**REPUBLIC OF THE PHILIPPINES**
**Court of Tax Appeals**
**QUEZON CITY**

***FIRST DIVISION***

**LISP-1 LOCATORS' ASSOCIATION INCORPORATED,**
Petitioner,

- versus -

**COMMISSIONER OF INTERNAL REVENUE,**
Respondent.

**CTA Case No. 7905**

Members:

**ACOSTA,** *Chairperson*
**UY,** *and*
**FABON-VICTORINO,** *JJ.*

**Promulgated:**

NOV 29 2012 ; 3:00 p.m.

x- - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - x

# DECISION

**UY, J.:**

This Petition for Review filed on April 13, 2009 by petitioner LISP-1 Locators' Association, Incorporated, appeals the inaction of respondent Commissioner of Internal Revenue over its claim for tax refund or issuance of tax credit certificate in the amount of ₱ 300,639.24, representing alleged excess / unutilized creditable withholding taxes for taxable year 2006.

## THE FACTS

Petitioner LISP-1 Locators' Association, Incorporated is a non-stock, non-profit corporation, duly organized and existing under Philippine laws, with principal office address at the Administrative Building, Light Industry and Science Park I, Cabuyao, Laguna.[1] Its primary purpose is "(t)o promote the best interest and well being as well as safeguard the welfare of the occupants, lessees, and owners of property in Light Industry and Science Park of the Philippines ('Science Park') in the Municipality of Cabuyao, Province of Laguna, Philippines, and which Science Park is more specifically defined and bounded in TCT Nos. T-204034, T-305084, 305085, 305086, T-275654 and T-267590 on record with the Register of Deeds of Calamba, Laguna".[2] No part of its excess income over expenses inures to the benefit of any member or locator, nor the trustees receive any compensation whatsoever from petitioner.[3]

Petitioner is registered with the Bureau of Internal Revenue (BIR), with Taxpayer's Identification No. 005-242-510-000, under Revenue District Office (RDO) No. 57-San Pedro, Laguna, and adopts a calendar year from January 1 to December 31 for purposes of keeping its books of accounts and filing its annual income tax return.[4]

On the other hand, respondent is the duly appointed Commissioner of Internal Revenue, vested with authority to exercise the functions of said office, including, *inter alia*, the power to refund any internal revenue tax 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. She holds office at the BIR National Office Building, BIR Road, Diliman, Quezon City.[5]

On May 29, 2001, petitioner obtained Ruling No. 24-01 dated April 17, 2001

---

[1] Par. 1 Stipulation of Facts, Joint Stipulation of Facts and Simplification of Issues (JSFSI), Docket, p. 154; Exhibits "A" and "B".
[2] Exhibits "B".
[3] Exhibit "AA", Docket, p. 174.
[4] Par. 3, Stipulation of Facts, JSFSI, Docket, p. 155.
[5] Par. 2, Stipulation of Facts, JSFSI, Docket, pp. 154 to 155.

issued by Mr. Ruben B. Buenaventura, Regional Director for Revenue Region No. 9-San Pablo City[6], the significant part of which reads:

> "Based on the [documentary evidence submitted], this Office is of the opinion and so holds that the LLAI I[7] is a corporation organized as a 'b*usiness league, chamber of commerce, or board or trade, not organized for profit and no part of the net income of which inures to the benefit of any private stockholder or member.'* as contemplated under Section 30(F) of the Tax Code of 1997. Accordingly, it is exempt from the payment of income tax received by it as such organization, and therefore, need not file an income tax return concerning such income. However, it is subject to the corresponding internal revenue taxes imposed under the National Internal Revenue Code on its income derived from any of its properties, real or personal or any activity conducted for profit regardless of the disposition thereof, which income should be returned for taxation.
>
> Likewise, interest income from currency bank deposits and yield or any other monetary benefit from deposit substitute instruments from the trust funds and similar arrangements, and royalties from sources within the Philippines are subject to the 20% final withholding tax: Provided, however, that the interest income derived by it from a depository bank under the expanded foreign currency deposit system shall be subject to 7 ½% final withholding tax pursuant to Section 27 (D) (1) in relation Section 57 (A), both of the Tax Code of 1997.
>
> Moreover, it is required to file on or before April 15 of each year a profit or loss statement and balance sheet with the annual information return under oath, stating its gross income and expenses incurred during the year and a certificate showing that there has not been any change in its By-laws, Articles of Incorporation, manner of operation and activities as well as sources and disposition of income.
>
> It should be understood that the said exempt organization/foundation shall be constituted as withholding agent for the government if it acts as an employer and its employees receive compensation income subject to the withholding tax under Section 79(A), Chapter XIII, Title II of the Tax Code of 1997, as implemented by Revenue Regulations No. 2-98, or if it makes income payments to individuals or corporations subject to withholding tax pursuant to Section 57 to the Tax Code of 1997, also as implemented by Revenue Regulation No. 2-98.
>
> It is of course understood that your books of accounts and other pertinent records shall be subject to periodic examination by revenue enforcement officers of this Bureau for the purposes of ascertaining whether you have been complying with the conditions under which you have been granted tax exemption or tax incentives and your tax liability, if any pursuant to Section 235 of the Tax Code of 1997."

