REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

SANKYU LOGISTICS PHILIPPINES, INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 8080

Members:

BAUTISTA, *Chairperson*
PALANCA-ENRIQUEZ, and
COTANGCO-MANALASTAS, *JJ.*

Promulgated:
DEC 28 2012
11:07 a.m.

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D E C I S I O N

COTANGCO-MANALASTAS, J.:

This is a Petition for Review filed on April 14, 2010 by Sankyu Logistics Philippines, Inc. (petitioner) pursuant to Section 4(a) of Rule 8 of the Revised Rules of the Court of Tax Appeals (RRCTA), in relation to Rule 4 thereof, to review by appeal the inaction of the Commissioner of Internal Revenue over petitioner's administrative claim for issuance of tax credit certificate for its alleged excess creditable withholding tax (CWT) for taxable years 2007 and 2008 in the aggregate amount of P6,299,797.00.

THE FACTS

Petitioner Sankyu Logistics Philippines, Inc. is a domestic corporation duly organized and existing under the laws of the Republic of the Philippines, with office address at 8th Floor, Salamin

Building, Salcedo Street, Legaspi Village, Makati City.[1] Petitioner is registered with the Bureau of Internal Revenue (BIR) and was issued Tax Identification No. 205-657-646-000-VAT.[2]

Respondent is the duly appointed Commissioner of the Bureau of Internal Revenue vested by law with the power to enforce and implement the provisions of the National Internal Revenue Code (NIRC), related statutes, and their implementing rules and regulations. She holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

On March 9, 2009, petitioner's Board of Directors issued a resolution approving the cessation of commercial operations of petitioner effective March 31, 2009 and the liquidation effective June 30, 2009.[3]

On July 31, 2009, petitioner filed an application for closure and for cancellation of its BIR registration with the BIR due to cessation of commercial operations as per the above resolution of petitioner's Board of Directors.[4]

On March 2, 2010, petitioner filed with the BIR its short period Income Tax Return (ITR) for the period covering January 1 to June 30, 2009, pursuant to its cessation of commercial operations.[5]

On April 13, 2010, petitioner filed with the BIR Revenue District Office (RDO) No. 47-East Makati an administrative claim for issuance

[1] Par. 1, Admitted Facts, Joint Stipulation of Facts and Issues (JSFI), docket, p. 46.
[2] Par. 3, Admitted Facts, JSFI, docket, p. 47.
[3] Par. 7, Admitted Facts, JSFI, docket, p. 47.
[4] Par. 8, Admitted Facts, JSFI, docket, p. 47.
[5] Par. 9, Admitted Facts, JSFI, docket, p. 47.

of tax credit certificate for excess creditable withholding tax for taxable years 2007 and 2008 in the amounts of P1,689,921.00 and P4,609,876.00, respectively, or an aggregate amount of P6,299,797.00.[6]

On April 14, 2010, petitioner filed this Petition for Review due to respondent's inaction over its administrative claim for issuance of tax credit certificate for its excess CWT for taxable years 2007 and 2008 in the aggregate amount of P6,299,797.00, pursuant to Section 229 of the NIRC of 1997.

In respondent's Answer[7] filed on April 30, 2010, she interposed the following special and affirmative defenses:

"**<u>SPECIAL AND AFFIRMATIVE DEFENSES</u>**

5) Assuming without admitting that Petitioner filed a claim for refund, the same is subject to investigation by the Bureau of Internal Revenue;

6) Petitioner failed to demonstrate that the tax, which is the subject of this case, was erroneously or illegally collected;

7) Taxes paid and collected are presumed to have been made in accordance with the laws and regulations, hence, not refundable;

8) It is incumbent upon the Petitioner to show that it has complied with the provisions of Section 204(C) in relation to Section 229 of the Tax Code, as amended upon which its claimed for refund is premised;

9) In an action for tax refund the burden is upon the taxpayer to prove that he is entitled thereto, and failure to discharge 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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[6] Par. 10, Admitted Facts, JSFI, docket, p. 47.
[7] Docket, pp. 16-18.

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, these are looked upon with disfavor (*Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 121*)."

On November 15, 2010, petitioner moved for the commissioning of Atty. Ma. Cecilia C. Katigbak as Independent Certified Public Accountant (CPA) to perform the following functions:

1. Conduct the examination and audit of the voluminous documents, and thereafter; and

2. Issue and file with this Court a Formal Report attesting to the correctness of the contents of the Summary/ies and compliance with substantiation requirements under pertinent tax laws, regulations and jurisprudence after making such examination, evaluation and audit.[8]

In a Resolution[9] dated December 13, 2010, the Court granted petitioner's motion to commission Atty. Ma. Cecilia C. Katigbak as Independent CPA.

