REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

****

WINEBRENNER & IÑIGO INSURANCE BROKERS, INC., Petitioner,	**CTA EB NO. 814** (CTA Case No. 7440)
	Members:
- versus -	**DEL ROSARIO,** *PJ*, **CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA,** and **COTANGCO-MANALASTAS,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	**Promulgated:** MAR 22 2013 10:00 a.m.

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DECISION

UY, J.:

This Petition for Review filed through registered mail before the Court of Tax Appeals *En Banc* on September 1, 2011, and duly received on September 18, 2011, seeks a reversal of the Amended Decision promulgated on July 27, 2011[1], issued by the Special First Division of this Court (Court in Division)[2] in CTA Case No. 7440, entitled "Winebrenner & Iñigo Insurance Brokers, Inc., petitioner, vs. Commissioner of Internal Revenue, respondent", denying petitioner's claim for refund or issuance of a tax credit certificate for its alleged excess and unutilized creditable withholding taxes (CWT) for the calendar year (CY) 2003 for insufficiency of evidence.

[1] Amended Decision dated July 27, 2011; Docket, pp. 35-49.
[2] Chaired by Presiding Justice Ernesto D. Acosta (Retired), with Associate Justice Lovell R. Bautista and Associate Justice Caesar A. Casanova as members.

THE FACTS

Based on the records, the factual antecedents of the case are as follows:

Petitioner is a domestic corporation duly organized and existing under Philippine laws, with principal office at Suite 803, 88 Corporate Centre, Sedeño corner Valero Streets, Salcedo Village, Makati City. It is registered with the Bureau of Internal Revenue (BIR) and was issued Tax Identification Number (TIN) 000-251-714-000 and BIR Certificate of Registration bearing RDO Control No. 9RC0000021218.

Respondent, on the other hand, is the duly appointed Commissioner of Internal Revenue empowered to perform the duties of said office including, among others, the power to decide, approve and grant refunds or tax credits of erroneously or excessively paid taxes.

On April 15, 2004, petitioner filed its Annual Income Tax Return (ITR) for CY 2003.

On April 7, 2006, petitioner filed its BIR Form No. 1914 (Application for Tax Credits/Refunds) and a formal letter reiterating its claim for refund of its excess or unutilized CWT for CY 2003, with the Revenue District Office (RDO) No. 50 of the BIR.

Thereafter, since no final action has been taken by respondent on petitioner's administrative claim for refund, petitioner filed through registered mail a Petition for Review before the Court in Division of the Court of Tax Appeals on April 11, 2006 docketed as CTA Case No. 7440.

An Answer was filed thereto by respondent on June 5, 2006, interposing as special and affirmative defenses, among others, that petitioner failed to prove that the amount of P4,073,954.00 as alleged excess/unutilized creditable withholding taxes for CY ending December 31, 2003 were not carried-over to the succeeding taxable quarters/years, and were not fully utilized in payment of its income tax liability for the succeeding taxable quarters/years.

Trial ensued and both parties presented their respective testimonial and documentary evidence. Thereafter, the Court in

Division directed both parties' counsel to file their respective memorandum. Only petitioner filed its Memorandum on April 7, 2009 and this case was deemed submitted for decision on April 13, 2009.

On April 13, 2010, the Court in Division rendered its Decision[3], partially granting petitioner's claim for refund or issuance of a tax credit certificate in its favor of its excess or unutilized creditable withholding taxes for the year 2003 in the reduced amount of P2,737,903.34.

Petitioner filed a Motion for Partial Reconsideration of the said Decision with Motion for Leave to Submit Supplemental Evidence before the Court *a quo* on May 4, 2010; while respondent likewise filed through registered mail a Motion for Reconsideration thereto on May 4, 2010. In said motion, petitioner prayed for the reconsideration of the assailed Decision and that for the Court in Division to issue an Amended Decision granting its entire claim for refund, or in the alternative, to allow it to submit and offer as supplemental evidence relevant documents attached thereto to grant the same. On the other hand, respondent argued that Section 76 of the National Internal Revenue Code (NIRC) of 1997, as amended, speaks of quarterly income tax payments; hence, a corporate taxpayer is required to present its quarterly income tax returns (ITRs) duly filed with the BIR. Accordingly, since petitioner failed to present its quarterly ITRs for 2003 and 2004, it cannot be determined whether petitioner has indeed exercised its option to refund or carry-over the alleged unutilized and excess CWT for the four quarters of 2003 to the succeeding four quarters of 2004.