---

[6] Exhibit "D".
[7] Petitioner herein.

On April 13, 2007, petitioner filed its Annual Income Tax Return[8] (ITR) for taxable year 2006. It is noteworthy that in the said ITR, petitioner did not claim any tax credits or payments; nor did it indicate any amount on the "Total Amount Payable/(Overpayment)" box (*i.e.*, Box No. 31 of the said Annual ITR).

Subsequently, petitioner filed with the BIR on March 4, 2009, a written claim for cash refund or issuance of tax credit certificate in the total amount of ₱ 300,639.24, representing its alleged excess/unutilized creditable withholding tax for calendar year 2006.[9] In the said claim, petitioner stated that:

> "...upon internal audit investigation, several locators were erroneously and illegally withholding taxes on their payments made to LISP-1 LAI[10] on their association dues and other fees owing thereto in furtherance of LISP-1 LAI's purpose as an association, reported as income exempt under the Annual Income Tax Return for 2006, and remitting them to the Bureau of Internal Revenue (BIR) on LISP-1 LAI's behalf as payee, to its damage and prejudice, despite the fact that LISP-1 LAI is exempt from income tax under Section 30 of the Tax Code. xxx."

Due to the alleged inaction of respondent on its administrative claim for refund or tax credit and the belief that the supposed two-year prescriptive period is about to lapse,[11] petitioner filed the instant Petition for Review on April 13, 2009.[12]

In her Answer[13] filed on May 18, 2009, respondent interposed the following Special and Affirmative Defenses:

> "4. Petitioner's alleged claim for refund is subject to administrative routinary investigation/examination by the Bureau.
>
> 5. The petitioner should fully comply with the provisions stated in Revenue Regulations 6-86 and CIR vs. PERF Realty Corp., GR No. 163345 dated July 4, 2008, which states that:
>
> > 'The CTA, citing Section 10 of Revenue Regulations 6-85 and Citibank, N.A. v. Court of Appeals, determined the requisites for a claim for refund, thus:

ND

[8] Exhibit "E".
[9] Par. 4, Stipulation of Facts, JSFSI, Docket, p. 155. Exhibit "H".
[10] Petitioner herein.
[11] Par. 13, Petition for Review, Docket, p. 5.
[12] Par. 5, Stipulation of Facts, JSFSI, Docket, p. 155.
[13] Docket, pp. 84 to 87.

1) That the claim for refund was filed within the two (2) year period as prescribed under Section 230 of the National Internal Revenue Code;

2) That the income upon which the taxes were withheld was included in the return of the recipient;

3) That the fact of withholding is established by a copy of a statement (BIR Form 1743.1) duly issued by the payor (withholding agent) to the payee, showing the amount paid and the amount of tax withheld therefrom.

x x x.'

6. Petitioner also seeks tax exemption under the guise that the same was granted by law. However, in an action for refund, the burden of proof is on the taxpayer to establish its right to refund and failure to sustain the burden is fatal to the claim for tax refund/credit. This is so because exemptions from taxation are highly disfavored in law and he who claims exemption must be able to justify his claim by the clearest grant of organic or statutory law. An exemption from the common burden cannot be permitted to exist upon vague implications.

7. .In an action for refund, the burden of proof is on the taxpayer to establish its right to refund, and failure to sustain the burden is fatal to the claim for refund/credit.

