REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

MERMAC, INC., Petitioner,	**EB CASE NO. 699** **(C.T.A. CASE NO. 7758)**
	Members:
- versus -	**ACOSTA**, *PJ,* **CASTAÑEDA, JR.,** **BAUTISTA,** **UY,** **CASANOVA,** **PALANCA-ENRIQUEZ,** **FABON-VICTORINO,** **MINDARO-GRULLA,** *and,* **COTANGCO-MANALASTAS**, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	**Promulgated:** JUL 27 2011 apolinario 9:10 a.m.

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DECISION

ACOSTA, *PJ:*

Before this Court of Tax Appeals *En Banc*[1] is a Petition for Review filed on December 6, 2010 assailing the Decision of the Court of Tax Appeals Former Second Division[2] dated June 28, 2010 and the subsequent Resolution dated

[1] Court *En Banc.*
[2] *Court Former Second Division.*

November 2, 2010, affirming the assailed Decision. The dispositive portion of the assailed Decision reads:

> "**WHEREFORE**, premises considered, the instant Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, respondent Commissioner of Internal Revenue is hereby **ORDERED TO REFUND, OR ISSUE A TAX CREDIT CERTIFICATE** in the amount **NINETY TWO THOUSAND EIGHT HUNDRED NINETY NINE PESOS AND EIGHTY CENTAVOS (P92,899.80)** in favor of petitioner, representing petitioner's excess and unutilized creditable withholding tax for taxable year 2005.
> **SO ORDERED.**

THE FACTS

The Court Former Second Division found the pertinent facts[3] to be as follows:

> Culled from the records of this case and as stipulated by the parties in the Joint Stipulation of Facts and Issues, the facts of the case are as follows.
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> Petitioner Mermac, Inc. is a corporation duly organized and existing under the laws of the Republic of the Philippines, with principal place of business at the 35th Floor, Tower One and Exchange Plaza, Ayala Triangle, Ayala Avenue, Makati City. It was incorporated with the following primary purpose:
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>> "To acquire, subscribe to, invest in and own, hold, use, assign, transfer, mortgage, pledge, exchange, or otherwise dispose of, real and personal property of every kind and description, including shares of stock, bonds, debentures, notes, evidences of indebtedness, and other securities, contracts or obligations of any corporation or association, domestic or foreign, and to pay therefor in whole or in part in cash or by exchanging therefor stocks, bonds, or other evidences of indebtedness or securities of this or any other corporation, and while the owner or holder of any such real or personal property, stocks, bonds, debentures, notes, evidences of indebtedness or other securities, contracts, or obligations, to receive, collect and dispose of the interest, dividends and income arising from such property, and to possess and exercise in respect thereof, all the rights, powers and privileges of ownership, including all voting powers on any stocks so owned without being a broker of securities or investment corporation."
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> Petitioner is a registered taxpayer of the Bureau of Internal Revenue (BIR), Large Taxpayers District Office (LTDO), with Taxpayer Identification No. 000-317-278-000.

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[3] Decision promulgated on June 28, 2010, pp.1-4.

Respondent is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR), vested with authority to carry out all the functions, duties and responsibilities of said office, including, inter alia, the power to decide, approve, and grant refunds or tax credits of overpaid and erroneously paid or collected internal revenue taxes. He holds office at the 5th Floor, BIR National Office Building, BIR Road, Diliman, Quezon City.

On April 17, 2006, petitioner filed with the BIR, through the Electronic Filing and Payment System (EFPS), its Annual Income Tax Return (or Final Adjustment Return) for taxable year 2005.

On November 17, 2006, petitioner filed with the BIR LTDO its administrative claim for refund of excess creditable withholding taxes for taxable year 2005 in the amount of P1,671,632.80.

On August 9, 2007, petitioner filed with the same office a letter dated August 2, 2007, amending the amount of its claim for refund to P2,010,452.00. 7 It explained that the increase in the amount of the claim (i.e., P338,819.20) represents the minimum corporate income tax for taxable year 2005 which was inadvertently credited against the total creditable withholding tax for purposes of computing the amount of overpaid creditable withholding tax.