In the higher interest of substantial justice, the Court *a quo* allowed petitioner's Motion for Leave to Submit Supplemental Evidence in order to give petitioner the opportunity to further establish its claim for refund; and thus, court hearings were conducted thereafter. Consequently, upon submission of respondent's Memorandum on April 18, 2011, and petitioner's Supplemental Memorandum on May 6, 2011, the Court in Division resolved the pending incidents in favor of respondent.

Although the Court *a quo* found partial merit in petitioner's foregoing arguments upon consideration of its supplemental evidence, particularly its *Schedules of Creditable Tax Withheld for taxable years 2001 and 2002, and the related Certificates of*

[3] Ponencia of Associate Justice Caesar A. Casanova, concurred by Presiding Justice Ernesto D. Acosta (Retired) and Associate Justice Lovell R. Bautista; Docket, pp. 51-64.

Creditable Tax Withheld at Source (BIR Forms No. 2307), as well as the Supplemental Sworn Statement dated August 6, 2010, nevertheless, it ruled that petitioner's substantiated excess creditable withholding taxes for taxable year 2003 in the amount of P3,599,773.90 cannot be granted.

In the Amended Decision dated July 27, 2011, the Court in Division denied petitioner's Motion for Partial Reconsideration due to petitioner's failure to sufficiently prove that it did not carry-over the claimed creditable withholding taxes to the succeeding first, second, and third quarters of 2004 as petitioner merely presented its 2004 Annual ITR. It elaborated that while there was no amount of "Prior Year's Excess Credits" reflected in petitioner's 2004 Annual ITR, however, this evidence is not enough to conclude that petitioner did not apply the said unutilized creditable withholding taxes against the income tax due for the first three quarters of 2004. The Court in Division concluded that petitioner should have presented as evidence its first, second, and third Quarterly ITRs for the year 2004 to prove that the claimed amount has not been carried over to the succeeding quarters following the "irrevocability rule" in Section 76 of the NIRC of 1997, as amended.

Hence, petitioner filed the instant Petition for Review before the Court *En Banc* praying that the assailed Amended Decision dated July 27, 2011 of the Court in Division be reversed and set aside, and that a new decision be rendered ordering respondent to refund petitioner the amount of P4,073,954.00, allegedly pertaining to its excess and unutilized creditable withholding tax for CY 2003.

Further, petitioner presents the lone assigned error in the Court in Division's assailed Amended Decision, to wit:

> THE CTA-DIVISION ERRED IN DENYING PETITIONER'S CLAIM FOR REFUND OF EXCESS CWT FOR CY 2003 ON THE BASIS OF PETITIONER'S FAILURE TO PRESENT ITS QUARTERLY INCOME TAX RETURNS FOR THE CY 2004.[4]

In the Resolution dated October 4, 2011[5], respondent was directed by the Court *En Banc* to file her Comment to the instant Petition for Review.

[4] Petition for Review, p. 7; Docket, p. 19.
[5] Docket, pp. 67-68.

In compliance with the Resolutions dated October 4, 2011 and October 17, 2011[6], respondent filed through registered mail her Comment/Opposition thereto on November 2, 2011, duly received by this Court on November 15, 2011. On December 21, 2011, both parties were directed to file their respective memorandum.[7] Thereafter, this case was considered submitted for decision on March 29, 2012, after petitioner filed through registered mail its Memorandum on February 21, 2012, duly received by this Court on February 28, 2012[8]; while respondent is adopting all her legal arguments and affirmative defenses in her Comment/Opposition, as well as the factual findings and conclusions of the Court in Division in the assailed Amended Decision in CTA Case No. 7440, as part of her Memorandum.