During trial, petitioner presented as witnesses Ms. Aida V. Magampon, petitioner's former Finance and Administration Manager from March 29, 2004 until August 31, 2009, and Atty. Ma. Cecilia C. Katigbak, the duly appointed Independent CPA.

During the scheduled hearing on February 27, 2012, petitioner's counsel failed to appear, despite notice.[10] This prompted respondent to move that petitioner be deemed to have waived its right to present further evidence, which the Court denied. In a

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[8] Docket, pp. 59-63.
[9] Docket, p. 80.
[10] Docket, p. 121.

Resolution[11] dated March 7, 2012, the Court warned petitioner's counsel that if he failed to appear again on March 26, 2012, petitioner's right to present further evidence shall be deemed waived.

During the March 26, 2012 hearing, counsel for petitioner again failed to appear despite notice. The Court, upon motion of respondent and considering the warning given in the Resolution[12] dated March 5, 2012, declared that petitioner's right to present further testimonial evidence has been deemed waived.[13]

On May 3, 2012, petitioner filed its Formal Offer of Evidence[14]; and respondent filed no comment/opposition to such offer. In the Resolution[15] dated June 11, 2012, this Court admitted Exhibits "I", "I-4", "I-5" and "J", described as follows:

EXHIBIT	DESCRIPTION
"I"	Revised Report on the Result of the Procedures Performed for the Claim for Refund/Tax Credit Certificate for taxable years 2007 and 2008
"I-4"	Summary of Creditable Withholding Tax for taxable years 2007 and 2008
"I-5"	Summary of Certificates of Creditable Tax Withheld not Signed by the Payor for taxable years 2007 and 2008
"J"	Judicial Affidavit of Atty. Ma. Cecilia Katigbak dated May 24, 2011
"J"	Judicial Affidavit of Ms. Aida V. Magampon dated November 17, 2011

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[11] Docket, p. 123.
[12] Docket, p. 123, should be Resolution dated March 7, 2012.
[13] Docket, p. 126.
[14] Docket, pp. 135-140.
[15] Docket, pp. 148-149.

The Court denied Exhibits "I-1", "I-2", "I-3", and the sub-markings of "I-4" due to petitioner's failure to submit the duly marked exhibits.

On June 21, 2012, respondent manifested that she will no longer present any evidence and moved for a period of thirty (30) days to submit memorandum, which this Court granted.[16]

On September 11, 2012, this case was deemed submitted for decision considering respondent's Memorandum filed on August 23, 2012 and the Report dated August 28, 2012 of the Court's Judicial Records Division stating that petitioner failed to file a Memorandum.

THE ISSUES

The following are the parties' jointly stipulated issues[17] submitted for this Court's consideration:

> "1. Whether or not Petitioner's claim for tax refund or credit for excess CWT for taxable years 2007 and 2008 in the aggregate amount of P6,299,797.00 was filed within the two (2)-year prescriptive period for filing claims for tax refunds or credits;
>
> 2. Whether or not the income payments from which the above excess CWT being claimed were withheld were declared by Petitioner in its ITR as part of its gross income;
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> 3. Whether or not the fact of withholding were established by a copy of the Certificates of Creditable Tax Withheld at Source (BIR Form No. 2307) duly issued by the income payor (i.e., customers) to the payee (i.e., claimant Petitioner) showing the amount

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[16] Docket, p. 150.
[17] Docket, p. 48.

of income paid and amount of tax withheld therefrom;

4. Whether or not the above excess CWT being claimed are duly substantiated with documents;"

The foregoing issues can be summarized as follows:

"Whether or not petitioner is entitled to an issuance of tax credit certificate for its alleged excess creditable withholding tax for taxable years 2007 and 2008 in the aggregate amount of P6,299,797.00."

THE RULING OF THE COURT

Petitioner must satisfy the following requisites to be entitled to a refund of its purported excess creditable withholding tax for taxable years 2007 and 2008:

1. The claim for refund was filed within the two-year prescriptive period as provided under Section 204(C) in relation to Section 229 of the NIRC of 1997, as amended;

2. 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; and

3. The income upon which the taxes were withheld was included in the return of the recipient.[18]

Before discussing whether petitioner was able to comply with the three requisites, it is imperative to discuss first whether petitioner was able to comply with the Best Evidence Rule[19] in relation to the 2005 Revised Rules of the Court of Tax Appeals and the doctrine laid

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[18] Section 2.58, Revenue Regulations 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.

