REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

TRANS PACIFIC AIR SERVICE CORPORATION, Petitioner,	**CTA Case No. 8630**
	Members:
- versus -	**DEL ROSARIO,** *Chairperson* **UY,** and **MINDARO-GRULLA,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	**Promulgated:** JAN 30 2015 ; 3:01 pm.

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DECISION

UY, J.:

In this Petition for Review filed on April 11, 2012, petitioner, Trans Pacific Air Service Corporation, prays that judgment be rendered in its favor: (i) declaring petitioner entitled to the issuance of a tax credit certificate (TCC), or in the alternative, a tax refund, in the total amount of ₱2,111,354.00, as excess and unutilized creditable withholding tax or overpaid income tax for taxable year ending December 31, 2010; and (ii) ordering respondent, Commissioner of Internal Revenue, to issue such TCC or to refund the said amount to petitioner.

THE FACTS

Petitioner is a domestic corporation with address at G/F SGV II Building, 6758 Ayala Avenue, Makati City 1226.[1]

[1] Pre-Trial Order dated November 27, 2013, Part II-A, Par. 1, Docket, Vol. I, p. 270.

Respondent Bureau of Internal Revenue (BIR), through the Commissioner of Internal Revenue, is the agency of the government tasked with the enforcement of revenue laws and the collection of taxes and duties.[2]

On April 13, 2011, petitioner filed its Income Tax Return (ITR) for 2010.[3] In the said ITR, the following amounts were reported, to wit:

Aggregate Income Tax Due		₱ 1,017,481.00
Less: Tax Credits/Payments:		
Creditable Tax Withheld for the First Three Quarters	₱ 2,643,549.00	
Creditable Tax Withheld per BIR Form No. 2307 for the Fourth Quarter	485,286.00	
Total Tax Credits/Payments		₱ 3,128,835.00
Tax Payable/(Overpayment)		₱ 2,111,354.00

For the tax overpayment amounting to ₱2,111,354.00, petitioner opted "(t)o be issued a Tax Credit Certificate".[4]

Subsequently, an administrative claim for refund/tax credit was filed by petitioner with the BIR on August 22, 2011,[5] requesting its assistance to facilitate the issuance of a TCC for the said tax overpayment.[6]

Upon the belief that the two-year prescriptive period is about to prescribe, and considering that respondent had not yet granted the refund or approved the issuance of a TCC in favor of petitioner, the latter filed the instant Petition for Review on April 11, 2012.[7]

In her Answer to the Petition for Review,[8] respondent contends that petitioner's claim for refund is still subject to investigation by the Bureau of Internal Revenue; and that petitioner failed to demonstrate that the tax, which is the subject of this case, was erroneously or illegally collected.

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[2] Pre-Trial Order dated November 27, 2013, Part II-A, Par. 2, Docket, Vol. I, p. 270.
[3] Pre-Trial Order dated November 27, 2013, Part II-A, Par. 4, Docket, Vol. I, p. 270.
[4] Exhibit "P-5", Docket, Vol. II, p. 757.
[5] Pre-Trial Order dated November 27, 2013, Part II-A, Par. 5, Docket, Vol. I, p. 270.
[6] Exhibit "P-13", Docket, Vol. II, p. 798.
[7] Petition for Review, Par. 12, Docket, Vol. I, p. 11.
[8] Docket, Vol. I, pp. 45 to 47.

Allegedly, it is explicitly stated under Section 76 of the Tax Code, as amended, that once a taxpayer chooses the option to carry-over, it shall be irrevocable for that taxable period and no application for a tax refund or tax credit certificate shall then be allowed (**Philam Asset Management, Inc. vs. Commissioner of Internal Revenue, G.R. Nos. 156637/162004, December 14, 2005**). Petitioner, therefore, must proved that it did not carry-over its 2010 alleged unutilized creditable withholding taxes to the succeeding taxable quarters/years, otherwise, petitioner is precluded from claiming a cash refund or for issuance of tax credit certificate its excess tax credit for taxable year 2010.

According to respondent, 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**).