Hence, this Decision.

THE ISSUE

Based on the arguments presented by the parties, the sole issue raised for the consideration of this Court is whether or not petitioner is entitled to the refund or issuance of a tax credit certificate in its favor of its alleged excess and unutilized creditable withholding tax (CWT) for calendar year (CY) 2003 despite the non-presentation of petitioner's Quarterly ITRs for the first, second, and third quarters of CY 2004.

Petitioner's Arguments

It is petitioner's contention that the presentation of its quarterly income tax returns (ITRs) for CY 2004 is not a legal requisite in claiming a refund of its excess CWT for CY 2003 since Section 76 of the NIRC of 1997, as amended, does not say so.

Well-settled is the rule that the only legal requirements for claiming a refund of excess and unutilized CWT are as follows: (i) the claim for refund is filed within the two-year reglementary period pursuant to Section 229 of the NIRC of 1997, as amended; (ii) the income upon which the taxes are withheld was included as part of the

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[6] Docket, p. 70.
[7] Resolution dated December 21, 2011; Docket, pp. 78-79.
[8] Memorandum; Docket, pp. 126-160.

gross income declared in the income tax return of the recipient; and (iii) the fact of withholding is established by copies of statements duly issued by the withholding agents showing the amount paid and the amount of tax withheld therefrom.

Therefore, as earlier correctly found by the Court in Division in its Decision dated April 13, 2010, petitioner has proven that it did not carry-over its unutilized CWT to the next taxable year upon compliance with the above-enumerated requisites, and submission of its Annual Income Tax Return for CY 2004.

Moreover, petitioner submits that the Annual Income Tax Return (ITR) of "Final Adjustment Return" is the summation of all the taxpayer's income tax payments/tax credits and total tax liability for the four (4) quarters of the relevant year. Section 76 of the NIRC of 1997, as amended, does not require that the quarterly ITRs for the subsequent year are necessary to prove refund of excess CWT; hence, petitioner concludes that its Annual ITR for the CY 2004 should be sufficient compliance with the requirements of the law.[9]

Lastly, respondent had all the opportunity to rebut during trial petitioner's evidence that it did not carry over the claimed CWT to the succeeding taxable year. Nevertheless, respondent failed to do so and therefore such factual finding made by the Court in Division in its Decision dated April 13, 2010 cannot now be questioned.

Respondent's Counter-arguments

Respondent counters that the Court in Division has correctly ruled that the presentation of petitioner's quarterly ITRs for CY 2004 are very material and vital to prove its claimed refund since if it is shown therein that petitioner has already exercised its option to carry-over its unutilized and excess creditable withholding tax for the four (4) quarters of CY 2003 to the succeeding four (4) quarters of CY 2004, its Decision would definitely be for the denial in full of petitioner's claim for refund, in accordance with the "irrevocability rule" pursuant to Section 76 of the NIRC of 1997, as amended.

Hence, for failure of petitioner to present and offer as evidence its succeeding quarterly ITRs, there is no way that the Court in

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[9] Citing *Philam Asset Management, Inc. vs. Commissioner of Internal Revenue*, 477 SCRA 761 (2005), *State Land Investment Corporation vs. Commissioner of Internal Revenue*, 542 SCRA 114 (2008), and *Commissioner of Internal Revenue vs. PERF Realty Corporation*, 557 SCRA 165 (2008).

Division could determine with reasonable certainty if petitioner has indeed exercised its option to refund, or carry-over its alleged excess and unutilized CWT for the four (4) quarters of CY 2003 to the succeeding four (4) quarters of CY 2004.

THE COURT EN BANC'S RULING

We agree with the Court *a quo*'s ruling that the presentation of petitioner's Quarterly ITRs for the succeeding quarters of taxable year 2004 are necessary to establish that petitioner did not exercise his option to carry-over excess and unutilized creditable withholding tax.