8. Claims for refund are construed strictly against the claimant for the same partake the nature of exemption from taxation (*Commissioner of Internal Revenue vs. Ledesma, 31 SCRA 95*) and such, they are looked upon with disfavor (*Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 1211*)."

During trial, petitioner presented as witnesses its Accounting Supervisors, Glenn R. Solis[14] and Lorna M. Condrillon[15].

Thereafter, petitioner filed on October 4, 2010 its Formal Offer of Evidence[16], submitting Exhibits "A" to "X", "AA" and "BB", inclusive of sub-markings. Except for Exhibits "T-46" and "X-4", the Court admitted petitioner's Exhibits in the Resolutions dated December 17, 2010[17] and March 7, 2011[18].

On the other hand, respondent presented her lone witness, Emily Singson,

[14] Minutes of the hearing held on February 25, 2010, Docket, p. 177.
[15] Minutes of the hearing held on May 25, 2010, Docket, p. 196.
[16] Docket, pp. 216 to 224.
[17] Docket, pp. 230 to 231.
[18] Docket, pp. 241 to 242.

M

Chief of the Assessment Section of Revenue District Office No. 57.[19] Thereafter, respondent formally offered her evidence, submitting Exhibits "1" to "4"[20], inclusive of sub-markings, which this Court admitted in the Resolution dated October 6, 2011.[21]

On December 15, 2011, this case was submitted for decision,[22] considering respondent's Memorandum filed on November 8, 2011 [23] and petitioner's Memorandum filed on December 9, 2011.[24]

Hence, this Decision.

## THE ISSUES

The following are the parties' jointly stipulated issues[25] submitted for this Court's resolution:

> "7. Whether or not the administrative and the judicial claims for tax refund or issuance of tax credit certificate of the petitioner were filed within the two (2)-year statutory period;
>
> 8. Whether or not Petitioner is entitled to refund the total amount of P300,639.24 allegedly representing excess and/or unutilized withholding taxes for the calendar year ending December 31, 2006."

### *Petitioner's arguments*

Petitioner argues that it is a non-stock, non-profit corporation exempt from payment of income tax under Section 30(F) of the National Internal Revenue Code (NIRC) of 1997, as amended.

According to petitioner, the fact of withholding of ₱ 300,639.24 is established by copies of creditable withholding tax certificates (BIR Form No. 2307) duly issued by those who erroneously withheld taxes showing the amount paid and the amount

---

[19] Minutes of the hearing held on May 10, 2011, Docket, p. 248.
[20] Docket, pp. 254 to 256.
[21] Docket, pp. 261 to 262.
[22] Resolution dated December 15, 2011, Docket, p. 294.
[23] Docket, pp. 263 to 267.
[24] Docket, pp. 273 to 293.
[25] Docket, pp. 155 to 156.

of taxes withheld from its payment to petitioner. Furthermore, petitioner contends that the related income from which the creditable taxes were erroneously withheld formed part of petitioner's gross income exempt from income tax for the year 2006.

Moreover, petitioner asserts that it did not apply its unutilized creditable and erroneously withheld taxes for year 2006 to the succeeding taxable year.

Finally, petitioner emphasizes that it filed its administrative claim for refund and the instant Petition for Review within the two (2) year prescriptive period prescribed by law.

***Respondent's counter-arguments***

Respondent contends that petitioner is not entitled to a refund because it submitted insufficient information that would allow a full evaluation of its claim. Respondent stresses that petitioner must fully comply with the provisions of Section 2.58.3 of Revenue Regulations No. 2-98, otherwise known as the *Withholding Tax Regulations* in order to be entitled to a claim for refund.

Additionally, respondent points out that petitioner failed to mark in its Annual ITR for 2006 the box pertaining to Creditable Tax Withheld, and the box referring to the choice whether the taxpayer opted to carry-over the excess refund, apply for refund and/or apply for tax credit certificate.

Lastly, respondent stresses that claims for refund are construed strictly against the claimant for the same partake the nature of exemption from taxation and as such, they are looked upon with disfavor.

**THE COURT'S RULING**

In *Banco Filipino Savings and Mortgage Bank vs. Court of Appeals, et al.*[26], the Supreme Court ruled that there are three (3) conditions for the grant of a claim

[26] G.R. No. 155682, March 27, 2007.