Due to respondent's inaction on its refund claim, petitioner filed the instant Petition for Review before this Court on April 10, 2008.

Respondent filed his Answer through registered mail on May 6, 2008, alleging the following Special and Affirmative Defenses:

> "4. Granting arguendo that Petitioner filed a claim for refund, the same is subject to investigation by the Bureau of Internal Revenue.
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> 5. Petitioner failed to demonstrate that the alleged tax sought for refund or tax credit has been or erroneously or illegally collected in violation of the tax laws relied upon by the petitioner.
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> 6. Well-settled is the rule that the interpretation placed upon a statute by executive officers, whose duty is to enforce it, is entitled to great respect by the courts. Nevertheless, such interpretation is not conclusive and will be ignored if judicially found to be erroneous. Thus, the courts will not countenance administrative issuances and rulings that override, instead of remaining consistent and in harmony with the law which they seek to apply and implement (Philippine Bank of Communications v. Commissioner of Internal Revenue, G.R. No.: 112024, 302 SCRA 241, January 28, 1999).
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> 7. Taxes paid and collected are presumed to be made in accordance with the laws and regulations, hence, not creditable or refundable.
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> 8. It is incumbent upon the Petitioner to show that it has complied with the provisions of Sections 108 and 112 in relation to Section 229 of the 1997 Tax Code, as amended.

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> 9. In an action for tax credit or refund, the burden is upon the taxpayer to prove that he is entitled thereto, and failure to discharge the said burden is fatal to the claim. (Emmanuel & Zenaida Aguilar v. Commissioner, CA-GR No. Sp. 16432, March 30, 1990 cited in Aban, Law of Basic Taxation in the Philippines, 1st Edition, p. 206).
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> 10. Claims for refund are construed strictly against the claimant, 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 Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 121)."
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> During trial, petitioner presented testimonial and documentary evidence primarily aimed at proving its supposed entitlement to the refund or issuance of a tax credit certificate in the total amount of P2,010,452.00, representing petitioner's excess and unutilized creditable withholding taxes for taxable year 2005.
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> When it was respondent's turn to present evidence on May 13, 2009, his counsel manifested that he is submitting the case for decision based on the pleadings. Accordingly, the Court granted the parties thirty (30) days to file their respective memorandum, after which, this case shall be deemed submitted for decision.
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> On July 24, 2009, petitioner filed its Memorandum. Respondent, however, failed to file his memorandum.

On June 28, 2010, the Court Former Second Division rendered the assailed Decision, which partially granted the Petition for Review and ordered herein respondent Commissioner of Internal Revenue (CIR) to refund to herein petitioner Mermac, Inc. the amount of P92,899.80 representing petitioner's excess and unutilized creditable withholding tax (CWT) for taxable year 2005.

Herein petitioner filed its Motion for Reconsideration of the said Decision on July 16, 2010. Respondent failed to file any Comment. The Court Former Second Division, in a Resolution dated November 2, 2010, denied petitioner's Motion.

Hence, petitioner filed this instant Petition for Review before the Court *En Banc* seeking the reconsideration of the Former Second Division's Decision and Resolution, and praying that said Decision and Resolution be reversed and set

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aside and another one be rendered ordering respondent to refund or issue in favor of petitioner a tax credit certificate in the total amount of P2,010,452.00, representing its excess and unutilized creditable withholding taxes for CY 2005.

On July 1, 2010, the Court *En Banc* issued a Resolution directing respondent to file a Comment on the instant Petition for Review. No Comment was filed by respondent. Thus, the Court *En Banc*, in a resolution promulgated on January 21, 2011 ordered the parties to submit their respective Memorandum within a non-extendible period of thirty (30) days from receipt thereof.

On February 25, 2011, petitioner filed its Memorandum. Again, respondent failed to file her Memorandum.

On March 29, 2011, the Court *En Banc* promulgated a Resolution submitting the herein case for decision.