The focal provision is Section 76 of the NIRC of 1997, as amended, which provides as follows:

> SEC. 76. *Final Adjustment Return.* — Every corporation liable to tax under Section 27 shall file a final adjustment 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 credits; 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. **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.**" *(Emphasis Ours)*

The above provision gives two options to a taxable corporation, to wit: (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. Once the option to carry over has been made, such shall be irrevocable for that taxable period and no application for cash refund or issuance of tax credit certificate shall be allowed.

Worthy to mention that the last sentence of Section 76, clearly and unequivocally refers to the option to "carry-over". Thus, once a corporation exercises the option to carry-over and apply the excess quarterly income tax against the tax due for the taxable quarters of the succeeding taxable years, such option is irrevocable for that year. Having chosen to carry-over the excess quarterly income tax, the corporation cannot thereafter choose to apply for a cash refund or for the issuance of a tax credit certificate for the amount representing such over payment.[10] The evident intent of the legislature in adding the last sentence to said section is to keep the taxpayer from flip-flopping on its options, and avoid confusion and complication as regards said taxpayer's excess tax credit.[11]

This is known as the "irrevocability rule" as regards the choice of the option to carry over, and not the exercise of the first choice by the taxpayer. 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.[12] In other words, Section 76 speaks only of the carry-over option, which when exercised, actually or constructively, becomes irrevocable, regardless of whether the excess tax credits were actually or fully utilized.

Consequently, before a cash refund or issuance of a tax credit certificate for any unutilized excess tax credits is granted, it is therefore essential to establish and prove that the excess creditable withholding tax should not have been carried over to the succeeding taxable quarters considering that the option to carry-over or apply as tax credit in the succeeding taxable quarters cannot be modified in its final adjustment return.

Notably, petitioner assails before the Court *En Banc,* the Amended Decision dated July 27, 2011 issued by the Court in

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[10] *Commissioner of Internal Revenue vs. Mirant (Philippines) Operations, Corporation, et seq.*, G.R. Nos. 171742 and 176165, June 15, 2011.
[11] *Commissioner of Internal Revenue vs. PL Management International Philippines, Inc.*, G.R. No. 160949, April 4, 2011.
[12] *Systra Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 176290, September 21, 2007.

Division denying petitioner's Motion for Partial Reconsideration of the said Court's Decision dated April 13, 2010 in CTA Case No. 7440. Said Amended Decision denied petitioner's claim for refund of excess and unutilized CWT for calendar year 2003, for failure of petitioner to prove that it did not carry-over the claimed creditable withholding taxes to the succeeding first, second, and third quarters of 2004. The Court in Division pronounced:

> As correctly pointed out by the respondent in her Motion for Reconsideration, petitioner failed to sufficiently prove that it did not carry-over the claimed creditable withholding taxes to the succeeding first, second and third quarters of 2004 as petitioner merely presented its 2004 Annual ITR. While there was no amount of "Prior Year's Excess Credits" reflected in petitioner's 2004 Annual ITR, however, this evidence is not enough to conclude that petitioner did not apply the said unutilized creditable withholding taxes against the income tax due for the first three quarters of 2004. **Petitioner should have presented as evidence its 1st, 2nd and 3rd Quarterly ITRs for the year 2004 to prove that the claimed amount has not been carried over to the succeeding quarters following the "irrevocability rule" in Section 76 of the 1997 Tax Code.**
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> **Since it is already settled that the option to carry-over is irrevocable and the said option may be taken either actually or constructively, the examination of the quarterly ITRs together with the annual ITR, is necessary in order for the Court to determine the subsequent act of the claimant, whether it has effectively chosen the carry-over option**. Section 2.58.3 of Revenue Regulations No. 2-98, which implements Section 76 of the 1997 Tax Code, provides that if the option to apply the excess credit is initiated in the first quarter (i.e., in the first quarter of 1998), the taxpayer cannot avail of a refund/tax credit certificate of the excess credit (in 1997).
>
> If petitioner applied the said unutilized creditable withholding taxes against the income tax due for the first three quarters of taxable year 2004, it therefore effectively exercised the option to carry over the 2003 unutilized creditable withholding taxes to the succeeding taxable year 2004; thus, its claim for refund should be denied

> pursuant to Section 76 of the 1997 Tax Code.[13] *(Emphasis supplied)*

We find the afore-quoted pronouncement of the Court in Division more in accord with the mandates of Section 76 of the NIRC of 1997, as amended.