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;[27] 2) it is shown on the return of the recipient that the income payment received was declared as part of the gross income;[28] and, 3) the fact of withholding is established by a copy of a statement duly issued by the payor to the payee showing the amount paid and the amount of the tax withheld therefrom.

***The two-year prescriptive period.***

The first of the above-stated conditions relates to the prescriptive period on the filing of the administrative claim for tax refund or for issuance of tax credit certificate, and is based on Section 204(C) of the NIRC of 1997, to wit:

> "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 stamps that have been rendered unfit for use and refund their value upon proof of destruction. **No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund <u>within two (2) years after the payment of the tax</u> or penalty**: *Provided, however,* That a return filed showing an overpayment shall be considered as a written claim for credit or refund." *(Emphasis and underscoring supplied)*

On the other hand, the filing of the judicial claim within the same two-year prescriptive period is based on Section 229 of the NIRC of 1997, *viz*:

> "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

[27] Jose C. Vitug and Ernesto D. Acosta, Tax Law and Jurisprudence, 329 (2006), citing *Gibb v. Collector,* 107 Phil. 230 (1960).
[28] *Calamba Steel Center, Inc. v. Commissioner on Internal Revenue*, G.R. No. 151857, April 28, 2005.

> 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 <u>two (2) years from the date of payment of the tax</u> or penalty regardless of any supervening cause that may arise after payment**: *Provided, however,* That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid." *(Emphasis and underscoring supplied)*

In this connection, petitioner invokes the case of *Accra Investments Corporation vs. Court of Appeals, et al.*,[29] wherein the Supreme Court held that the reckoning of the two-year prescriptive period for the filing of a claim for refund/tax credit certificate of excess creditable withholding tax/quarterly income tax payments, commences to run, at the earliest, from the date of filing of the final adjustment return. Accordingly, petitioner is of the view that, since it manually filed its ITR for taxable year 2006 on April 13, 2007, the filing of its administrative claim on March 3, 2009 and its judicial claim on April 13, 2009 is well within the two-year prescriptive period.

We do not agree.

A more careful perusal of the *Accra Investment* case relied upon by petitioner reveals the reason or the *raison d'etre* of the ruling of the High Court, to wit:

> "Clearly, there is the need to file a return first before a claim for refund can prosper inasmuch as the respondent Commissioner by his own rules and regulations mandates that **<u>the corporate taxpayer opting to ask for a refund must show in its final adjustment return</u> the income it received from all sources and <u>the amount of withholding taxes remitted by its withholding agents to the Bureau of Internal Revenue</u>**. The petitioner corporation filed its final adjustment return for its 1981 taxable year on April 15, 1982. In our Resolution dated April 10, 1989 in the case of *Commissioner of Internal Revenue v. Asia Australia Express, Ltd.* (G.R. No. 85956), we ruled 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 tax return. Hence, the petitioner corporation had until April 15, 1984 within which to file its claim for refund.
>
> xxx xxx xxx

[29] G.R. No. 96322, December 20, 1991.

> **It bears emphasis at this point that the rationale in computing the two-year prescriptive period with respect to the petitioner corporation's claim for refund from the time it filed its final adjustment return is the fact that it was only then that ACCRAIN could ascertain whether it made profits or incurred losses in its business operations.** The 'date of payment', therefore, in ACCRAIN's case was when its tax liability, if any, fell due upon its filing of its final adjustment return on April 15, 1982." *(Emphases and underscoring supplied)*

Notably, the same reason or *raison* of counting the two-year prescriptive period from the filing of the final adjustment return was applied in the case of *Commissioner of Internal Revenue vs. TMX Sales, Inc., et al.*[30] in this wise:

> "It is generally recognized that before an accountant can make a certification on the financial statements or render an auditor's opinion, an audit of the books of accounts has to be conducted in accordance with generally accepted auditing standards.
>
> Since the audit, as required by Section 321 (now Section 232) of the Tax Code is to be conducted yearly, then it is the Final Adjustment Return, where the figures of the gross receipts and deductions have been audited and adjusted, that is truly reflective of the results of the operations of a business enterprise. Thus, **it is only when the Adjustment Return covering the whole year is filed that the taxpayer would know whether a tax is still due or a refund can be claimed based on the adjusted and audited figures**." *(Emphasis and underscoring supplied)*

Also in *Commissioner of Internal Revenue vs. Philippine American Life Insurance Co.*,[31] the Supreme Court said:

> "Clearly, **the prescriptive period of two years should commence to run only from the time that the refund is ascertained, which can only be determined after a final adjustment return is accomplished**." *(Emphasis and underscoring supplied)*

In all of the aforesaid cases, the premise is that the subject taxpayer would know if there is a refundable amount only after a final adjustment return is accomplished or filed. This is not so in the case of petitioner.