THE ISSUE

Herein petitioner assigns the following error on the part of Court Former Second Division with the Court *En Banc*, *to wit*:

> The Second Division erred in denying petitioner's (Mermac, Inc.'s) claim for refund of the amount of P1,917,552.00 on the ground that the Withholding Tax Remittance Return (BIR Form No. 1606) (Exhibit "M-5") submitted by petitioner is insufficient proof of the CWT being claimed for refund, because it did not emanate from the income payor. In this regard, petitioner respectfully submits that:

PETITIONER'S ARGUMENTS

Petitioner anchors its Petition for Review[4] on the following arguments:

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[4] Petition for Review, pp. 9-10.

1. Petitioner argues that the fact of withholding and the existence of CTW may be established by documents other than the Certificate of Creditable Tax Withheld at Source (BIR Form No. 2307). Petitioner avers that there is no statutory basis for the Court Former Second Division to conclude that the only acceptable evidence of withholding is BIR Form No. 2307 and that the absence of such document would result to the outright nullification of the income recipient's CWT;

2. The Second Division failed to consider the rationale behind Section 2.58.3 (B), RR No. 2-98 when it ruled that "the only acceptable evidence is BIR Form No. 2307 to establish the fact of withholding";

3. The Second Division and this Court *En Banc* already ruled in the *Roxas Land Case*[5] that the Withholding Tax Remittance Return (BIR Form No. 1606) is sufficient proof of the fact of withholding and remittance to the BIR of the CWT on sales of real property;

4. In BIR Ruling No. DA-319-99, respondent has already ruled that the remittance of withholding taxes by the seller of real property, on behalf of the buyer, constitutes substantial compliance with the withholding tax regulations;

5. The Supreme Court's ruling in the *Banco Filipino Case*[6] is inapplicable to the case at bar;

6. There is no factual basis for the Court Former Second Division's finding that petitioner failed to explain why it was the one who filed BIR Form No. 1606 with the BIR, and not the Nolledo spouses; and

7. The Second Division disregarded reality and gave more importance to form than to substance when it ignored the evidentiary value of petitioner's Withholding Tax Remittance Return (BIR Form No. 1606) (Exhibit "M-5").

THE COURT EN BANC's DECISION

The petition is bereft of merit.

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[5] *CIR vs. Roxas Land Corporation*, CTA EB No. 393, October 15, 2008.
[6] *Banco Filipino Savings and Mortgage Bank vs. CA, CTA & CIR*, GR No. 155682, March 27, 2007.

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The issues and arguments raised by petitioner in its Motion for Reconsideration with the Court Former Second Division are replicated in herein Petition for Review. The Court *En Banc* does not find any justifiable reason to disturb the findings of the Court Former Second Division.

To reiterate, a claim for refund of excess creditable withholding taxes, in accordance with settled jurisprudence, must comply with the following requirements in order to be granted:

1. That the claim for refund was filed within the two-year prescriptive period prescribed under Section 204 (C)[7], in relation to Section 229[8] of the NIRC of 1997, as amended;

2. That it is shown on the return of the recipient that the income payment received was declared as part of the gross income, and

3. That the fact of withholding is established by a copy of a statement duly issued by the payor (withholding agent) to the payee, showing the amount paid and the amount of tax withheld therefrom.[9]

There is no question that petitioner complied with the first two requirements since, *first*, its filing of administrative claim on November 17, 2006

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[7] SEC. 204. Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes. — The Commissioner may — xxx
(C) Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two (2) years after the payment of the tax or penalty: Provided, however, That a return filed showing an overpayment shall be considered as a written claim for credit or refund.

[8] SEC. 229. Recovery of Tax Erroneously or Illegally Collected. — No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.
In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment: Provided, however, That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid.

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

and its amendment thereof on August 9, 2007, as well as the Petition for Review on April 10, 2008 are well within the two-year prescriptive period required in Section 204(C), in relation to Section 229 of the 1997 National Internal Revenue Code (NIRC), as amended; and *second*, that the income from the sale of real property, from which the creditable tax of P1,917,552.00 was withheld, was proven to be reported in petitioner's Annual Income Tax Return for taxable year 2005.[10]

The question which now besets the Court is whether the petitioner complied with the third condition by presenting documents other than a copy of a statement duly issued by the payor (withholding agent) to the payee, showing the amount paid and the amount of tax withheld therefrom.