Further, respondent points out that it is incumbent upon petitioner to show that it has complied with the provisions of Section 76 in relation to Section 204 and 229 of the 1997 Tax Code, as amended, including Revenue Regulations No. 2-98, as amended; and that claims for refund are construed strictly against the claimant, the same partake the nature of exemption from taxation and as such[9], they are looked upon with disfavor.[10]

This case was set for pre-trial on August 16, 2013, and as directed by the Court,[11] the parties filed their Joint Motion to Approve Stipulations of Facts and Issues and Identification of Documents and Witnesses on October 14, 2013.[12] The Joint Stipulation of Facts and Issues was approved by the Court in the Resolution dated November 14, 2013.[13]

During trial, petitioner presented two (2) witnesses to prove its refund claim, namely: Arlene J. Aquino and Maria Fe A. Larrosa. On the other hand, respondent's counsel, Atty. Victor Eleazar S.J. Santos, manifested during the hearing held on February 18, 2014[14] that respondent will not present evidence. Thus, the parties were

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[9] Commissioner vs. Ledesma, 31 SCRA 95
[10] Western Minolco Corp. vs. Commissioner, 124 SCRA 121
[11] Resolution dated October 4, 2013, Docket, Vol. I, pp. 223 to 224.
[12] Docket, Vol. I, pp. 234 to 240.
[13] Docket, Vol. I, pp. 258 to 259.
[14] Resolution dated February 18, 2014, Docket, Vol. II, pp. 677-678

directed to file their respective memorandum after the Court's resolution of petitioner's Formal offer of Evidence.

Respondent filed her Memorandum on June 30, 2014,[15] while petitioner filed its Memorandum on July 23, 2014.[16] On August 11, 2014, the instant case was submitted for decision.[17]

Hence, this Decision.

THE ISSUES

The stipulated issues submitted for the Court's consideration, are as follows:

> "1. Whether or not petitioner has unutilized/excess creditable withholding tax in the amount of Php2,111,354.00 for taxable year 2010.
>
> 2. Whether or not the said unutilized creditable withholding taxes for taxable year 2010 were carried over and applied as tax credit to the succeeding taxable year(s).
>
> 3. Whether or not the income from which the taxes were withheld was included as part of the gross income in the petitioner's 2010 Income Tax Return.
>
> 4. Whether or not the petitioner's claim for refund/tax credit allegedly representing unutilized/excess creditable withholding tax for taxable year 2010 in the amount of Php2,111,354.00 is substantiated by documentary evidence."[18]

The foregoing issues, however, may be simplified as follows:

> "Whether or not petitioner is entitled to its claim for TCC or tax refund in the amount of ₱2,111,354.00, allegedly representing excess and unutilized creditable withholding tax for the taxable year ending December 31, 2010."

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[15] Docket, Vol. II, pp. 1139 to 1143.

[16] Docket, Vol. II, pp. 1153 to 1162.

[17] Resolution dated August 11, 2014, Docket, Vol. II, p. 1164.

[18] Urgent Motion To Approve Stipulation of Facts and Issues and Identification of Documents and Witnesses, Docket, Vol. I, pp. 234 to 240; Pre-Trial Order dated November 27, 2013, Docket, Vol. I, pp. 270-271

Petitioner's arguments:

Petitioner argues that it has complied with the 2-year period from payment of the tax as prescribed under Section 229 of the National Internal Revenue Code (NIRC) of 1997.

According to petitioner, the income from which the creditable taxes were withheld was declared as part of its gross income for taxable year 2010. In this connection, petitioner contends that it even went to the extent of presenting the individual cash receipts journals proving that it issued receipts of payments.

Finally, petitioner avers that its claim for refund of its unutilized 2010 creditable withholding tax is supported by withholding tax certificates issued by the withholding agents / income payors.

Respondent's counter-arguments:

Respondent contends that there is no showing on petitioner's annual ITR for 2010 that the income payments subjected to withholding tax were declared as part of its gross income.

Furthermore, respondent asserts that the certificates of creditable taxes withheld accomplished by its withholding agents showing the amount deducted and withheld from its income in support of the tax refund, does not constitute conclusive evidence of payment and remittance to the BIR of the withheld taxes on petitioner's income. Allegedly, the act of withholding is one thing while the act of remittance is another thing; and the best evidence or proof of remittance is the certification from the BIR's Revenue Accounting Division as to the fact of remittance of the tax withheld.