Specifically, We cannot apply the doctrine in the above-quoted cases that the commencement of the two-year period under Sections 204 and 229 of the NIRC of 1997 is from the filing of the final adjustment return, because unlike in the said

---

[30] G.R. No. 83736, January 15, 1992.
[31] G.R. No. 105208, May 29, 1995.

cases, petitioner need not wait for the filing of its final adjustment return for taxable year 2006 to know whether a tax refund can be claimed, since it has been earlier confirmed by the BIR that petitioner is exempt from income tax under Section 30(F) of the NIRC of 1997.

We are mindful of the fact that it was only after an internal audit, conducted sometime in the year 2008 and early 2009, that petitioner came to know that there were some unused BIR Form No. 2307 issued to petitioner.[32] However, the same is of no moment, since it is clear, as earlier stated, that the above-quoted cases were decided on the premise that the refund can only be ascertained as of the time of filing of the final adjustment return. In this case, from the time taxes were withheld from the association dues and other fees paid to petitioner, the latter can already determine the amount of tax to be refunded, which is exactly the same as the amount of tax withheld.

Thus, the pertinent question would be : when should we reckon the computation of the two-year prescriptive period in this case?

Pursuant to the earlier quoted Sections 204 and 229 of the NIRC of 1997, the two-year prescriptive period is counted *"from the date of payment of the tax"*, or on the date the withholding tax is actually paid or remitted to the BIR.

Records show that petitioner's claim consisted of creditable income taxes withheld by Philips Semiconductors Phils. Inc., Nippon Paint Philippines Inc. and ISPL Phil. Inc. for the year 2006 in the respective amounts of ₱ 274,270.49, ₱ 4,687.13 and ₱ 21,681.62, totalling ₱ 300,639.24, broken down as follows:

| Exhibit | Period Covered | Withholding Agent/Payor | Income Tax Withheld |
|---|---|---|---|
| G-1 | 01/01/06-03/31/06 | Philips Semiconductors Phils. Inc. | ₱ 44,233.79 |
| G-2 | 04/01/06-06/30/06 | Philips Semiconductors Phils. Inc. | 96,359.02 |
| G-3 | 07/01/06-09/30/06 | Philips Semiconductors Phils. Inc. | 69,177.98 |

[32] Exhibit "BB", par. A12.

| | | | |
|---|---|---|---|
| G-4 | 10/01/06-12/31/06 | Philips Semiconductors Phils. Inc. | 64,499.70 |
| | | **Subtotal** | **₱ 274,270.49** |
| G-5 | 01/01/06-03/30/06 | Nippon Paint Philippines Inc. | ₱ 2,216.22 |
| G-6 | 04/01/06-06/30/06 | Nippon Paint Philippines Inc. | 2,470.91 |
| | | **Subtotal** | **₱ 4,687.13** |
| G-7 | 01/01/06-03/31/06 | ISPL Phil. Inc. | 5,332.45 |
| G-8 | 04/01/06-06/30/06 | ISPL Phil. Inc. | 5,356.77 |
| G-9 | 07/01/06-09/30/06 | ISPL Phil. Inc. | 5,577.76 |
| G-10 | 10/01/06-12/31/06 | ISPL Phil. Inc. | 5,414.64 |
| | | **Subtotal** | **₱ 21,681.62** |
| | | **Total** | **₱ 300,639.24** |

However, petitioner never presented the Withholding Tax Returns of Philips Semiconductors Phils. Inc., Nippon Paint Philippines Inc. and ISPL Phil. Inc., for the above respective periods, as proof as to when the EWT was remitted or paid to the government.

Parenthetically, the Certifications [33] issued by the Revenue Accounting Division of the BIR cannot be relied upon, simply because there is no indication as to which of the remittances stated therein pertained to a particular month during which the pertinent tax was withheld.