The Third Condition

On the outset, the third condition is imposed by Section 2.58.3(B) of Revenue Regulations (RR) No. 2-98, which states:

> Sec. 2.58.3. Claim for Tax Credit or Refund. —
> xxx xxx xxx
> (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 payor to the payee** showing the amount paid and the amount of tax withheld therefrom. (Emphasis provided)

Corollary to the condition set forth, the same RR No. 2-98 establishes the requirement on the part of the payor to furnish the payee the withholding tax statement using the prescribed form (BIR Form No. 2307), which shows the income payments made and the amount of taxes withheld. Otherwise, the failure of the payor to furnish the same shall be a ground for mandatory audit, *viz*:

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[10] CTA Former Second Division Decision promulgated on June 28, 2010, pp. 10-11.

> Sec. 2.58. RETURNS AND PAYMENT OF TAXES WITHHELD AT SOURCE. —
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> xxx xxx xxx
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> (B) Withholding tax statement for taxes withheld. — **Every payor required to deduct and withhold taxes under these regulations shall furnish, in triplicate, each payee, whether individual or corporate, with a withholding tax statement, using the prescribed form (BIR Form No. 2307) showing the income payments made and the amount of taxes withheld therefrom**, for every month of the quarter, within twenty (20) days following the close of the taxable quarter employed by the payee in filing his/its quarterly income tax return. The payor, nonetheless, should always retain a copy of duly issued BIR Form 2307. Failure to furnish the same shall be a ground for the mandatory audit of payor's income tax liabilities (including withholding tax) upon verified complaint of the payee.
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> For final withholding taxes, the statement should be given to the payee on or before January 31 of the succeeding year.
>
> Upon request of the payee, however, the payor must furnish such certificate simultaneously with the income payment. (Emphasis provided)

The rules are clear. The income-payor, as the withholding agent, is required to furnish the recipient-payee of the statement of withholding or BIR Form No. 2307. And for purposes of claims for refund or tax credit of creditable income tax, the claim shall only be given due course when the income and withholding are established by a copy of the withholding tax statement or BIR Form No. 2307 issued by the income-payor to the recipient-payee.

Notably, in order to prove compliance with the third condition, petitioner presented the following documents to prove the total amount of P2,010,452.00, representing the creditable withholding tax that were supposedly withheld from the income payments it received in taxable year 2005 (i.e., P19,538,680.00):

1. Summary of Creditable Withholding Tax for the year 2005;[11]
2. Certificates of Creditable Tax Withheld at Source (BIR Form No. 2307) issued by petitioner's lessee, Sonoma Services, Inc.;[12] and
3. Withholding Tax Remittance Return (BIR Form No. 1606).[13]

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[11] Exhibit "M", Rollo, p. 279.
[12] Exhibits "M-1" to "M-4", Rollo, pp. 280 to 283.

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The breakdown of the total claim of petitioner amounting to P2,010,452.00 and the following pieces of evidence corresponding thereto are summarized as follows:[14]

Exhibit	Withholding Agent	Period Covered		CWT	
M-1 (BIR Form 2307)	Sonoma Services, Inc.	1/1/2005	3/31/2005	P	23,224.95
M-2 (BIR Form 2307)	Sonoma Services, Inc.	4/1/2005	6/30/2005		23,224.95
M-3 (BIR Form 2307)	Sonoma Services, Inc.	7/1/2005	9/30/2005		23,224.95
M-4 (BIR Form 2307)	Sonoma Services, Inc.	10/1/2005	12/31/2005		23,224.95
M-5 (BIR Form 1606)	Nolledo, Nico Jose S. & Maita A.	8/31/2005			1,917,552.00
	TOTAL			**P**	**2,010,451.80**

BIR Form No. 2307 is an inevitable requirement in a claim for refund or credits of any creditable income tax which was deducted and withheld on income payments.