Respondent also points out that petitioner failed to prove that the creditable taxes withheld by the payors were indeed remitted to the BIR and that petitioner failed to present the various payors and withholding agents in order to establish the fact of withholding and remittances made.

Lastly, respondent stresses that tax refunds are in the nature of tax exemptions, and as such, they are regarded as in derogation of sovereign authority and to be construed *strictissimi juris* against the person or entity claiming the exemption.

THE COURT'S RULING

We deny the instant Petition for Review.

Section 76 of the National Internal Revenue Code (NIRC) of 1997 provides:

> "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 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. Once the option to carry-over and apply the excess quarterly income tax against income 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 supplied)*

Interpreting the foregoing provision, the Supreme Court, in *Systra Philippines, Inc. vs. Commissioner of Internal Revenue*,[19] held that 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.

The Supreme Court further said that in exercising its option, the

[19] G.R. No. 176290, September 21, 2007.

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.

Petitioner opted to be issued a Tax Credit Certificate for the alleged excess amount paid.

A perusal of petitioner's Annual ITR[20] for the year 2010 shows an income tax due in the amount of ₱1,017,481.00. This amount was offset against the creditable taxes withheld accumulated during the four (4) quarters of the said year in the amount of ₱3,128,835.00. Thus, petitioner had an excess tax credit of ₱2,111,354.00 as of the end of December 31, 2010, computed as follows:

Creditable tax withheld for the first three quarters	₱	2,643,549.00
Creditable tax withheld for the fourth quarter		485,286.00
Total tax credits	₱	3,128,835.00
Less: Income tax due		1,017,481.00
Unutilized excess tax credits as of December 31, 2010	**₱**	**2,111,354.00**

It is also clearly indicated therein that petitioner opted to be issued a TCC by marking the corresponding box in the said Annual ITR. Moreover, petitioner's Quarterly ITR for the years 2011 and 2012,[21] and Annual ITR for CY 2011,[22] reflected no prior year's excess credits.

Accordingly, the unutilized CWT for year 2010 in the amount of ₱2,111,354.00 may be the proper subject of a claim for TCC under the aforequoted Section 76 of the NIRC of 1997.

Conditions for the grant of a claim for refund or TCC for excess/unutilized CWT may be allowed.

In addition to the choice of its option under Section 76 of the

[20] Exhibit "P-5", Docket, Vol. II, p. 757.
[21] Exhibits "P-7-a", "P-8-a", "P-9-a", "P-10-a", "P-11-a" and "P-12-a" Docket, Vol. II, pp. 799 to 804.
[22] Exhibit "P-14-b", Docket, Vol. II, p. 810.

NIRC of 1997 and in accordance with the ruling of the Supreme Court, in a number of cases,[23] a taxpayer must satisfy the following conditions for the grant of a claim for refund of creditable withholding income tax, to wit:

1) the claim is filed with the Commissioner of Internal Revenue within the two-year period from the date of payment of the tax;[24]

2) 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;[25] and

3) it is shown on the return of the recipient that the income payment received was declared as part of the gross income.[26]

The **first condition** is anchored on Sections 204(C) and 229 of the NIRC of 1997, which read:

> "SEC. 204. *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.* – The Commissioner may –
>
> xxx xxx 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 stamped 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**

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[23] *Banco Filipino Savings and Mortgage Bank vs. Court of Appeals, et al.*, G.R. No. 155682, March 27, 2007; *Commissioner of Internal Revenue vs. Perf Realty Corporation*, G.R. No. 163345, July 4, 2008, and *Commissioner of Internal Revenue vs. Far East Bank & Trust Co. (Now Bank of the Philippine Islands)*, G.R. No. 173854, March 15, 2010.

[24] Sections 204(C) and 229, NIRC of 1997; Jose C. Vitug and Ernesto D. Acosta, Tax Law and Jurisprudence, 329 (2006), citing *Gibb v. Collector,* 107 Phil. 230 (1960).

[25] Section 2.58.3(B) of Revenue Regulations No. 2-98.

[26] Id.; *Calamba Steel Center, Inc. v. Commissioner on Internal Revenue*, G.R. No. 151857, April 28, 2005, 457 SCRA 482.