[19] Section 3, Rule 130 of the Rules of Court.

down by the Supreme Court in the case of *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue*[20] *(Atlas case)*.

The Best Evidence Rule as provided in Section 3 of Rule 130 of the Rules of Court states that "when the subject of inquiry is the contents of a document, no evidence shall be admissible other than the original document itself." While the above-quoted provision does admit exceptions, absent the clear showing that it falls under any of those exceptions, the originals of the documents should be submitted. However, this Court has its own rules to compliment the Best Evidence Rule, which specifically cater to the voluminous documents or long accounts that taxpayer-claimants submit as evidence to substantiate their claim for a tax refund. As provided, the Revised Rules of the Court of Tax Appeals allows and admits the reproduction or copy of the original. Section 5 of Rule 12 of the RRCTA states:

> "SEC. 5. *Presentation of voluminous documents or long accounts.* – In the interest of speedy administration of justice, the following rules shall govern the presentation of voluminous documents or long accounts, such as receipts, invoices and vouchers, as evidence to establish certain facts:
>
> (a) *Summary and CPA certification.* – The party who desires to introduce in evidence such voluminous documents or long accounts must, upon motion and approval by the Court, refer the voluminous documents to an independent Certified Public Accountant (CPA) for the purpose of presenting:
>
> (1) a summary containing, among other matters, a chronological listing of the numbers, dates and amounts covered by the invoices or receipts and the amount(s) of taxes paid; and

[20] G.R. Nos. 141104 and 148763, June 8, 2007.

(2) a certification of an independent CPA attesting to the correctness of the contents of the summary after making an examination, evaluation and audit of voluminous receipts invoices or long accounts.

The name of the Certified Public Accountant or partner of a professional partnership of certified public accountants in charge must be stated in the motion. The Court shall issue a commission authorizing him to conduct an audit and, thereafter, testify relative to such summary and certification.

(b) *Pre-marking and availability of originals.* - The receipts, invoices, vouchers or other documents covering the said accounts or payment to be introduced in evidence must be pre-marked by the party concerned and submitted to the Court in order to be made accessible to the adverse party who desires to check and verify the correctness of the summary and CPA certification. The original copies of the voluminous receipts, invoices or accounts must be ready for verification and comparison in case of doubt on its authenticity is raised during the hearing or resolution of the formal offer of evidence."

In relation to the above-quoted provision, Section 2 of Rule 13 of the RRCTA, as amended, enumerates the duties of an Independent CPA, to wit:

"SEC. 2. *Duties of independent CPA.* – The independent CPA shall perform audit functions in accordance with the generally accepted accounting principles, rules and regulations, which shall include:

(a) Examination and verification of receipts, invoices, vouchers and other long accounts;

(b) Reproduction of, and comparison of such reproduction with, and certification that the same are faithful copies of original documents, and pre-marking of documentary exhibits consisting of voluminous documents;

(c) Preparation of schedules or summaries containing a chronological listing of the numbers, dates and amounts covered by receipts or invoices or other relevant documents and the amount(s) of taxes paid; *l*

(d) Making findings as to compliance with substantiation requirements under pertinent tax laws, regulations and jurisprudence;

(e) Submission of a formal report with certification of authenticity and veracity of findings and conclusions in the performance of the audit;

(f) Testifying on such formal report; and

(g) Performing such other functions as the Court may direct." *(Emphasis supplied)*

One of the important duties of the Court-commissioned Independent CPA is to certify that the documents submitted as evidence before the Court are faithful reproductions or copies of the original. It is also the duty of the Independent CPA to determine whether the taxpayer-claimant complied with substantiation requirements under pertinent tax laws, regulations and jurisprudence.

While this Court gives weight to the Independent CPA's findings and conclusions derived from the examination and verification of the documents submitted as evidence, it is not bound by such an assessment or report. The Supreme Court emphasized in the *Atlas case*[21] that the Independent CPA's certification, findings, and conclusions are not enough to substantiate petitioner's claim for tax refund and it is incumbent upon the taxpayer to submit the supporting documents. The Highest Tribunal explained that the supporting documents are necessary to determine the authenticity and veracity of the Independent CPA's conclusions. The pertinent

[21] G.R. Nos. 141104 and 148763 June 8, 2007.

portions of the *Atlas case* decision are quoted hereunder for ready reference:

> "Also worth noting in the same decision is the weight given by this Court to the certification by the independent certified public accountant (CPA), thus –
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> xxx xxx xxx
>
> There is nothing, however, in CTA Circular No. 1-95, as amended by CTA Circular No. 10-97, which either expressly or impliedly suggests that summaries and schedules of input VAT payments, even if certified by an independent CPA, suffice as evidence of input VAT payments.
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> xxx xxx xxx
>
> The circular, in the interest of speedy administration of justice, was promulgated to avoid the time-consuming procedure of presenting, identifying and marking of documents before the Court. **It does not relieve respondent of its imperative task of *pre-marking* photocopies of sales receipts and invoices and *submitting the same to the court* after the independent CPA shall have examined and compared them with the originals. Without presenting these pre-marked documents as evidence – from which the summary and schedules were based, the court cannot verify the authenticity and veracity of the independent auditor's conclusions.**
>
> There is, moreover, a need to subject these invoices or receipts to examination by the CTA in order to confirm whether they are VAT invoices. Under Section 21 of Revenue Regulation No. 5-87, all purchases covered by invoices other than a VAT invoice shall not be entitled to a refund of input VAT.
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> xxx xxx xxx
>
> While the CTA is not governed strictly by technical rules of evidence, as rules of procedure are not ends in themselves but are primarily intended as tools in the administration of justice, the presentation of the purchase receipts and/or invoices is not mere procedural technicality which may be disregarded considering that it is the only means by which the CTA may ascertain and verify the truth of the respondent's claims.

> The records further show that respondent miserably failed to substantiate its claims for input VAT refund for the *first semester of 1991*. Except for the summary and schedules of input VAT payments prepared by respondent itself, no other evidence was adduced in support of its claim.
>
> As for respondent's claim for input VAT refund for the *second semester of 1991*, it employed the services of Joaquin Cunanan & Co. on account of which it (Joaquin Cunanan & Co.) executed a certification that:
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>> We have examined the information shown below concerning the input tax payments made by the Makati Office of Manila Mining Corporation for the period from July 1 to December 31, 1991. Our examination included inspection of the pertinent suppliers' invoices and official receipts and such other auditing procedures as we considered necessary in the circumstances. xxx
>
> As the certification merely stated that it used 'auditing procedures considered necessary' and not auditing procedures which are in accordance with generally accepted auditing principles and standards, and that the examination was made on 'input tax payments by the Manila Mining Corporation,' without specifying that the said input tax payments are attributable to the sales of gold to the Central Bank, this Court cannot rely thereon and regard it as sufficient proof of the respondent's input VAT payments for the second semester.

As for the Petition in G.R. No. 141104, involving the input VAT of petitioner corporation on its zero-rated sales in the first quarter of 1992, this Court already found that the petitioner corporation failed to comply with Section 106(b) of the Tax Code of 1977, as amended, imposing the two-year prescriptive period for the filing of the application for refund/credit thereof. This bars the grant of the application for refund/credit, whether administratively or judicially, by express mandate of Section 106(e) of the same Code.

Granting *arguendo* that the application of petitioner corporation for the refund/credit of the input VAT on its zero-rated sales in the first quarter of 1992 was actually and timely filed, petitioner corporation still failed to present together with its application the required supporting documents, whether before the BIR or the CTA. As the Court of Appeals ruled –

In actions involving claims for refund of taxes assessed and collected, the burden of proof rests on the taxpayer. As clearly discussed in the CTA's decision, petitioner failed to substantiate its claim for tax refunds. Thus:

'We note, however, that in the cases at bar, petitioner has relied totally on Revenue Regulations No. 2-88 in determining compliance with the documentary requirements for a successful refund or issuance of tax credit. Unmentioned is the applicable and specific amendment later introduced by Revenue Regulations No. 3-88 dated April 7, 1988 (issued barely after two months from the promulgation of Revenue Regulations No. 2-88 on February 15, 1988), which amended Section 16 of Revenue Regulations No. 5-87 on refunds or tax credits of input tax. x x x.

xxx xxx xxx

'A thorough examination of <u>the evidence submitted</u> by the petitioner before this court <u>reveals outright the failure to satisfy documentary requirements laid down under the above-cited regulations. Specifically, petitioner was not able to present the following documents,</u> to wit:

'a) sales invoices or receipts;
'b) purchase invoices or receipts;
'c) evidence of actual receipt of goods;
'd) BOI statement showing the amount and description of sale of goods, etc.
'e) original or attested copies of invoice or receipt on capital equipment locally purchased; and
'f) photocopy of import entry document and confirmation receipt on imported capital equipment.

