REPUBLIC OF THE PHILIPPINES

Court of Tax Appeals

QUEZON CITY

En Banc

MINDANAO II GEOTHERMAL PARTNERSHIP,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA *EB* NO. 1206
(CTA Case No. 8251)

Present:
Del Rosario, P.J.,
Castañeda, Jr.,
Bautista,
Uy,
Casanova,
Fabon-Victorino,
Mindaro-Grulla,
Cotangco-Manalastas, *and*
Ringpis-Liban, JJ.

Promulgated:

APR 20 2016 1:25p.m.

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DECISION

BAUTISTA, J:

This is a Petition for Review under *Section 3(b), Rule 8 of the Revised Rules of the Court of Tax Appeals* ("CTA")[1] filed by petitioner Mindanao II Geothermal Partnership before the CTA *En Banc* praying for the reversal of the CTA First Division's (the "CTA Division")

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[1] The relevant Section provides:

> SECTION 3. *Who May Appeal; Period to File Petition.* — xxx
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> (b) A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court by filing before it a petition for review within fifteen days from receipt of a copy of the questioned decision or resolution. Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of the reglementary period herein fixed, the Court may grant an additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review.

Decision promulgated on February 27, 2014 (the "Assailed Decision")[2] and Resolution promulgated on July 24, 2014 (the "Assailed Resolution")[3], and the granting of petitioner's claim for refund or issuance of tax credit certificate ("TCC") in the total amount of Php7,186,586.00 representing its excess income tax payments for the calendar years ("CY") 2008 and 2009.[4]

The Facts

The facts of the case as found by the CTA Division are, as follows:

> Petitioner was a general partnership duly registered with the Securities and Exchange Commission (SEC), with principal address at 36th Floor, Tower I, The Enterprise Center, 6766 Ayala Avenue, Makati City. It was primarily engaged in the development, financing, construction, ownership, operation, maintenance, and transfer of geothermal electrical generation with plant located at the Mindanao Geothermal Reservation, North Cotabato. The general partners in petitioner were the following: Marubeni Pacific Energy Holdings Corporation (MPEHC) and Marubeni Pacific II Energy Holdings Corporation (MP2EHC). Petitioner was one of the generation companies under Republic Act (RA) No. 9136, otherwise known as the Electric Power Industry Reform Act of 2001, whose sales of generated power is value-added tax (VAT) zero-rated. It is a duly registered VAT taxpayer with Taxpayer's Identification No. (TIN) 004-766-953.
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> Respondent, on the other hand, is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR) empowered to perform the duties of her office, including, among others, the duty to act and decide upon and approve claims for refund or tax credit as provided by law. She holds office at the 4th Floor, BIR National Office Building, Agham Road, Diliman, Quezon City.
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> On December 22, 2009, the Board of Directors and Stockholders of Marubeni Energy Services Corporation (MESC), MPEHC, and MP2EHC approved their merger with Axia Power Holdings Philippines Corporation (APHPC) with

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[2] *Records, CTA Case No. 8251*, pp. 1145-1181.
[3] *Id.*, pp. 1325-1329.
[4] *Rollo, CTA EB No. 1206*, pp. 52, 72.

the latter as the surviving entity. The merger was approved by the SEC on March 29, 2010.

On account of the merger, MPEHC withdrew as general partner in petitioner on January 1, 2010. The SEC has certified on March 29, 2010 that the Affidavit of Withdrawal executed by MPEHC's representative was presented to the SEC on March 17, 2010.

On April 15, 2009, petitioner filed its Annual Corporate Income Tax Return (ITR) for calendar year (CY) 2008. The Annual ITR of petitioner for CY 2008 reported a gross income of [Php]91,921,398.00, representing its income payment subject to creditable withholding tax. However, petitioner was not able to utilize these income taxes withheld resulting in an [*sic*] excess income tax payments in the amount of [Php]27,307,745.00.

On April 12, 2010, petitioner filed its Annual Corporate Income Tax Return for CY 2009.

On April 12, 2010, petitioner also filed with the BIR Revenue District Office (RDO) No. 108, Kidapawan, North Cotabato, a written application for issuance of tax clearance with a claim for refund or issuance of tax credit certificate for its excess creditable withholding tax.