> **written claim for credit or refund.**" *(Emphasis supplied)*
>
> "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 therefore, 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.**" *(Emphasis supplied)*

It is well settled in our jurisprudence that the two-year prescriptive period within which to claim a refund commences to run, at the earliest, on the date of the filing of the adjusted final return.[27] This must be so because it is only on such date when it can be finally ascertained if the taxpayer has still to pay additional income tax or if he is entitled to a refund of overpaid income tax.[28]

In the instant case, petitioner filed its Annual ITR or Final Adjustment Return on April 13, 2011.[29] Counting from this date, petitioner had until April 13, 2013 within which to file its claim for the issuance of TCC, both in the administrative and judicial levels.

It appearing that petitioner's administrative claim for refund was filed on August 22, 2011,[30] and thereafter, its judicial claim via the

[27] *ACCRA Investments Corporation vs. Court of Appeals, et al.*, G.R. No. 96322, December 20, 1991.
[28] *Commissioner of Internal Revenue vs. TMX Sales Inc., et al.*, G.R. No. 83736, January 15, 1992.
[29] Pre-Trial Order dated November 27, 2013, Part II-A, Par. 4, Docket, Vol. I, p. 270; Exhibit "P-5", Docket, Vol. II, p. 760.
[30] Pre-Trial Order dated November 27, 2013, Part II-A, Par. 5, Docket, Vol. I, p. 270.

instant Petition for Review was filed on April 11, 2013,[31] clearly, both administrative and judicial claims were filed within the two-year prescriptive period provided by law.

As for the **second and third conditions** for the grant of a claim for refund of creditable withholding income tax, the basis therefor is Section 2.58.3(B) of Revenue Regulations (RR) No. 2-98[32], as amended, 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**.
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> **Proof of remittance is the responsibility of the withholding agent.**" *(Emphases supplied)*

In this connection, it must be emphasized that We find no merit in respondent's argument that the certificates of creditable taxes withheld accomplished by its withholding agents showing the amount deducted and withheld from its income in support of the tax refund, does not constitute conclusive evidence of payment and remittance to the BIR of the withheld taxes on petitioner's income.

In *Commissioner of Internal Revenue vs. Philippine National Bank*,[33] the Supreme Court said:

> **"The certificate of creditable tax withheld at source[34] is the competent proof to establish the fact**

[31] Docket, Vol. I, p. 1.

[32] SUBJECT: Implementing Republic Act No. 8424, "An Act Amending the National Internal Revenue Code, as amended" relative to the Withholding on Income subject to the Expanded Withholding Tax and Final Withholding Tax, Withholding of Income Tax on Compensation, Withholding of Creditable Value-Added Tax and Other Percentage Taxes.

[33] G.R. No. 180290, September 29, 2014.

[34] Now BIR Form No. 2307.

> **that taxes are withheld.**[35] **It is not necessary for the person who executed and prepared the certificate of creditable tax withheld at source to be presented and to testify personally to prove the authenticity of the certificates.**[36]
>
> In *Banco Filipino Savings and Mortgage Bank v. Court of Appeals*,[37] this court declared that **a certificate is complete in the relevant details that would aid the courts in the evaluation of any claim for refund of excess creditable withholding taxes**:
>
> xxx xxx xxx
>
> Moreover, as correctly held by the Court of Tax Appeals En Banc, **the figures appearing in the withholding tax certificates can be taken at face value since these documents were executed under the penalties of perjury**, pursuant to Section 267 of the 1997 National Internal Revenue Code, as amended, which reads:
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>> SEC. 267. Declaration under Penalties of Perjury. — Any declaration, return and other statements required under this Code, shall, in lieu of an oath, contain a written statement that they are made under the penalties of perjury. Any person who willfully files a declaration, return or statement containing information which is not true and correct as to every material matter shall, upon conviction, be subject to the penalties of prescribed for perjury under the Revised Penal Code.

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[35] Citing Sec. 10 of Revenue Regulation No. 6-85, as amended by Revenue Regulations No. 12-94, which provides as follows: *Sec. 10. Claim for Tax Credit or Refund.*— (a) Claims for Tax Credit or Refund of income tax deducted and withheld on income payments shall be given due course only when it is shown on the return that the income payment received has been declared as party 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 supplied) *Far East Bank and Trust Company vs. Court of Appeals*, 513 Phil. 680. 689 (1996) [Per J. Regalado, Second Division].