Thus, for lack of sufficient evidence, the Court is unable to determine whether petitioner complied with the first *condition* for the grant of a claim for refund of creditable withholding income tax.

***Petitioner failed to show in its final adjustment return that the income payment it received was declared as part of gross income.***

The *second* and *third* conditions are anchored on Section 2.58.3(B) of Revenue Regulations No. 2-98[34], which states:

[33] Exhibits "X-1", "X-2", and "X-3".

[34] 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 on Income Tax on Compensation, Withholding of Creditable Value-Added Tax ad Other Percentage Taxes.

"*Sec. 2.58.3. Claim for Tax Credit or Refund*
xxx xxx xxx

(B) Claims for tax credit or refund of any creditable income tax which was deducted and withheld on income payments shall be given due course **only when it is shown that the income payment has been declared as part of the gross income and the fact of withholding is established by a copy of the withholding tax statement duly issued by the payor to the payee showing the amount paid and the amount of tax withheld therefrom**." *(Emphasis supplied)*

As regards the *third* condition, the fact of withholding was established by the submission of copies of Withholding Tax Statements (BIR Form No. 2307) issued by the respective payors to petitioner showing the amount paid and the amount of the tax withheld therefrom. A summary of such statements is as follows:

| Exhibit | Period | Amount of income | Amount of Tax Withheld |
|---|---|---|---|
| "G-1" | 1st Quarter 2006 | 2,211,691.27 | 44,233.79 |
| "G-5" | | 110,811.00 | 2,216.22 |
| "G-7" | | 533,245.00 | 5,332.45 |
| "G-2" | 2nd Quarter 2006 | 4,817,979.22 | 96,359.02 |
| "G-6" | | 123,545.50 | 2,470.91 |
| "G-8" | | 535,677.00 | 5,356.77 |
| "G-3" | 3rd Quarter 2006 | 3,458,909.93 | 69,177.98 |
| "G-9" | | 557,776.00 | 5,577.76 |
| "G-5" | 4th Quarter 2006 | 3,224,969.22 | 64,499.70 |
| "G-10" | | 541,464.00 | 5,414.64 |
| | | Total | ₱ 300,639.24 |

Notwithstanding that the total amount of tax withheld is supported by BIR Form No. 2307, petitioner however, failed to convince Us that it has complied with *second* condition, *i.e.*, it is shown **on the return of the recipient** that the income payment received was declared as part of the gross income. Logically, the first and foremost document to be closely examined is the final adjustment return or Annual ITR of petitioner for taxable year 2006,[35] particularly the entries made therein.

In the said Annual ITR, specifically under Schedule 1 thereof or the *"Schedule of Sales/Revenues/Receipts/Fees"*, while there is an amount of ₱ 215,944.00,

[35] Exhibit "E".

representing petitioner's Sale of Service, there is no correspondeing entry whatsoever in the *"Creditable Tax Withheld"* column. Thus, said declaration, which was made under the penalties of perjury, is to the effect, or at the very least, taken to mean, that no part of the gross income reported therein were ever subjected to creditable withholding tax. Accordingly, the supposed income payments to which taxes were withheld, cannot be said to have been declared as part of the gross income in petitioner's Annual ITR for taxable year 2006.

Consequently, the prayer of petitioner in the instant Petition of Review for tax refund or issuance of a tax credit certificate in the amount of ₱ 300,639.24 in its favor cannot be granted on the ground that petitioner failed to show compliance with the *first* and *second* condition for the grant of a claim for refund of creditable withholding tax.

We reiterate our consistent ruling that actions for tax refund, as in the instant case, are in the nature of a claim for exemption and the law is not only construed in *strictissimi juris* against the taxpayer, but also the pieces of evidence presented entitling a taxpayer to an exemption is *strictissimi* scrutinized and must be duly proven.[36]

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

**SO ORDERED**.

**ERLINDA P. UY**
Associate Justice

[36] *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue*, G.R. No. 159490, February 18, 2008.

WE CONCUR:

**ERNESTO D. ACOSTA**
Presiding Justice

**ESPERANZA R. FABON-VICTORINO**
Associate Justice

## CERTIFICATION

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

**ERNESTO D. ACOSTA**
Chairperson
Presiding Justice