On April 15, 2010, petitioner filed with the Court its judicial claim for refund or tax credit of its excess creditable income taxes for CY 2007 in the total amount of [Php]22,867,594.00, subject matter of CTA Case No. 8094 entitled "Mindanao II Geothermal Partnership vs. Commissioner of Internal Revenue".

To date, no tax clearance was issued by the BIR RDO No. 108, Kidapawan, North Cotabato despite follow-ups. Thus, petitioner was constrained to file the present Petition for Review without waiting for the tax clearance from the BIR.

Petitioner prays that the Court render a judgment ordering respondent to refund or to issue a tax credit certificate to petitioner in the total amount of [Php]7,186,586.00, representing its excess income tax payments for calendar years 2008 and 2009.

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[5] *Records, Decision*, pp. 1146-1148.

On February 27, 2014, the CTA Division promulgated the Assailed Decision denying the Petition for Review, the dispositive portion of which reads:

> **WHEREFORE,** premises considered, the instant Petition for Review is hereby **DENIED** for lack of merit.
>
> **SO ORDERED.**[6]

Aggrieved, on March 19, 2014, petitioner filed by registered mail a Motion for Reconsideration[7] of the Assailed Decision. On June 2, 2014, respondent filed her Comment (Re: Petitioner's Motion for Reconsideration)[8]. In a Resolution[9] dated July 24, 2014, the CTA Division denied petitioner's Motion for Reconsideration for lack of merit. The dispositive portion of the Assailed Resolution provides:

> **WHEREFORE,** petitioner's *Motion for Reconsideration* filed through registered mail on March 19, 2014 is hereby **DENIED** for lack of merit.
>
> **SO ORDERED.**[10]

On August 15, 2014, petitioner filed a Motion for Extension of Time to File Petition for Review[11], which was granted by the Court *En Banc* in a Minute Resolution[12] dated August 20, 2014.

Hence, the present Petition for Review[13] filed by registered mail on September 1, 2014 wherein petitioner ascribed the following errors:

> A. The Honorable First Division erred in not applying the exception to the irrevocability rule to petitioner's claim for refund or tax credit for the taxable year 2008 in the amount of Php4,440,160.00 simply because petitioner, which is

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[6] *Records, Decision*, p. 1175.
[7] *Id.*, pp. 1183-1199.
[8] *Id.*, pp. 1238-1244.
[9] *Id.*, pp. 1248-1252.
[10] *Id.*, p. 1252.
[11] *Rollo*, pp. 1-49, with Annexes.
[12] *Id.*, p. 50.
[13] *Id.*, pp. 52-133, with Annexes.

a dissolved entity, failed to present a Certificate of Tax Clearance.

B. The Honorable First Division erred in holding that petitioner was not entitled to a refund of Php2,746,426.31 as it allegedly failed to include the income upon which the taxes were withheld in its return because no entry was made in the "Creditable Tax Withheld" column of the Annual Income Tax Return.[14]

On December 23, 2014, the Court *En Banc* promulgated a Resolution[15] noting that respondent failed to file her Comment to the Petition for Review, and requiring the parties to submit their respective memoranda within thirty (30) days from receipt thereof. In compliance therewith, petitioner filed its Memorandum[16] on February 26, 2015, while respondent failed to file her memorandum.[17]

On May 7, 2015, the Court *En Banc* promulgated a Resolution[18] submitting the case for decision.

The Issues

Petitioner raises the following issues for the Court *En Banc*'s resolution:

I.

WHETHER PETITIONER'S CLAIM FOR REFUND OR ISSUANCE OF TCC FOR CY 2008 IN THE AMOUNT OF PHP4,440,160.00 IS AN EXCEPTION TO THE IRREVOCABILITY RULE; AND

II.

WHETHER THE INCOME FOR CY 2009 ON WHICH PETITIONER'S TAXES WERE WITHHELD WAS INCLUDED IN ITS RETURN.[19]

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[14] *Rollo*, pp. 58-59.
[15] *Id.*, pp. 225-226.
[16] *Id.*, pp. 236-261.
[17] *Id.*, pp. 268-269.
[18] *Id.*, pp. 268-269.
[19] *Id.*, *Petition for Review*, pp. 58-59.

The Ruling of the Court En Banc

The Petition has no merit.

Petitioner is not entitled to a refund or issuance of TCC of its excess Creditable Withholding Tax ("CWT") for CY 2008 for failure to present the short period return.