In the present case, while petitioner did offer its Annual ITR/Final Adjustment Return for taxable year 2004, it appears that petitioner miserably failed to submit and offer as part of its evidence the first, second, and third Quarterly ITRs for the year 2004. Consequently, petitioner was not able to prove that it did not exercise its option to carry-over its excess CWT.

In ***Millennium Business Services, Inc. vs. Commissioner of Internal Revenue***,[14] this Court sitting *En Banc* had the opportunity to settle the same issue raised in the following manner:

> Since the burden of proof is upon the claimant to show that the amount claimed was not utilized or carried over to the succeeding taxable quarters, **the presentation of the succeeding quarterly income tax return and final adjustment return is indispensable to prove that it did not carry over or utilize the claimed excess creditable withholding taxes. Absent thereof, there will be no basis for a taxpayer's claim for refund since there will be no evidence that the taxpayer did not carry over or utilize the claimed excess creditable withholding taxes to the succeeding taxable quarters**.
>
> Significantly, a taxpayer may amend its quarterly income tax return or annual Income tax return or Final Adjustment Return which in any case may modify the previous intention to carry-over, apply as tax credit certificate or refund, as the case may be. But the option to carry-over in the succeeding taxable quarters under the irrevocable rule cannot be modified in its final adjustment return.
>
> The presentation of the final adjustment return does not the shift the burden of proof that the excess creditable

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[13] *Supra.*see note 1; Docket, pp.45-46.
[14] CTA EB No. 510, Decision dated September 28, 2010, with Entry of Judgement dated October 28, 2010.

withholding tax was not utilized or carried over to the first three (3) taxable quarters. It remains with the taxpayer claimant. **It goes without saying that final adjustment returns of the preceding and the succeeding taxable years are not sufficient to prove that the amount claimed was utilized or carried over to the first three (3) taxable quarters**.

The importance of the presentation of the succeeding quarterly income tax return and the annual income tax return of the subsequent taxable year need not be overly emphasized. All corporations subject to income tax, are required to file quarterly income tax returns, on a cumulative basis for the preceding quarters, upon which payment of their income tax has been made. In addition to the quarterly income tax returns, corporations are required to file a final or adjustment return on or before the fifteenth day of April. **The quarterly income tax return, like the final adjustment return, is the most reliable firsthand evidence of corporate acts pertaining to income taxes, as it includes the itemization and summary of additions to and deductions from the income tax due**. These entries are not without rhyme or reason. They are required, because they facilitate the tax administration process, and guide this Court to the veracity of a petitioner's claim for refund without which petitioner could not prove with certainty that the claimed amount was not utilized or carried over to the succeeding quarters or the option to carry-over and apply the excess was effectively chosen despite the intent to claim a refund.

In the same vein, if the government wants to disprove that the excess creditable withholding tax was not utilized or carried over to the succeeding taxable quarters, the presentation of the succeeding quarterly income tax return and the annual income tax return of the subsequent taxable year indicating utilization or carrying over are indispensable. However, the claimant must first establish its claim for refund, such that it did not utilize or carry over or that it opted to utilize and carry over to the 1st, 2nd, 3rd quarters and final adjustment return of the succeeding taxable year.

> **Concomitantly, the presentation of the quarterly income tax return and the annual income tax return to prove the fact that excess creditable withholding tax was not utilized or carried over or opted to be utilized and carried over to the 1st, 2nd, 3rd quarters and final adjustment return of the succeeding taxable year is not only for convenience to facilitate the tax administration process but it is part of the requisites to establish the claim for refund**. Section 76 of the NIRC of 1997 provides that if the taxpayer claimant carries-over and applies the excess quarterly income tax against the income tax due for the taxable quarters of the succeeding taxable years, the same is irrevocable and no application for cash refund or issuance of a tax credit certificate shall be allowed.[15] *(Emphasis supplied)*