[36] Citing *Commissioner of Internal Revenue vs. Team (Philippines) Operations Corporation*, G.R. No. 179260, April 2, 2014 [Per J. Perez, Second Division]; *Commissioner of Internal Revenue vs. Team (Philippines) Operations Corporation*, G.R. No. 185728, October 16, 2013 [Per J. Villarama, Jr., First Division]; and *Commissioner of Internal Revenue vs. Mirant (Philippines) Operations Corporation*, G.R. No. 171742, June 15, 2011 [Per J. Mendoza, Second Division].

[37] 548 Phil. 32 (2007) [Per J. Austria-Martinez, Third Division].

Thus, upon presentation of a withholding tax certificate complete in its relevant details and with a written statement that it was made under the penalties of perjury, the burden of evidence then shifts to the Commissioner of Internal Revenue to prove that (1) the certificate is not complete; (2) it is false; or (3) it was not issued regularly.

Petitioner's posture that respondent is required to establish actual remittance to the Bureau of Internal Revenue deserves scant consideration. **Proof of actual remittance is not a condition to claim for a refund of unutilized tax credits. Under Sections 57 and 58 of the 1997 National Internal Revenue Code, as amended, it is the payor-withholding agent, and not the payee-refund claimant such as respondent, who is vested with the responsibility of withholding and remitting income taxes.**

This court's ruling in *Commissioner of Internal Revenue v. Asian Transmission Corporation*,[38] citing the Court of Tax Appeals' explanation, is instructive:

> " xxx proof of actual remittance by the respondent is not needed in order to prove withholding and remittance of taxes to petitioner. Section 2.58.3 (B) of Revenue Regulation No. 2-98 clearly provides that proof of remittance is the responsibility of the withholding agent and not of the taxpayer-refund claimant. It should be borne in mind by the petitioner that payors of withholding taxes are by themselves constituted as withholding agents of the BIR. The taxes they withhold are held in trust for the government. In the event that the withholding agents commit fraud against the government by not remitting the taxes so withheld, such act should not prejudice herein respondent who has been duly withheld taxes by the withholding agents acting under government authority. Moreover, pursuant to Section 57 and 58 of the NIRC of 1997, as amended, the withholding of income tax and the remittance thereof to the BIR

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[38] G.R. No. 179617, January 19, 2011 [Per J. Mendoza, Second Division].

> is the responsibility of the payor and not the payee. Therefore, respondent . . . has no control over the remittance of the taxes withheld from its income by the withholding agent or payor who is the agent of the petitioner. **The Certificates of Creditable Tax Withheld at Source issued by the withholding agents of the government are *prima facie* proof of actual payment by herein respondent-payee to the government itself through said agents.**"

Thus, petitioner's compliance with the second condition may be shown merely by presenting the pertinent certificates of creditable tax withheld at source, which are complete in their relevant details and with a written statement that they were made under the penalties of perjury.

To prove the fact of withholding of the subject claim, in compliance with the second requisite, petitioner submitted various Certificates of Creditable Tax Withheld at Source and Summary Alphalist of Withholding Taxes[39] showing creditable withholding taxes in the aggregate amount of ₱3,128,835.28, broken down as follows:

Withholding Agent	Exhibit (BIR Form No. 2307)	Income Payment	Income Tax Withheld
Banco De Oro Unibank Inc.	"P-15"	₱ 223,840.00	₱ 1,119.19
Banco De Oro Unibank Inc.	"P-16"	55,290.00	276.45
Banco De Oro Unibank Inc.	"P-17"	2,700,585.00	13,502.94
Banco De Oro Unibank Inc.	"P-18"	74,410.00	372.05
Banco De Oro Unibank Inc.	"P-19"	2,985,086.00	14,925.43
Banco De Oro Unibank Inc.	"P-20"	1,990,145.00	9,950.72
Banco De Oro Unibank Inc.	"P-21"	5,049,354.00	25,246.77
Banco De Oro Unibank Inc.	"P-22"	279,070.00	1,395.35
Banco De Oro Unibank Inc.	"P-23"	202,436.00	1,012.18

[39] Exhibit "P-79", Docket, Vol. II, pp. 877 to 878.