Petitioner maintains that on April 12, 2010, it filed with the Bureau of Internal Revenue ("BIR") Revenue District Office ("RDO") No. 108 its written application for the issuance of a tax clearance with a claim for refund or issuance of a TCC for its excess CWT for CYs 2007 to 2009. Despite complying with the documentary requirements of the BIR, the BIR did not act on petitioner's application. Thus, petitioner was forced to file an administrative claim for tax refund or issuance of TCC; otherwise, petitioner would have been barred by the two-year prescriptive period under *Section 229 of the National Internal Revenue Code of 1997 (the "1997 NIRC")*[20].

Accordingly, petitioner posits that it cannot be faulted for failing to wait for the BIR to issue the Tax Clearance Certificate ("TCL"), which, to date, has yet to be issued, as waiting for the issuance of the TCL would have meant that the period for filing the claim for refund or issuance of TCC would have already lapsed and that the filing of the judicial claim would have been dismissed for lack of jurisdiction. Petitioner, thus, submits that as a dissolved entity, the exception to the irrevocability rule should be applied to its claim.[21]

We partially agree.

Section 76 of the 1997 NIRC embodies the irrevocability rule, as follows:

> **SEC. 76.** ***Final Adjustment Return.*** - Every corporation liable to tax under Section 27 shall file a final adjustment

[20] Republic Act No. 8424, as amended (1997).
[21] *Rollo, Petition for Review*, pp. 59-63; *Rollo, Memorandum*, pp. 242-247.

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:

(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. <u>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.</u>[22]

The irrevocability rule provides that corporations with excess income taxes may either carry over the excess credit to the succeeding taxable quarters or claim a refund or the issuance of a TCC for the same; however, once the corporation opts to carry over its excess credit, such option shall be considered irrevocable for the taxable period and the corporation may no longer claim a refund or the issuance of a TCC.

The Supreme Court discussed the nature and the rationale of the irrevocability rule in *Systra Philippines, Inc. v. Commissioner of Internal Revenue ("CIR")*[23] in this wise:

A corporation entitled to a tax credit or refund of the excess estimated quarterly income taxes paid has two options: (1) to carry over the excess credit or (2) to apply for the issuance of a tax credit certificate or to claim a cash refund. If the option to carry over the excess credit is exercised, the same shall be irrevocable for that taxable period.

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[22] Emphasis ours.
[23] G.R. No. 176290, September 21, 2007, 533 SCRA 776.

In exercising its option, the corporation must signify in its annual corporate adjustment return (by marking the option box provided in the BIR form) its intention either to carry over the excess credit or to claim a refund. To facilitate tax collection, these remedies are in the alternative and the choice of one precludes the other.

This is known as the irrevocability rule and is embodied in the last sentence of Section 76 of the Tax Code. The phrase "such option shall be considered irrevocable for that taxable period" means that the option to carry over the excess tax credits of a particular taxable year can no longer be revoked.

The rule prevents a taxpayer from claiming twice the excess quarterly taxes paid: (1) as automatic credit against taxes for the taxable quarters of the succeeding years for which no tax credit certificate has been issued and (2) as a tax credit either for which a tax credit certificate will be issued or which will be claimed for cash refund.

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The legislative intent to make the option irrevocable becomes clearer when Section 76 is viewed in comparison to Section 69 of the (old) 1977 Tax Code:

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Under Section 69 of the 1977 Tax Code, there was no irrevocability rule. Instead of claiming a refund, the excess tax credits could be "credited against the estimated quarterly income tax liabilities for the taxable quarters of the succeeding taxable year," that is, the immediately following year only. In contrast, Section 76 of the present Tax Code formulates an irrevocability rule which stresses and fortifies the nature of the remedies or options as alternative, not cumulative. It also provides that the excess tax credits "may be carried over and credited against the estimated quarterly income tax liabilities for the taxable quarters of the succeeding taxable years" until fully utilized.

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Since petitioner elected to carry over its excess credits for the year 2000 in the amount of Php4,627,976 as tax credits for the following year, it could no longer claim a refund. Again, at the risk of being repetitive, once the carry over option was made, actually or constructively, it became forever

> irrevocable regardless of whether the excess tax credits were actually or fully utilized. Nevertheless, as held in *Philam Asset Management, Inc.*, the amount will not be forfeited in favor of the government but will remain in the taxpayer's account. Petitioner may claim and carry it over in the succeeding taxable years, creditable against future income tax liabilities until fully utilized.