The petitioner seeks to exempt compliance with the required submission of BIR Form No. 2307 in its claim for refund of creditable withholding tax for year 2005 insofar as that relative to the sale of property by petitioner to the Nolledo Spouses. Instead of BIR Form No. 2307, petitioner submitted the Withholding Tax Remittance Return (BIR Form No. 1606) reflecting the total amount of P2,010,452.00 in order to prove its claim from its sale of property to the Nolledo Spouses.

Furthermore, the petitioner asserts that BIR Form No. 2307 is not the sole acceptable evidence of withholding and the absence of which would not necessarily result to an outright nullification of the income recipient's CWT.

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[13] Exhibit "M-5", Rollo, p. 285.
[14] *Supra*, pp. 12-13.

The petitioner's arguments are unmeritorious. The submission of BIR Form No. 1606 cannot and is not a substitute to BIR Form No. 2307 in a claim for refund of creditable withholding taxes.

Sections 2.58.3(B) and 2.58 (B) of RR No. 2-98 are clear. Sections 2.58.3 (B) explicitly provides that the claim for tax credit or refund of creditable income tax <u>shall only be given due course</u> when it is established by a copy of the withholding tax statement issued by the payor to the payee. And what is this withholding tax statement issued by the payor to the payee? Section 2.58(B) of RR No. 2-98 answers that and provides that the withholding tax statement issued by the payor to the payee is BIR Form No. 2307.

What better way to interpret RR No. 2-98 but by its literal interpretation? For administrative issuances have the force and effect of law[15], they benefit from the same presumption of validity and constitutionality enjoyed by statutes.[16] Just as where the law is clear and unambiguous; it must be taken to mean exactly what it says and the Court has no choice but to see to it that its mandate is obeyed.[17] RR No. 2-98, having the same effect of a law, is clear on the requirement for the submission of BIR Form No. 2307 in a claim for refund or tax credit over creditable income tax, hence, the Court must also apply it as it is.

DA-318-88 and the Ruling in the *Roxas Land Case* are inapplicable.

The petitioner further avers that the Supreme Court's ruling in *Banco Filipino Savings and Mortgage Bank vs. CA*[18] (*Banco Filipino Case*) is inapplicable to the herein case but instead BIR Ruling No. DA-319-88, as well as, *CIR vs.*

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[15] *Chevron Phil., Inc. vs. Bases Conversion Dev't Authority, Et. Al.*, GR No. 173869, September 15, 2010 citing *Mirasol vs. Department of Public Works and Highways*, G.R. No. 158793, June 8, 2006, 490 SCRA 318, 347, citing *Eslao vs. Commission on Audit*, G.R. No. 108310, September 1, 1994, 236 SCRA 161, 175.
[16] *Id.* citing *Mirasol vs. Department of Public Works and Highways*, G.R. No. 158793, June 8, 2006, 490 SCRA 318, 347, citing *JMM Promotion and Management, Inc. v. Court of Appeals*, G.R. No. 120095, August 5, 1996, 260 SCRA 319.
[17] *Abello vs. CIR*, GR No. 120721, February 23, 2005 citing *Chartered Bank Employees Association vs. Ople*, 138 SCRA 273; *Luzon Surety Co., Inc. vs. De Garcia*, 30 SCRA 111; *Quijano vs. Development Bank of the Philippines*, 35 SCRA 270.
[18] *Supra.*

Roxas Land Corporation[19] *(Roxas Land Case)* which provides that the Withholding Tax Remittance Return (BIR Form No. 1606) is sufficient proof of the fact of withholding and remittance to the BIR of the CWT on sales of real property, must be applied.

The Court cannot countenance petitioner's arguments.