Applying the foregoing jurisprudential pronouncements in the present case, it is without a doubt that a claimant has the burden of proof to establish the factual basis of his claim for tax credit or refund, consistent with the principle that tax refunds, like tax exemptions, are construed strictly against the taxpayer. Likewise, it bears stressing that entitlement to a tax refund is for the taxpayer to prove and not for the government to disprove.[16]

Otherwise stated, in order to be entitled to a cash refund or issuance of tax credit certificate under Section 76 of the NIRC of 1997, as amended, petitioner must prove that it did not carry over its excess creditable withholding taxes to the succeeding taxable quarters of the succeeding taxable year. Ostensibly, the most feasible and logical way of proving the same is to present and offer in evidence the succeeding quarterly income tax returns and the annual income tax return of the subsequent taxable year in order for this Court to determine with utmost certainty that no claimed amount was carried over or utilized to said quarters.

By way of reiteration, since petitioner failed to present and offer in evidence the first, second, and third Quarterly ITRs for the year 2004, this Court agrees with the Court in Division's ruling that petitioner was not able to prove that it did not exercise its option to carry-over its excess creditable withholding tax. Consequently, the Court is given no alternative but to deny the instant petition for lack of merit.

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[15] *Ibid.*, pp. 12-14.
[16] *Commissioner of Internal Revenue vs. Far East Bank & Trust Company (now Bank of the Philippine Islands)*, G.R. No. 1738, March 15, 2012.

In light of all the foregoing considerations, We see no errors of fact or law committed by the Court in Division that would warrant a reversal or modification of the assailed Amended Decision dated July 27, 2011 in CTA Case No. 7440.

WHEREFORE, premises considered, the Petition for Review is hereby **DENIED** for lack of merit. Accordingly, the Amended Decision dated July 27, 2011 of the Court in Division in CTA Case No. 7440, is hereby **AFFIRMED**.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

(On leave)
ROMAN G. DEL ROSARIO
Presiding Justice

Juanito C. Castañeda, Jr.
(With Dissenting Opinion)
JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

CAESAR A. CASANOVA
Associate Justice

(Concurs with the Dissenting Opinion of Justice Juanito C. Castañeda, Jr.)
ESPERANZA R. FABON-VICTORINO
Associate Justice

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

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the conclusions in the above decision were reached in consultation before the case was assigned to the writer of the opinion of the Court *En Banc*.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Acting Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

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WINEBRENNER & IÑIGO INSURANCE BROKERS, INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB No. 814
(CTA Case No. 7440)

Present:

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

Promulgated:
MAR 2 2 2013

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DISSENTING OPINION

CASTAÑEDA, JR., J.:

This case involves petitioner's claim for refund or the issuance of tax credit certificate ("TCC") of P4,073,954.00 representing its excess or unutilized creditable taxes withheld for calendar year 2003.

On April 13, 2010, the Special First Division issued a Decision ordering the Commissioner of Internal Revenue ("CIR") to refund or to issue TCC in the reduced amount of P2,737,903.34 representing excess or unutilized creditable withholding tax ("CWT") for calendar year 2003.[1]

Acting upon petitioner's Motion for Partial Reconsideration and respondent's Motion for Reconsideration of the Decision dated April 13, 2010, the Court in Division issued an Amended Decision dated July 27, 2011[2] granting

[1] Penned by Associate Justice Caesar A. Casanova with retired Presiding Justice Ernesto D. Acosta and Associate Justice Lovell R. Bautista concurring.
[2] Penned by Associate Justice Caesar A. Casanova with retired Presiding Justice Ernesto D. Acosta concurring.

respondent's Motion, and consequently denying the Petition for Review due to insufficiency of evidence. The Court in Division emphasized that petitioner's failure to offer as evidence the 2004 quarterly income tax returns ("ITRs") is fatal to its refund claim as echoed in the CTA *en banc* case of *Millenium Business Services, Inc. v. The Commissioner of Internal Revenue*.[3]

On appeal to the Court of Tax Appeals ("CTA") *en banc*, Associate Justice Erlinda P. Uy as the ponente recommended to affirm the Amended Decision dated July 27, 2011 in CTA Case No. 7440, and reiterated the denial of the Petition for Review due to insufficiency of evidence, specifically on the failure to present and offer in evidence the first, second, and third quarterly ITRs for year 2004.