Accordingly, the irrevocability rule is the norm. Jurisprudence has, however, carved out an exception to the irrevocability rule, *i.e.*, a corporation which previously indicated its intent to carry over excess income taxes may still claim a refund or the issuance of a TCC if such corporation has already dissolved its corporate existence.[24] In the *Systra Philippines, Inc.* case, the Supreme Court explained the exception to the irrevocability rule thus:

> Where, however, the corporation permanently ceases its operations before full utilization of the tax credits it opted to carry over, it may then be allowed to claim the refund of the remaining tax credits. In such a case, the remaining tax credits can no longer be carried over and the irrevocability rule ceases to apply. *Cessante ratione legis, cessat ipse lex.*

The Court highlighted the rationale for the exception to the irrevocability rule in *Axia Power Holdings Philippines Corporation v. CIR*[25], as follows:

> Clearly, the purpose of allowing the refund of excess CWT for dissolved corporations with permanent cessation of operations, as an exception to the irrevocability rule, is due to the <u>impossibility of carrying it over to succeeding years</u>.

As applied to partnerships, the *Civil Code*[26] provides that the same is dissolved when there is a "change in the relation of the

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[24] *See Systra Philippines, Inc. v. CIR*, G.R. No. 176290, September 21, 2007, 533 SCRA 776; *Bank of the Philippine Islands v. CIR*, G.R. No. 144653, August 28, 2001, 363 SCRA 840; *Mindanao II Geothermal Partnership v. CIR*, CTA *EB* No. 1045 (CTA Case No. 8094), March 30, 2015; *Stablewood Philippines, Inc. v. CIR*, CTA *EB* No. 794 (CTA Case No. 7704), October 8, 2012; *Raytheon-Ebasco Overseas Ltd. – Philippine Branch v. CIR*, CTA *EB* No. 592 (CTA Case No. 6458), August 18, 2011; *Philaqua Consultants, Inc. v. CIR*, CTA *EB* No. 442 (CTA Case No. 6942), September 8, 2009; *CIR v. Financial Marketing Services Corporation*, CTA *EB* Nos. 159 & 161, July 19, 2007; *Axia Power Holdings Philippines Corporation v. CIR*, CTA Case No. 8092, February 25, 2014; *Sankyu Construction Philippines, Inc. v. CIR*, CTA Case No. 8079, May 31, 2013; *Sankyu Logistics Philippines, Inc. v. CIR*, CTA Case No. 8080, December 28, 2012.
[25] CTA Case No. 8092, February 25, 2014.
[26] Republic Act No. 386 (1949).

partners caused by any partner ceasing to be associated in the carrying on . . . of the business."[27] In fact, any change in the membership of a partnership (*e.g.*, retirement of a partner, admission of new members into the partnership) results in an immediate dissolution of the existing partnership.[28] Significantly, a dissolved partnership can no longer undertake new partnership business.[29]

In the present case, petitioner presented the following evidence to prove the dissolution of the partnership:

1. Affidavit of Withdrawal stating that Marubeni Pacific Energy Holdings Corporation ("MPEHC") withdrew as general partner of petitioner effective January 1, 2010;[30]

2. Securities and Exchange Commission ("SEC") Certification dated March 29, 2010 certifying that an Affidavit of Withdrawal was executed by one of the two partners of petitioner, thereby technically dissolving said partnership;[31]

3. Petitioner's letter-request to the BIR for the cancellation of registration and Tax Identification Number ("TIN"), the issuance of a TCL, and the issuance of TCCs for excess input value-added tax and CWT stamped received by the BIR on April 12, 2010;[32] and

4. Testimony of Ms. Ivy P. Acosta attesting to, among others, the dissolution of the partnership.[33]

It can be gleaned from the above-stated evidence that petitioner was dissolved as a partnership with the withdrawal of MPEHC as a general partner, which dissolution was confirmed by the SEC on March 29, 2010. Considering its dissolution, petitioner proceeded to have its TIN cancelled and TCCs issued for its excess and unutilized taxes. From the foregoing, it can be inferred that by reason of its dissolution, it would be impossible for petitioner to carry over its

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[27] Art. 1828.
[28] HECTOR S. DE LEON, COMMENTS AND CASES ON PARTNERSHIP, AGENCY, AND TRUSTS 227-228 (5th ed. 2002).
[29] *Id.* at 230.
[30] *Records, Exhibit* "A-1," pp. 523-524.
[31] *Id., Exhibit* "A," pp. 520-524.
[32] *Id., Exhibit* "O," inclusive of sub-markings, pp. 697-707.
[33] *Id., Exhibit* "Y," inclusive of sub-marking, pp. 1007-1023.