The *Banco Filipino Case* has applied RR No. 6-85 (the precursor to RR No. 2-98 in the withholding of taxes and claim for refund over creditable income tax) to require BIR Form No. 1743.1 (now BIR Form No. 2307) as the complete acceptable evidence of the fact of withholding and such must emanate from the payor itself and not merely from the payee. Also, the Supreme Court said that the form must indicate the name of the payor, the income payment basis of the tax withheld, the amount of tax withheld and the nature of the tax paid, *viz*:

> In fine, the document which may be accepted as evidence of the third condition, that is, the fact of withholding, **must emanate from the payor itself, and not merely from the payee, and must indicate the name of the payor, the income payment basis of the tax withheld, the amount of the tax withheld and the nature of the tax paid.**
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> **At the time material to this case, the requisite information regarding withholding taxes from the sale of acquired assets can be found in BIR Form No. 1743.1. As described in Section 6 of Revenue Regulations No. 6-85, BIR Form No. 1743.1 is a written statement issued by the payor as withholding agent showing the income or other payments made by the said withholding agent during a quarter or year and the amount of the tax deducted and withheld therefrom. It readily identifies the payor, the income payment and the tax withheld.** It is complete in the relevant details which would aid the courts in the evaluation of any claim for refund of creditable withholding taxes. (Emphasis provided)

The ruling in *Banco Filipino Case* was confirmed and further applied in *CIR vs. Far East Bank & Trust Company (Now Bank of the Philippine Islands)*[20] *(Far East Bank Case)*, wherein the Supreme Court ruled that:

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[19] *Supra.*
[20] GR No. 173854, March 15, 2010.

> ***Respondent failed to present all the Certificates of Creditable Tax Withheld at Source.***
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> The CA likewise failed to consider in its Decision the absence of several Certificates of Creditable Tax Withheld at Source. It immediately granted the refund without first verifying whether the fact of withholding was established by the Certificates of Creditable Tax Withheld at Source as required under Section 10 of Revenue Regulation No. 6-85. **As correctly pointed out by the CTA, the certifications *(Exhibit UU)* issued by respondent cannot be considered in the absence of the required Certificates of Creditable Tax Withheld at Source.** (Emphasis provided)

Thus, it is inevitable for a claimant of tax refund or credit over creditable income tax to submit the certificates of creditable tax withheld at source. As clearly pointed out in RR No. 2-98 and the foregoing jurisprudence, the certificate of creditable tax withheld at source is BIR Form No. 2307.

The petitioner cannot merely rely on BIR Ruling No. DA-319-88. It bears stressing that interpretations of administrative agencies in charge of enforcing a law are entitled to great weight and consideration by the courts, unless such interpretations are in a sharp conflict with the governing statute or the Constitution and other laws.[21]

Since BIR Ruling No. DA-319-88 is not in perfect harmony with RR No. 2-98 and the *Banco Filipino Case* and *Far East Bank Case,* the interpretation in BIR Ruling No. DA-319-88 which ruled that the remittance of withholding taxes by the seller of real property, on behalf of the buyer, is substantial compliance with the withholding tax regulation, cannot apply to the instant case.

The petitioner cannot also rely on the *Roxas Land Case*. The Supreme Court, as the final arbiter of all disputes, has already ruled in the *Far East Bank Case*, a case which is more recent than the *Roxas Land Case*, the requisite of presenting a certificate of creditable tax withheld at source or BIR Form No. 2307 for a claim of refund or tax credit of any creditable income tax which was deducted and withheld on income payments.

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[21] *Nestle Philippines, Inc. vs. Court of Appeals*, G.R. No. 86738, November 13, 1991.

The provisions of the law must be applied accordingly. An industry practice does not justify non-compliance with the law.

Petitioner asserts that there is no basis for the Court Former Second Division to conclude that petitioner failed to explain why it was the one who filed BIR Form No. 1606 and that it is an industry practice for the real esate company to remit on behalf of its clients (who are mostly individual buyers) the creditable withholding due on its income from the sale of property.

The same cannot be countenanced.

Analyzing Exhibit "V" or the Deed of Absolute Sale[22] alleged by petitioner, it appears that indeed the Seller, in this case the petitioner, is the one responsible for the payment of the tax liability. However, the said Deed of Absolute Sale appears to only make an acknowledgement from where or whom the payment would originate but does not indicate any relinquishment on the part of the Nolledo Spouses, the buyer, to act as withholding agent. There was no stipulation of any withholding on the part of petitioner. In fact, the only transaction that the petitioner should have been involved in was to secure the necessary tax clearance and certificate authorizing transfer and/ or registration of title. If the parties intended the petitioner to be the withholding agent, then it should have stipulated said role in the contract.