I respectfully disagree with the majority on the following grounds:

I. **THE SUPREME COURT'S RULINGS IN PHILAM, STATE LAND, MIRANT AND PERF CASES ARE BINDING UPON THIS COURT. <u>THESE SUPREME COURT CASES MUST PREVAIL AGAINST THE MILLENIUM CASE ISSUED BY THE CTA EN BANC.</u>**

II. **IN A REFUND CLAIM OF EXCESS CREDITABLE WITHOLDING TAXES, THE SUPREME COURT HAS CONSISTENTLY RULED THAT THE SUBMISSION OF RETURNS FOR THE SUBSEQUENT YEARS IS UNNECESSARY.**

THE SUPREME COURT'S RULINGS IN THE PHILAM, STATE LAND, MIRANT AND PERF CASES ARE BINDING UPON THIS COURT. <u>THESE SUPREME COURT CASES MUST PREVAIL AGAINST THE MILLENIUM CASE ISSUED BY THE CTA *EN BANC*.</u>

The Supreme Court, by tradition and in our system of judicial administration, has the last word on what the law is. It is the final arbiter of any justiciable controversy.[4] In the case of *Systra Philippines, Inc. v. Commissioner of Internal Revenue*,[5] it was emphasized that "**All courts must take their bearings from the decisions of this Court**".

Maintaining stability in jurisprudence is of paramount importance under the principle of *stare decisis et non quieta movere* which simply means follow past precedents and do not disturb what has been settled. Where the same questions

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[3] CTA EB Case No. 510, September 28, 2010.
[4] *Dante Nacuray, et al. v. National Labor Relations Commission*, G.R. Nos. 114924-27, March 18, 1997, 270 SCRA 9.
[5] *Systra Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 176290, Resolution dated September 21, 2007, 533 SCRA 776, 781 citing *Republic of the Philippines v. Maj. Gen. Garcia,* G.R. No. 167741, July 12, 2007, 527 SCRA 495.

relating to the same event have been put forward by parties similarly situated as in a previous case litigated and decided by a competent court, the rule of *stare decisis* is a bar to any attempt to relitigate the same issue.[6] That decision becomes a judicial precedent to be followed in subsequent cases by all courts in the land.[7] The doctrine of *stare decisis* explains why the cases of ***Commissioner of Internal Revenue v. Mirant (Philippines) Operations, Corporation***[8], ***Philam Asset Management, Inc. v. Commissioner of Internal Revenue***[9], ***State Land Investment Corporation v. Commissioner of Internal Revenue***[10] **and** ***Commissioner of Internal Revenue v. PERF Realty Corporation***[11] are binding upon this Court. Clearly, the law and existing jurisprudence dictate that there is justifiable reason to adopt the Decision dated April 13, 2010, and not the Amended Decision dated July 27, 2011 in CTA Case No. 7440.

IN A REFUND CLAIM OF EXCESS CREDITABLE WITHOLDING TAXES, THE SUPREME COURT HAS CONSISTENTLY RULED THAT THE SUBMISSION OF RETURNS FOR THE SUBSEQUENT YEARS IS UNNECESSARY.

In the case of *Philam Asset Management, Inc. v. Commissioner of Internal Revenue,*[12] the Supreme Court exhaustively discussed the reasons why the Income Tax Return ("ITR") or the Final Adjustment Return ("FAR") of the succeeding year is no longer necessary when a taxpayer requests for a tax refund. It categorically ruled that the said requirement has no basis in law and jurisprudence. The Supreme Court held:

> **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.**
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> xxx **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. (Emphasis ours)