Banco De Oro Unibank Inc.	"P-24"	126,028.00	630.14
Banco De Oro Unibank Inc.	"P-25"	720.00	3.61
Banco De Oro Unibank Inc.	"P-26"	554.00	2.77
Banco De Oro Unibank Inc.	"P-27"	95,372.00	476.86
Banco De Oro Unibank Inc.	"P-28"	67,316.00	336.58
Banco De Oro Unibank Inc.	"P-29"	82,060.00	410.30
Banco De Oro Unibank Inc.	"P-30"	233,675.00	1,168.36
Banco De Oro Unibank Inc.	"P-31"	133,780.00	668.90
Banco De Oro Unibank Inc.	"P-32"	124,679.00	623.40
Banco De Oro Unibank Inc.	"P-33"	160,896.00	804.48
Banco De Oro Unibank Inc.	"P-34"	954.00	4.76
Banco De Oro Unibank Inc.	"P-35"	39,722.00	198.61
Banco De Oro Unibank Inc.	"P-36"	394,354.00	1,971.77
Banco De Oro Unibank Inc.	"P-37"	155,168.00	775.84
Citadel Air Services Corporation	"P-38"	25,042.40	1,252.12
Citadel Air Services Corporation	"P-39"	29,007.64	1,450.38
Citadel Air Services Corporation	"P-40"	18,816.66	940.83
Citadel Air Services Corporation	"P-41"	18,816.66	940.83
Citadel Air Services Corporation	"P-42"	129,924.55	6,496.23
Citadel Air Services Corporation	"P-43"	89,603.13	4,480.16
Citadel Air Services Corporation	"P-44"	18,816.66	940.83
Citadel Air Services Corporation	"P-45"	18,816.66	940.83
Citadel Air Services Corporation	"P-46"	18,816.66	940.83
Continental Micronesia Incorporated	"P-47"	8,343,640.72	834,364.07
Continental Micronesia Incorporated	"P-48"	11,069,521.29	1,106,952.13
Continental Micronesia Incorporated	"P-49"	2,776,375.80	277,637.58
Continental Micronesia Incorporated	"P-50"	2,684,339.50	268,433.95

Continental Micronesia Incorporated	"P-51"	1,565,768.00	156,576.80
Continental Micronesia Incorporated	"P-52"	19,084.70	1,908.47
Continental Micronesia Incorporated	"P-53"	1,586,873.28	158,687.33
Continental Micronesia Incorporated	"P-54"	1,426,417.39	142,641.74
Euro Trans Air Services Corporation	"P-55"	16,471.56	823.58
Euro Trans Air Services Corporation	"P-56"	129,758.89	6,487.94
Euro Trans Air Services Corporation	"P-57"	113,732.21	5,686.61
Euro Trans Air Services Corporation	"P-58"	16,471.56	823.58
Euro Trans Air Services Corporation	"P-59"	16,471.56	823.58
Euro Trans Air Services Corporation	"P-60"	16,471.56	823.58
Euro Trans Air Services Corporation	"P-61"	16,471.56	823.58
Global Air Service Corporation	"P-62"	544,647.77	27,232.39
Global Air Service Corporation	"P-63"	80,976.80	4,048.84
Global Air Service Corporation	"P-64"	80,976.80	4,048.84
Global Air Service Corporation	"P-65"	37,541.62	1,877.08
Global Air Service Corporation	"P-66"	43,435.18	2,171.76
Global Air Service Corporation	"P-67"	37,541.62	1,877.08
Global Air Service Corporation	"P-68"	43,435.18	2,171.76
Global Air Service Corporation	"P-69"	80,976.80	4,048.84
Global Air Service Corporation	"P-70"	37,541.62	1,877.08
iTravel iExplore Tours & Services	"P-71"	55,705.26	2,785.26
iTravel iExplore Tours & Services	"P-72"	55,705.26	2,785.26
Isla Corporation	"P-73"	27,142.20	1,357.11
Isla Corporation	"P-74"	187,410.41	9,370.52
Isla Corporation	"P-75"	27,142.20	1,357.11
Isla Corporation	"P-76"	27,142.20	1,357.11
Isla Corporation	"P-77"	27,142.20	1,357.11

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Isla Corporation	"P-78"	27,142.20	1,357.11
Total		**₱ 46,762,629.92**	**₱3,128,835.28**

Verification of the said certificates reveal that they are respectively complete in their relevant details, with a written statement that they were made under the penalties of perjury.