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excess CWT to succeeding years. Following the pronouncements in *Systra Philippines, Inc.* and *Axia Power Holdings Philippines Corporation,* petitioner should be entitled to a refund or the issuance of a TCC for its excess CWT for CY 2008 as an exception to the irrevocability rule.

However, under *Section 52(C) of the 1997 NIRC*[34], a corporation contemplating dissolution must file a short period return within thirty (30) days from approval by the SEC of the dissolution. The Supreme Court, in *Bank of the Philippine Islands v. CIR*[35], held that it is only upon filing the return that the dissolved corporation "will be able to ascertain whether a tax is still due, or a refund can be claimed based on the adjusted and audited figures." Consequently, the Supreme Court held therein that the two (2)-year prescriptive period for claiming a refund for excess and unutilized CWT should be counted from the end of the thirty (30)-day period after the approval by the SEC of the plan for dissolution.

Notably, in the recent case of *Mindanao II Geothermal Partnership v. CIR*[36], involving petitioner's claim for refund or issuance of TCC for excess and unutilized CWT for CY 2007, the Court *En Banc* outlined the guidelines for the application of the exception to the irrevocability rule, to wit:

1. Once the corporate taxpayer opts to carryover the excess income tax against the income taxes due for the

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[34] Section 52(C) of the 1997 NIRC provides:

Sec. 52. ***Corporation Returns.*** -

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(C) **Return of Corporation Contemplating Dissolution or Reorganization.** - Every corporation shall, within thirty (30) days after the adoption by the corporation of a resolution or plan for its dissolution, or for the liquidation of the whole or any part of its capital stock, including a corporation which has been notified of possible involuntary dissolution by the Securities and Exchange Commission, or for its reorganization, render a correct return to the Commissioner, verified under oath, setting forth the terms of such resolution or plan and such other information as the Secretary of Finance, upon recommendation of the Commissioner, shall, by rules and regulations, prescribe.

The dissolving or reorganizing corporation shall, prior to the issuance by the Securities and Exchange Commission of the Certificate of Dissolution or Reorganization, as may be defined by rules and regulations prescribed by the Secretary of Finance, upon recommendation of the Commissioner, secure a certificate of tax clearance from the Bureau of Internal Revenue which certificate shall be submitted to the Securities and Exchange Commission.

[35] G.R. No. 144653, August 28, 2001, 363 SCRA 840.
[36] CTA *EB* No. 1045 (CTA Case No. 8094), March 30, 2015.

succeeding taxable years or quarters, such option is irrevocable for the whole amount of the excess income tax;

2. The unutilized excess CWT will remain in the taxpayer's account and will be carried over and applied against the taxpayer's income tax liabilities in the succeeding taxable years until fully utilized;

3. If, however, the excess CWT remains unutilized or has been partially utilized in the year the subject corporation permanently ceases its operation, the same may be the subject of a refund claim;

4. The corporation must file a short period return from the beginning of the year when the corporation was dissolved up to the date of its dissolution or retirement. It shall pay the corresponding tax due, if any, or reflect and excess tax credits from the previous year(s) or the shortened period;

5. The filing of the short period return, covering the income earned within the shortened period, must be made within thirty (30) days after the approval by the SEC of the plan or resolution of dissolution; and

6. The counting of the two (2)-year prescriptive period for filing a refund claim shall commence thirty (30) days after the approval by the SEC of its plan for dissolution.

Applying the foregoing to petitioner's claim for CY 2008, it was on March 29, 2010 when the SEC approved petitioner's dissolution. Petitioner should, therefore, have filed a short period return covering the period January 1, 2010 to March 29, 2010 within thirty (30) days from the SEC's approval, or on April 28, 2010, in order to determine whether it has a tax payable or a tax overpayment. Thereafter, the two-year prescriptive period for filing the claim for refund will commence on April 28, 2010.