<u>'There is the need to examine the sales invoices or receipts</u> in order <u>to ascertain the actual amount or quantity of goods sold and their selling price</u>. Without them, this Court cannot verify the correctness of petitioner's claim inasmuch as the regulations require that the input taxes being sought for refund should be limited to the portion that is directly and entirely attributable to the particular zero-rated transaction. In this instance, the best evidence of such transaction are the said sales invoices or receipts.

Also, even <u>if sales invoices are produced, there is the further need to submit evidence that such goods were actually received by the buyer</u>, in this case, by CBP, Philp[h]os and PASAR.

xxx xxx xxx

> Lastly, this Court cannot determine whether there were actual local and imported purchase of capital goods as well as domestic purchase of non-capital goods without the required purchase invoice or receipt, as the case may be, and confirmation receipts.
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> There is, thus, the imperative need to submit before this Court the original or attested photocopies of petitioner's invoices or receipts, confirmation receipts and import entry documents in order that a full ascertainment of the claimed amount may be achieved.
>
> Petitioner should have taken the foresight to introduce in evidence all of the missing documents abovementioned. Cases filed before this Court are litigated *de novo*. This means that party litigants should endeavor to prove at the first instance every minute aspect of their cases strictly in accordance with the Rules of Court, most especially on documentary evidence. xxx" (*Emphasis supplied)*

In this case, what remains of petitioner's evidence are the following:

1. Revised Report on the Result of the Procedures Performed for the Claim for Refund/Tax Credit Certificate for taxable years 2007 and 2008[22];
2. Summary of Creditable Withholding Tax for taxable years 2007 and 2008[23];
3. Summary of Certificates of Creditable Tax Withheld not Signed by the Payor for taxable years 2007 and 2008[24];
4. Judicial Affidavit of Atty. Ma. Cecilia Katigbak dated May 24, 2011[25]; and
5. Judicial Affidavit of Ms. Aida V. Magampon dated November 17, 2011[26].

In light of the foregoing, the duly admitted pieces of evidence of petitioner after being measured and weighed are found wanting.

[22] Exhibit "I".
[23] Exhibit "I-4".
[24] Exhibit "I-5".
[25] Exhibit "J".
[26] Exhibit "J".

As laid down in the *Atlas case*[27], absent the supporting documents, there is no other way this Court can determine the authenticity and veracity of the Independent CPA's conclusion. Petitioner's evidence consists only of a report, summaries, and judicial affidavits of its witnesses. There is no iota of evidence that would support petitioner's contention that it was able to comply with substantiation requirements. The Court is unable to determine whether petitioner complied with the three requisites laid down in the case of *Citibank N.A. vs. Court of Appeals, et al.*[28] due to the absence of supporting documents.

Aside from failing to submit supporting documents to prove that petitioner was able to comply with the three essential requisites to be entitled to a tax refund, petitioner also failed to submit evidence to support its allegation that it has already ceased commercial operations.

A corporate taxpayer that ceased commercial operations, as a rule, is allowed to claim refund of its excess CWT even though it carried over to the succeeding year said excess tax credit or overpaid tax. The said circumstance serves as an exception to the "irrevocability rule".

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[27] *Supra.*
[28] G.R. No. 107434, October 10, 1997.

In the case of *Raytheon-Ebasco Overseas Ltd. – Philippine Branch vs. Commissioner of Internal Revenue*[29] *(Raytheon-Ebasco case)*, this Court has reiterated the prevailing jurisprudential principle that the "irrevocability rule" does not apply to a company that has already dissolved its corporate existence, to wit:

> "(A) company that has already dissolved its corporate existence can be refunded its unutilized tax credits or overpaid income tax within the two-year prescription period reckoned from the date of payment of the tax. The BIR cannot deny the claim on the basis of Section 76 of the Tax Code, which prescribes that a taxpayer's option to carry over the excess tax credits or overpaid tax is irrevocable and bars him from applying for cash refund or issuance of a tax credit certificate in the future. It would be unjust if a company that has already dissolved its corporate existence cannot be refunded such unutilized taxes.
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> xxx xxx xxx
>
> As earlier mentioned, only those companies that have *already dissolved its corporate existence* can be refunded their unutilized tax credits or overpaid income tax. xxx"

Nevertheless, mere allegations that a corporation has dissolved its corporate existence are not sufficient for this Court to recognize that the corporation indeed dissolved. This Court also pointed out in the *Raytheon-Ebasco case* that for a dissolving corporation to be deemed legally dissolved, it must comply with the following provisions of the NIRC of 1997:

> "SEC. 52. *Corporation Returns.* -
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> xxx xxx xxx
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> (C) *Return of Corporation Contemplating Dissolution or Reorganization.* - Every corporation shall, within thirty (30) days after the adoption by the corporation of a resolution or

[29] CTA EB No. 592, August 18, 2011, citing *Financial Marketing Services Corporation vs. Commissioner of Internal Revenue*, CTA Case No. 6443, September 7, 2005.

plan for its dissolution, or for the liquidation of the whole or any part of its capital stock, including a corporation which has been notified of possible involuntary dissolution by the Securities and Exchange Commission, or for its reorganization, render a correct return to the Commissioner, verified under oath, setting forth the terms of such resolution or plan and such other information as the Secretary of Finance, upon recommendation of the commissioner, shall, by rules and regulations, prescribe.

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

"SEC. 235. *Preservation of Books of Accounts and Other Accounting Records.* –

xxx xxx xxx

(e) In the exercise of the Commissioner's power under Section 5(B) to obtain information from other persons in which case, another or separate examination and inspection may be made. Examination and inspection of books of accounts and other accounting records shall be done in the taxpayer's office or place of business or in the office of the Bureau of Internal Revenue. All corporations, partnerships or persons that retire from business shall, within ten (10) days from the date of retirement or within such period of time as may be allowed by the Commissioner in special cases, submit their books of accounts, including the subsidiary books and other accounting records to the Commissioner or any of his deputies for examination, after which they shall be returned. Corporations and partnerships contemplating dissolution must notify the Commissioner and shall not be dissolved until cleared of any tax liability."

In addition, Section 136 of the Corporation Code provides:

"SEC. 136. *Withdrawal of foreign corporations.* –

Subject to existing laws and regulations, a foreign corporation licensed to transact business in the Philippines may be allowed to withdraw from the Philippines by filing a petition for withdrawal of license. No certificate of withdrawal shall be issued by the Securities and Exchange Commission unless all the following requirements are met:

1. All claims which have accrued in the Philippines have been paid, compromised or settled;
2. All taxes, imposts, assessments, and penalties, if any, lawfully due to the Philippine Government or any of its agencies or political subdivisions have been paid; and
3. The petition for withdrawal of license has been published once a week for three (3) consecutive weeks in a newspaper of general circulation in the Philippines."

Based on the above-mentioned provisions of law, a company or corporation that wishes to cease commercial operations and be deemed legally dissolved, must satisfy these requirements:

1. Secure a Certificate of Tax Clearance from the BIR; and
2. Submit the same to the Securities and Exchange Commission (SEC) for the issuance of the Certificate of Dissolution.

Here, petitioner never submitted any evidence to prove that it has ceased its commercial operations. It merely relied on its bare assertion that petitioner's Board of Directors issued a resolution approving the cessation of commercial operations effective March 31, 2009 and the liquidation effective June 30, 2009. There was neither a Certificate of Dissolution from the SEC nor a Certificate of Clearance from the BIR.

This Court cannot determine whether or not petitioner has dissolved its corporate existence, which in turn would excuse petitioner from the application of the irrevocability rule. Bare allegations, unsubstantiated by evidence, are not equivalent to proof under our Rules of Court.[30]

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[30] *Manzano vs. Perez, et al.*, G.R. No. 112485, August 9, 2001; *Coronel vs. Constantino, et al.*, G.R. No. 121069, February 7, 2003.

Tax refunds, like tax exemptions, are construed strictly against the taxpayer.[31] Petitioner, as a taxpayer-claimant, has the burden of proving whether or not it is entitled to a tax refund through the submission of necessary supporting documents to establish the factual bases of the claim for refund. Petitioner's failure to overcome the burden of proving its entitlement to a tax refund or issuance of tax credit certificate leaves this Court with no other choice but to deny the claim.

WHEREFORE, the instant Petition for Review is hereby **DENIED** for insufficiency of evidence.

SO ORDERED.

AMELIA R. COTANGCO- MANALASTAS
Associate Justice

WE CONCUR:

LOVELL R. BAUTISTA
Associate Justice

(Retired)
OLGA PALANCA-ENRIQUEZ
Associate Justice

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[31] *Citibank N.A. vs. Court of Appeals, et al.*, G.R. No. 107434, October 10, 1997.

ATTESTATION

I attest that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

LOVELL R. BAUTISTA
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

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