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[6] *Negros Navigation Co., Inc.., v. Court of Appeals, et al.*, G.R. No. 110398, November 7, 1997, 281 SCRA 534.
[7] *Gregorio Castillo v. Sandiganbayan*, G.R. No. 138231, February 21, 2002, 377 SCRA 509. See *Tala Realty Services Corp. v. Banco Filipino Savings and Mortgage Bank*, June 20, 2000, 334 SCRA 114.
[8] G.R. Nos. 171742 and 176165, June 15, 2011, 652 SCRA 80.
[9] *Philam Asset Management, Inc. v. Commissioner of Internal Revenue*, G.R. Nos. 156637 or 162004, December 14, 2005, 477 SCRA 761.
[10] *State Land Investment Corporation v. Commissioner of Internal Revenue,* G.R. No. 171956, January 18, 2008, 542 SCRA 114.
[11] *Commissioner of Internal Revenue v. PERF Realty Corporation,* G.R. No. 163345, July 4, 2008, 557 SCRA 165.
[12] *Philam Asset Management, Inc. vs. Commissioner of Internal Revenue,supra.*

Citing the case of *Philam Asset Management, Inc. v. Commissioner of Internal Revenue*, the Supreme Court made a similar ruling in the case of *State Land Investment Corporation v. Commissioner of Internal Revenue*[13] attesting as unnecessary the presentation of the final adjustment return for the subsequent year as follows:

> As previously mentioned, after paying P4,187,523.00 as income tax due in 1998, there remained an unutilized tax credit of P9,742,270.51. **It was not necessary on the part of petitioner to file with the BIR its income tax return for 1999. In *Philam Asset Management, Inc. v. Commissioner of Internal Revenue*, we held that the Tax Code merely requires the filing of the final adjustment return for the preceding — not the succeeding — taxable year.** Indeed, any refundable amount indicated therein corresponding to the preceding taxable year may be credited against the estimated income tax liabilities for the taxable quarters of the succeeding taxable year. **Requiring that the income tax return or the final adjustment return of the succeeding year be presented to the BIR in requesting a tax refund has no basis in law and jurisprudence.** (Emphasis ours.)

In the recent case of *The Commissioner of Internal Revenue v. Mirant (Philippines) Operations, Corporation,*[14] the Supreme Court mentioned that a tax credit or refund of creditable withholding tax requires compliance with only three (3) requisites as follows:

1) The claim must be filed with the CIR within the two-year period from the date of payment of the tax;

2) It must be shown on the return that the income received was declared as part of the gross income; and

3) The fact of withholding must be 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.[15]

In the said case, the Court granted the refund claim without requiring the submission of the original quarterly income tax returns of the subsequent year upon showing that the claimant opted to refund its excess CWT and had complied with the above legal requisites.

The presentation of subsequent ITRs is a mere superfluity as declared by the Supreme Court in the case of *Commissioner of Internal Revenue v. PERF Realty Corporation,*[16] *viz*: ge

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[13] *State Land Investment Corporation v. Commissioner of Internal Revenue, supra.*
[14] The *Commissioner of Internal Revenue vs. Mirant (Philippines) Operations, Corp., supra.*
[15] See *Commissioner of Internal Revenue v. Far East Bank and Trust Company (Now Bank of the Philippine Islands)*, G.R. No. 173854, March 15, 2010, 615 SCRA 417 and *Banco Filipino v. Court of Appeals*, March 27, 2007, G.R. No. 155682, 519 SCRA 93.
[16] *Commissioner of Internal Revenue v. PERF Realty Corporation, supra.*

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> **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.** (Emphasis ours.)

Considering that in the cases of *Philam*, *State Land*, *Mirant* and *PERF*, the Supreme Court explicitly stated that the submission of FAR of the succeeding taxable year is not required under the law to prove the claimant's entitlement to excess or unutilized creditable withholding tax; logically, the submission of quarterly income tax returns for the subsequent taxable period is unnecessary. To put it succinctly, there is no justifiable reason to deviate from the existing rulings of the Supreme Court.

I vote to affirm the Decision dated April 13, 2010 in CTA Case No. 7440.

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

I CONCUR:

ESPERANZA R. FABON-VICTORINO
Associate Justice