A review of the records would, however, show that petitioner failed to present its short period return. Accordingly, it cannot be determined whether petitioner is entitled to the excess and unutilized CWT for CY 2008. Without the short period return, it cannot be ascertained whether the 2008 CWT may be applied against petitioner's income tax payable, if any, for the period January 1, 2010 to March 29, 2010. Petitioner's failure to present the short period return is fatal to its refund claim. Thus, we find guidance in the *Mindanao II Geothermal Partnership* case wherein the Court *En Banc* held:

> In this case, it was established that petitioner opted to carry over its excess tax credits for taxable year 2007 in the amount of Php22,867,594.00. At the onset, this amount shall remain in petitioner's account, and shall, for all intents and purposes, be applied against the petitioner's income tax liabilities in the succeeding taxable years until fully utilized. Parenthetically, the said amount of excess tax credits appears unutilized for taxable year 2008.
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> It is likewise established that petitioner permanently ceased its operation effective March 29, 2010.
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> What is lacking, however, is the shortened period ITR of petitioner covering the period from January 1, 2010 to March 29, 2010. <u>It must be emphasized that while it is shown that petitioner permanently ceased its operation on March 29, 2010, when the SEC approved the merger and withdrawal of MPEHC, there is no indication that the excess tax credits for taxable year 2007 remain unutilized as of such date</u>. <u>Petitioner should have presented and offered in evidence, the said shortened period ITR and pertinent supporting accounting records and books of accounts to show that the said excess tax credits remained unutilized as of the said period</u>. <u>Petitioner's failure to do so is fatal to its refund claim in this case</u>.[37]

To sum up, a qualification to the application of the exception to the irrevocability rule is the presentation of the short period return of the dissolved corporation. The short period return is vital to determine whether upon dissolution (*i.e.*, approval by the SEC of the dissolution), the corporation's excess and unutilized CWT may still be claimed for refund or will need to be applied to the corporation's outstanding taxes as of such dissolution. A dissolved corporation claiming refund or issuance of TCC must present the short period return; otherwise, it will not be able to sufficiently prove that the excess and unutilized CWT being claimed remained unutilized upon

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[37] Emphasis ours.

dissolution. Tax refunds are, after all, construed strictly against the taxpayer.[38]

Finally, petitioner's contention that it had to file the judicial claim within the two (2)-year period from filing of the CY 2008 Annual Income Tax Return ("ITR") otherwise the same would have been barred by prescription is misplaced. To reiterate, the two (2)-year prescriptive period as applied to the exception to the irrevocability rule begins to run thirty (30) days after the approval by the SEC of the plan for dissolution. A dissolved corporation is therefore granted the opportunity to claim a refund of its excess CWT for previous years upon dissolution.

Petitioner is not entitled to a refund or issuance of TCC of its excess CWT for CY 2009 for failure to prove its entitlement.

Petitioner maintains that following prevailing jurisprudence, petitioner is only required to declare the income payments it received as part of its gross income, and to establish the fact of withholding; that petitioner's failure to indicate an entry in the "Creditable Tax Withheld" column of its Annual ITR for CY 2009 does not negate the fact that, based on the evidence it presented, the income upon which the taxes were withheld was included in the Annual ITR. As such, petitioner opines that it substantially complied with the requisites for claiming a tax refund or credit of excess CWT for CY 2009. Finally, petitioner argues that it is entitled to at least the amount of Php2,583,413.80 following the conclusion reached and computation made by Presiding Justice Roman G. Del Rosario in his Concurring and Dissenting Opinion to the Assailed Decision.[39]

We partially agree.

The Supreme Court in *Banco Filipino Savings and Mortgage Bank v. Court of Appeals*[40] enumerated the requisites for granting a claim for refund of CWT, as follows:

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[38] *Citibank, N.A. v. Court of Appeals*, G.R. No. 107434, October 10, 1997, 280 SCRA 459.
[39] *Rollo, Petition for Review*, pp. 63-72; *Rollo, Memorandum*, pp. 247-259.
[40] G.R. No. 155682, March 27, 2007, 519 SCRA 93.

1. The claim is filed with the CIR within the two (2)-year period from the date of payment of the tax;

2. It is shown on the return of the recipient that the income payment received was declared as part of the gross income; and

3. The fact of withholding is established by a copy of a statement duly issued by the payor to the payee showing the amount paid and the amount of the tax withheld therefrom.