The assertion of the industry practice as a way to justify petitioner's failure to present BIR Form No. 2307 for its claim of refund or tax credit is not only disturbing but is also violative of existing laws.

Enlightening and important is the disquisition of the Court Former Second Division in its Resolution dated November 2, 2010 rejecting petitioner's allegation that such is an industry practice that should be given credence, to wit:

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[22] Rollo, p. 412.

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It must be remembered that in the operation of the withholding tax system, the withholding agent is the payor, a separate entity acting no more than an agent of the government for the collection of the tax in order to ensure its payment, while the payer is the taxpayer or the person subject to tax imposed by law. Furthermore, one of the reasons why such system was devised is to merely provide the said taxpayer a convenient manner to meet his probable income tax liability. As corollary, taxes withheld on the income payment is intended merely to equal or at least approximate the tax due. Thus, the role of the withholding agent is entirely different from that of the income recipient in the operation of the withholding tax system. Such being the case, if the Nolledo Spouses indeed intended to designate petitioner as the person who would perform their obligation as withholding agents, they have couched the said Deed of Absolute Sale in a more explicit language.

Petitioner further manifest that it is standard practice in the real estate industry for the real estate company to remit on behalf of the clients (who are mostly individual buyers) the creditable withholding tax due on the latter's income payments. It then concluded that the real estate company no longer issue Certificates of Creditable Tax Withheld (BIR Form No. 2307) to the real estate company as proof of withholding.

We find this revelation disturbing. It discloses two things: (1) in general, it alludes to the participation of the real estate industry, including petitioner, for violating the positive provisions of the NIRC of 1997 and its implementing regulations, and (2) in particular, it is an implied admission on the part of petitioner that no BIR Form No. 2307 was ever issued in its transaction with the Nolledo Spouses. In any event, the same is apparently without merit, since it is violative of the law.

The law indicates separate and distinct provisions for the filing of the withholding tax return, and for the furnishing of each income recipient by the withholding agent of the withholding tax statement pertinent to the transaction – both of which must be done by the withholding agent, Section 58(A) of the NIRC of 1997 provides:

> "SEC. 58. Returns and Payment of Taxes Withheld at Source. —
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> "(A) Quarterly Returns and Payments of Taxes Withheld. — Taxes deducted and withheld under Section 57 **by withholding agents shall be covered by a <u>return</u>** and paid to, except in cases where the Commissioner otherwise permits, an authorized agent bank, Revenue District Officer, Collection Agent, or duly authorized Treasurer of the city or municipality where the withholding agent has his legal residence or principal place of business, or where the withholding agent is a corporation, where the principal office is located.
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> xxx xxx xxx
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> "xxx, while the **return for creditable withholding taxes shall be filed** and the payment made not later than the last day of the month following the close of the quarter during which withholding was made: Provided, That the Commissioner, with the approval of the Secretary of Finance, may require these withholding agents to pay or deposit the taxes deducted or

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withheld at more frequent intervals when necessary to protect the interest of the government." (Emphasis provided)

And Section 2.58 (A)(1)&(2)(a) of RR 2-98 provides:

"SECTION 2.58. Returns and Payment of Taxes Withheld at Source.

(A) Monthly return and payment of taxes withheld at source —

(1) WHERE TO FILE — Creditable and final withholding taxes deducted and withheld by the withholding agent **shall be paid upon filing a return** in duplicate with the authorized agent banks located within the Revenue District Office (RDO) having jurisdiction over the residence or principal place of business of the withholding agent. In places where there is no authorized agent banks, **the return** shall be filed directly with the Revenue District Officer, Collection Officer or the duly authorized Treasurer of the city or municipality where the withholding agent's residence or principal place of business is located, or where the withholding agent is a corporation, where the principal office is located except in cases where the Commissioner otherwise permits.

xxx xxx xxx

Anent the furnishing of each income recipient by the withholding agent of the withholding tax statement, We quote anew Section 58(B) of the NIRC of 1997 and Section 2.58 (B) of RR No. 2-98, as amended by RR 3-2002, for easy reference:

"(B) Statement of Income Payments Made and Taxes Withheld. — **Every withholding agent required to deduct and withhold taxes under Section 57 shall furnish each recipient, in respect to his or its receipts during the calendar quarter or year, <u>a written statement</u>** showing the income or other payments made by the withholding agent during such quarter or year, and the amount of the tax deducted and withheld therefrom, simultaneously upon payment at the request of the payee, but not later than the twentieth (20th) day following the close of the quarter in the case of corporate payee, or not later than March 1 of the following year in the case of individual payee for creditable withholding taxes. For final withholding taxes, the statement should be given to the payee on or before January 31 of the succeeding year."

""Section 2.58. RETURNS AND PAYMENT OF TAXES WITHHELD AT SOURCE.

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(B) Withholding tax statement for taxes withheld. — **Every payor required to deduct and withhold taxes under these regulations shall furnish, in triplicate, each payee, whether individual or corporate, with a withholding tax**

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> **statement, using the prescribed form (BIR Form No. 2307)** showing the income payments made and the amount of taxes withheld therefrom, for every month of the quarter, within twenty (20) days following the close of the taxable quarter employed by the payee in filing his/its quarterly income tax return. The payor, nonetheless, should always retain a copy of duly issued BIR Form No. 2307. Failure to furnish the same shall be a ground for the mandatory audit of payor's income tax liabilities (including withholding tax) upon verified complaint of the payee. xxx"

Codal provision on withholding tax are mandatory and must be complied with by the withholding agent. So important is the compliance with, or the observance of, the foregoing provisions that the NIRC of 1997 makes non-compliance thereof a crime, to wit:

> SEC. 275. Violation of Other Provisions of this Code or Rules and Regulations in General. — **Any person who violates any provision of this Code or any rule or regulation promulgated by the Department of Finance, for which no specific penalty is provided by law**, shall, upon conviction for each act or omission, be punished by a fine of not more than One thousand pesos (P1,000) or suffer imprisonment of not more than six (6) months, or both. (Emphasis provided)

It cannot be gainsaid that the petitioner is threading on perilous waters which posits a dangerous precedent in the real estate industry. The petitioner must bear in mind that laws are repealed only by subsequent once, and their violation or non-observance shall not be excused by any disuse, customs or practice to the contrary.[23] The Court therefore has no other recourse but to uphold the law.

In sum, the Court finds petitioner's arguments unmeritorious. Petitioner failed to comply with the third requirement in its claim for refund or credit set by law insofar as the withholding taxes emanating from the sale of property to the Nolledo Spouses. The same cannot be refunded.

It is well settled in our jurisprudence that tax refunds are in the nature of tax exemptions and as such, they are regarded as in derogation of sovereign authority.[24] Thus, tax refunds are construed in *strictissimi juris* against the person or entity claiming

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[23] Article 7, Republic Act No. 386, Civil Code of the Philippines.
[24] *Commissioner of Internal Revenue vs. Ledesma,* GR No. L-17509, January 30, 1970.

the same.[25] In this case, not only should petitioner establish that it is entitled to the claim but it must, most importantly, show proof of compliance with the requirements as mandated by law or regulations. Unfortunately in this case, petitioner failed to discharge said burden.

WHEREFORE, the instant Petition for Review is hereby **DENIED** for lack of merit. The assailed Decision dated June 28, 2010 and Resolution dated November 2, 2010 of the Former Second Division of this Court are hereby **AFFIRMED.**

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Justice

WE CONCUR:

JUANITO C. CASTANEDA, JR.
Associate Justice

(On Leave)
LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

(On Leave)
AMELIA R. COTANGCO-MANALASTAS
Associate Justice

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[25] *Commissioner of Internal Revenue vs. Procter & Gamble Philippines Manufacturing Corporation,* GR No. 66838, December 2, 1991; *Commissioner of Internal Revenue vs. Tokyo Shipping Co., Ltd.,* GR No. 68282, May 26, 1995.

CERTIFICATION

I hereby certify that the above decision was reached after due consultation with the members of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

ERNESTO D. ACOSTA
Presiding Justice