However, creditable taxes withheld in the aggregate amount of ₱2,702.50, the related income payments of which amount to ₱54,050.04,[40] are supported by certificates not within the taxable year 2010, but for year 2009. Hence, out of the total creditable tax withheld of ₱3,128,835.28 indicated in the certificates issued in favor of petitioner, only the amount of ₱3,126,132.78 pertains to year 2010, as computed below:

Total claimed creditable taxes withheld		₱ 3,128,835.28
Less: Disallowed creditable taxes withheld		
Citadel Air Services Corporation (Exhibit "P-38")	₱ 1,252.12	
Citadel Air Services Corporation (Exhibit "P-39")	1,450.38	2,702.50
Total amount creditable taxes withheld per BIR Form No. 2307		**₱ 3,126,132.78**

Thus, petitioner's compliance with the second condition, *i.e.*, the establishment of the fact of withholding, is only up to the extent of the amount of ₱3,126,132.78

Anent the third condition requiring that it be shown on the return of the recipient that the income payment received was declared as part of the gross income, a perusal of the creditable withholding tax certificates reveals that the above-stated amount of ₱3,126,132.78 were withheld from petitioner's income of ₱46,708,579.88 (₱46,762,629.92 less ₱54,050.04), which is lower as compared to the income of ₱46,852,978.00 and ₱46,901,436.00 reported in petitioner's 2010 Annual ITR and Audited Financial Statements (FS), respectively, consisting of the following items:

[40] Refer to Exhibits "P-38" and "P-39", Docket, Vol. II. pp. 836 to 837.

ITR[41]		**FS**[42]	
Sales/revenues/receipts /fees	₱ 44,784,890.00	Commissions	₱ 44,784,890.00
Non-Operating & Taxable Other income			
Rental Revenue	1,804,162.00	Rentals	1,804,162.00
Service Fee	223,776.00	Others	230,436.00
Interest Income	40,150.00	Interest income	81,948.00
Total	**₱ 46,852,978.00**	**Total**	**₱ 46,901,436.00**
A difference amounting to ₱ 48,458.00			

Maria Fe Larrosa, petitioner's Finance and Administrative Manager, in her Judicial Affidavit,[43] explained that the difference in the total revenue declared in ITR and that in FS in the amount of ₱48,458.00 represents the interest income of ₱41,798.00 subjected to final tax and non-taxable dividend income of ₱6,660.00 found in entry 123 of the same ITR;[44] while the difference between the amount per certificate *vis-à-vis* the amount of income from both ITR and FS is due to timing difference.

To further prove that the income from which the creditable taxes were withheld was declared as part of its gross income for taxable year 2010, petitioner contends that it even went to the extent of presenting the individual cash receipts journals proving that it issued receipts of payments.

To the mind of the Court, however, these are not enough. The Court could not verify whether the income from which the creditable tax withheld of ₱3,126,132.78 indeed formed part of petitioner's taxable gross income for 2010, for petitioner's failure to present proof, such as, but not limited to, the detailed sales schedules and reconciliation schedules of its revenue with corresponding creditable tax withheld as reported in its ITR and FS for the year 2010.

Moreover, as to petitioner's contention that the discrepancy was due to timing difference, petitioner did not provide any evidence to prove the same. Mere allegations without adducing evidence are not sufficient. Allegation is not synonymous with proof.[45]

41 Exhibit "P-5", Docket, Vol. II, pp. 757 to 761.
42 Exhibit "P-6-b", Docket, Vol. II, p. 767.
43 Exhibit "P-242, Docket, Vol. II, p. 1098.
44 Exhibit "P-242", Docket, Vol. II, p. 1098.
45 *Ernesto Martin vs. Hon. Court of Appeals and Manila Electric Company*, G.R. No. 82248, January 30, 1992.