As held in the Assailed Decision, petitioner was able to comply with the first and third requisites above. As regards, however, the second requisite, the Court in Division ruled that failure of petitioner to indicate entries in the "Creditable Tax Withheld" columns of Schedules 1 and 4 of its Annual ITR for CY 2009 can be interpreted to mean that no part of the gross income reported therein was subjected to CWT. Accordingly, the Court in Division held that petitioner cannot be said to have declared as part of its gross income for CY 2009 the supposed income payments to which the taxes were allegedly withheld.

A review of the evidence submitted by petitioner would show, however, that notwithstanding its failure to indicate the relevant entries in its Annual ITR, it nevertheless included as part of its gross income the income on which CWT was withheld. In any case, prevailing jurisprudence and BIR issuances on the matter do not require that the CWT be indicated in the relevant columns of Schedules 1 and 4 of the Annual ITR before a taxpayer can be said to have declared the same as part of its gross income. It is sufficient that petitioner was able to substantiate its claim that the amount being refunded forms part of its gross income, whether through the other entries in the Annual ITR or through other evidence presented.

In *Winebrenner & Iñigo Insurance Brokers, Inc. v. CIR*[41], the Supreme Court held that a taxpayer claiming refund or issuance of TCC for excess and unutilized CWT need only prove its *prima facie* entitlement to the claim, thus:

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[41] G.R. No. 206526, January 28, 2015, 748 SCRA 591.

> . . . 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.
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> This simply underscores the rule that any document, other than quarterly ITRs may be used to establish that indeed the non-carry over clause has been complied with, provided that such is competent, relevant and part of the records. The Court is thus not prepared to make a pronouncement as to the indispensability of the quarterly ITRs in a claim for refund for <u>no court can limit a party to the means of proving a fact for as long as they are consistent with the rules of evidence and fair play</u>. <u>The means of ascertainment of a fact is best left to the party that alleges the same</u>. <u>The Court's power is limited only to the appreciation of that means pursuant to the prevailing rules of evidence</u>. To stress, what the NIRC merely requires is to sufficiently prove the existence of the non-carry over of excess CWT in a claim for refund.
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> <u>It must be emphasized that once the requirements laid down by the NIRC have been met, a claimant should be considered successful in discharging its burden of proving its right to refund</u>. Thereafter, the burden of going forward with the evidence, as distinct from the general burden of proof, shifts to the opposing party, that is, the CIR. It is then the turn of the CIR to disprove the claim by presenting contrary evidence which could include the pertinent ITRs easily obtainable from its own files.[42]

In contrast with the 2008 refund claim of petitioner, wherein petitioner opted to carry over its excess income tax, Line 33 of the 2009 Annual ITR of petitioner would readily show that it opted to have its excess income tax refunded or for the issuance of a TCC.[43] Petitioner thus need only to prove its entitlement to the 2009 refund claim in accordance with the requisites outlined in the *Banco Filipino Savings and Mortgage Bank* case - which petitioner was able to.

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[42] Emphasis ours.
[43] *Records, Exhibit* "N-3," p. 694.

Notwithstanding the foregoing, however, we hold that it is necessary for petitioner to prove - as an additional requirement in view of its dissolution - that it has a tax overpayment before petitioner can be entitled to the refund for CY 2009. Similar to our ruling for its CY 2008 refund claim, petitioner's failure to present its short period return is fatal to its CY 2009 refund claim as without the short period return, the Court *En Banc* cannot ascertain whether (regardless of the apparent overpayment evidenced by petitioner's 2009 Annual ITR) there still exists an overpayment upon dissolution after petitioner has finalized its accounts.

In the absence of the short period return, the situation may arise wherein the taxpayer will be granted a tax refund and yet, after the BIR's audit upon dissolution, the taxpayer will be found to have outstanding tax liabilities which negate its alleged overpayment. There can be no overpayment when there is underpayment. Indubitably, to refund an alleged overpayment when it is later found to exist an underpayment of taxes is purely detrimental to the State.

The strict application of the law to petitioner's claim for refund is necessary as taxes are, after all, the lifeblood of the nation. As held by the Supreme Court in *Philippine Phosphate Fertilizer Corporation v. CIR*[44],

> The general rule is that claimants of tax refunds bear the burden of proving the factual basis 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.

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[44] G.R. No. 141973, June 28, 2005, 461 SCRA 369.

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

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

Ma. Belen
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CERTIFICATION

Pursuant to *Section 13 of 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.

ROMAN G. DEL ROSARIO
Presiding Justice