25	Trillanes, Isabelita Hernandez	51,000.00
26	Faeldonia, Josephine	18,000.00
27	Gusa Realty & Development Corp	1,635,000.00
28	Tubupan, Editha	78,000.00
29	La Farge Cement Service Inc.	100,931.70
30	La Farge Cement Service Inc.	100,931.70
31	La Farge Cement Service Inc.	107,028.82
32	LG System Philippines	450.00
33	LG System Philippines	450.00
34	LG System Philippines	17,346.60
35	LG System Philippines	17,346.60
	TOTAL	**P 7,081,345.42**

(Exhibit "YYYY", Annexes 11 to 15)

This Court, however, finds that as regards the creditable withholding tax payments with related income traced to petitioner's Annual ITR amounting to P7,081,345.42, the same must be reduced, as follows:

Exhibit	**Payor**			**CWT**
1. Discrepancy in amount claimed				
		Claim	**BIR Form 1606**	**Difference**
YYYY-3.46	Shogun Properties Holding Corp.	P 420,000.00	P 390,526.00	P 29,474.00
	Subtotal			***P 29,474.00***
2. Supported with BIR Form 1706 Capital Gains Tax Return				
YYYY-3.55	Ang, Bernardo			P 90,000.00
YYYY-3.60	Lu, Joaquin			600,000.00
YYYY-3.64	Potot, Jeffrey			4,200.00
YYYY-3.67	Villodres, Roberto & Venus			90,000.00
YYYY-3.68	Yu, Edward			300,000.00
	Subtotal			***P 1,084,200.00***
3. Without supporting documents		**Remarks**		

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Abdulhamid Aleen Imran	Included in Annex 9 of CPA Report	P	54,000.00
Erce, Elma-Marilao Branch	Included in Annex 9 of CPA Report		48,000.00
Mangilet, Marilyn	Included in Annex 9 of CPA Report		48,000.00
Faeldonia, Josephine	Included in Annex 9 of CPA Report		18,000.00
LG System Philippines	Included in Annex 10 of CPA Report		450.00
Subtotal		*P*	*168,450.00*
TOTAL		**P**	**1,282,124.00**

Even though the related income pertaining to the amount of P1,084,200.00 (under item 2) was verified by the ICPA to have been reported as part of petitioner's income, the same should be disallowed as the supporting documents show that said amount pertained to capital gains tax and not to creditable withholding tax.

Thus, this Court holds that the claimed creditable withholding taxes in the amount of P7,081,345.42, the related income of which was verified by the Independent CPA to have been reported in petitioner's 2003 Annual ITR , should be reduced by P1,282,124.00, in accordance with the above-findings.

In sum, petitioner has sufficiently complied with the first, second and third requisites, but only to the extent of P5,799,221.42 out of the total claimed creditable withholding taxes of P17,578,318.00, computed as follows:

Amount of claimed creditable withholding taxes		P 17,578,318.00
Less: Disallowances		
a. Creditable withholding taxes the related income of which was not verified to have been included in Petitioner's annual income tax return for 2003	P 10,496,972.58	

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b. Creditable withholding taxes not duly supported by valid proofs of withholding	1,282,124.00	11,779,096.58
Refundable creditable withholding taxes		**P 5,799,221.42**

WHEREFORE, premises considered, petitioner's "Motion For Reconsideration" is hereby **PARTLY GRANTED**. Accordingly, the dispositive portion of our Decision dated August 10, 2009 is hereby **AMENDED,** to read as follows:

> "**WHEREFORE**, premises considered, respondent Commissioner of Internal Revenue is hereby **ORDERED TO REFUND OR TO ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner the reduced amount of **FIVE MILLION SEVEN HUNDRED NINETY NINE THOUSAND TWO HUNDRED TWENTY ONE PESOS AND 42/100 (P5,799,221.42),** representing unutilized creditable withholding taxes for taxable year 2003."

SO ORDERED.

OLGA PALANCA-ENRIQUEZ
Associate Justice

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

ATTESTATION

I attest 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's Division.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson, Second Division

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson's Attestation, 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.

ERNESTO D. ACOSTA
Presiding Justice