More importantly, as borne out by petitioner's annual ITR for 2010,[46] the same is **not** indicative that the income payment received by petitioner was declared as part of the gross income.

In the said ITR, specifically under Schedule 1 thereof or the *"Schedule of Sales/Revenues/Receipts/Fees"*,[47] stating a revenue in petitioner's Sale of Services in the amount of ₱44,784,890.00, **there is no entry whatsoever in the *"Creditable Tax Withheld"* column**. This is also the case as for the other income of petitioner in the total amount of ₱2,068,088.00,[48] which were reflected in Schedule 4 or the *"Schedulre of Non-Operating and Taxable Other Income"* of the same ITR. Thus, said declarations are to the effect or can be taken to mean that no part of petitioner's revenue and other income which were reported therein were ever subjected to creditable withholding tax.

Petitioner's non-compliance with the third requisite is fatal to its claim. It bears stressing that a claimant has the burden of proof to establish the factual basis of his or her claim for tax credit or refund.[49] Tax refunds are in the nature of tax exemptions. As such, they are regarded as in derogation of sovereign authority and to be construed *strictissimi juris* against the person or entity claiming the exemption.[50]

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

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

(*With Separate Concurring Opinion*)
ROMAN G. DEL ROSARIO
Presiding Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

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[46] Exhibit "P-5", Docket, Vol. II, p. 757.
[47] Exhibit "P-5", Docket, Vol. II, p. 758.
[48] Broken down as follows: ₱1,804,162.00 as Rental revenue, ₱223,776.00 as Service fee, and ₱40,150.00 as Interest income, Exhibit "P-5", Docket, Vol. II, p. 758.
[49] *Citibank, N.A. vs. Court of Appeals, et al.*, G.R. No. 107434, October 10, 1997.
[50] *Commissioner of Internal Revenue vs. S.C. Johnson and Son, Inc., and Court of Appeals*, G.R. No. 127105, 25 June 1999.

CERTIFICATION

I hereby certify that this Decision was reached after due consultation among the members of this Division in accordance with the provisions of Section 13, Article VIII of the Constitution.

ROMAN G. DEL ROSARIO
Chairperson
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

<u>FIRST DIVISION</u>

TRANS PACIFIC AIR SERVICE CORPORATION, Petitioner,	**CTA CASE NO. 8630** **Members:**
-versus-	**DEL ROSARIO,** *Chairperson* **UY,** *and* **MINDARO-GRULLA,** <u>*JJ.*</u>
COMMISSIONER OF INTERNAL REVENUE, Respondent.	**Promulgated:** JAN 30 2015 ; 3:01 pm.

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SEPARATE CONCURRING OPINION

DEL ROSARIO, <u>P.J.</u>:

I concur in the *ponencia* of my esteemed colleague, the Honorable Associate Justice Erlinda P. Uy, denying petitioner's claim for refund or issuance of a tax credit certificate (TCC) in the total amount of Php2,11,354.00, representing petitioner's alleged excess and unutilized creditable withholding tax or overpaid income tax for taxable year ending December 31, 2010.

As emphasized in the *ponencia*, petitioner's failure to **present detailed sales schedules** and **reconciliation schedules of its revenue with corresponding creditable tax withheld** as reported in its Annual Income Tax Return (ITR) and Audited Financial Statements (FS) is fatal to its claim. In the absence of the afore-mentioned schedules, the Court could not verify whether the income from which the creditable tax withheld of Php3,126,132.78 indeed formed part of petitioner's taxable gross income for the taxable year ending December 31, 2010.

While the lack of entries in the *"Creditable Tax Withheld"* column in Schedules 1 and 4, page 2 of petitioner's Annual Income Tax Return (ITR) for taxable year 2010, **does not conclusively indicate that no part of the gross income reported was ever subjected to creditable withholding tax**, the absence of the earlier mentioned schedules prevented the Court from verifying petitioner's compliance with the mandatory requirement that *"the income upon which the taxes were withheld were included in the return of the recipient"*.

In view of the foregoing, I **VOTE** to **DENY** the Petition for Review filed by Trans Pacific Air Service Corporation.

ROMAN G. DEL ROSARIO
Presiding Justice