Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

EN BANC

PHILIPPINE NATIONAL BANK, *Petitioner,*	**CTA EB CASE NO. 859** (CTA Case No. 7760)
	Members: DEL ROSARIO, P.J., CASTAÑEDA, JR. BAUTISTA UY CASANOVA FABON-VICTORINO MINDARO-GRULLA COTANGCO-MANALASTAS LIBAN, *JJ.*
-versus-	
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: JUN 05 2013 Ca Apolinario 9:05 a.m.

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D E C I S I O N

MINDARO-GRULLA, J.:

Submitted for decision is a Petition for Review filed with the Court *En Banc* under *Section 2(a)(1), Rule 4*, in relation to *Section 4(b), Rule 8 of the 2005 Revised Rules of the Court of Tax* Appeals, *as amended*, of the Decision[1] and Resolution[2] rendered by the former Third Division of this Court on September 30, 2011 and December 29, 2011, respectively.

In the deliberation of the instant case, Associate Justice Lovell R. Bautista, Associate Justice Erlinda P. Uy, and Associate Justice Amelia R. Cotangco-Manalastas concurred

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[1] Penned by Associate Justice Lovell R. Bautista and concurred in by Associate Justice Amelia R. Cotangco-Manalastas with dissenting opinion by Associate Justice Olga Palanca-Enriquez. *En Banc* Docket, pp. 44-57.
[2] *Id.*, at *En Banc* Docket, pp. 26-42.

with the opinion of the ponente that the assailed Decision and Resolution of the Court in Division should be affirmed.

However, Presiding Justice Roman G. del Rosario, Associate Justice Juanito C. Castañeda, Jr., Associate Justice Caesar A. Casanova and Associate Justice Esperanza R. Fabon-Victorino voted to reverse the assailed Decision and Resolution of the Court in Division.

Section 2 of Republic Act No. 1125, as amended by Republic Act No. 9503, provides:

> "SEC. 2. *Sitting En Banc or Division; Quorum; Proceedings.* –
> xx x x x x x x x
>
> **The affirmative votes of five (5) members of the Court *en banc* shall be necessary to reverse a decision of a Division** but a simple majority of the Justices present necessary to promulgate a resolution or decision in all other cases or two (2) members of a Division, as the case may be, shall be necessary for the rendition of a decision or resolution in the Division level.

Likewise, Section 3, Rule 2 of the 2005 Revised Rules of the CTA, as amended, states that the presence at the deliberation and the affirmative vote of five (5) members of the Court *en banc shall be necessary* ***to reverse*** *a decision of a Division* but only a simple majority of the justices present to promulgate a resolution or decision in all other cases. *Where the necessary majority vote cannot be had in appealed cases, the judgment or order appealed from shall stand affirmed,* thus:

> "Sec. 3. *Court en banc; quorum and voting.* - The presiding justice or, if absent, the most senior justice in attendance shall preside over the sessions of the Court *en banc*. The attendance of five (5) justices of the Court shall constitute a quorum for its session *en banc*. **The presence at the deliberation and the affirmative vote of five (5) members of the Court *en banc* shall be necessary to *reverse* a decision of a Division but only a simple majority of the justices present to promulgate a resolution or decision in all other cases.**

> **Where the necessary majority vote cannot be had, the petition shall be dismissed; in appealed cases, the judgment or order appealed from shall stand affirmed; and on all incidental matters, the petition or motion shall be denied.** [Emphasis supplied.]

Considering that the required affirmative votes of five (5) members of the Court *en banc* was not obtained in the instant case, pursuant to Section 2 of Republic Act No. 1125, as amended by Republic Act No. 9503 in relation to Section 3 of Rule 2 of the Revised Rules of the Court of Tax Appeals (RRCTA), the appealed Decision and Resolution shall stand AFFIRMED.

The pertinent facts taken from the decision of the former Third Division of this Court read as follows:

> "Petitioner, Philippine National Bank ("PNB"), is a corporation existing under and by virtue of Philippine Laws, with principal office at the PNB Financial Center, President Diosdado Macapagal Boulevard, Pasay City.
>
> On the other hand, respondent is the duly appointed Commissioner of Internal Revenue, who is vested with the authority to administer and enforce national internal revenue laws, including, *inter alia*, the power to grant claims for refund of any internal revenue taxes erroneously or excessively paid, assessed or collected. He holds office at the Fourth (4th) Floor, Bureau of Internal Revenue ("BIR") Building, Agham Road, Diliman, Quezon City.
>
> On April 17, 2006, petitioner electronically filed, under Reference No. 120600001019131, its Annual Income Tax Return for taxable year 2005 through the BIR's Electronic Filing and Payment System.
>
> On April 18, 2006, petitioner manually filed its Annual Income Tax Return, together with the required attachments thereto, with the BIR's Large Taxpayers Documents Processing and Quality Assurance Division.
>
> Through letters, with their attachments, dated February 12, 2007, June 22, 2007, and March 10, 2008, and received with respective stamped dates of February 22, 2007, June 25, 2007, and March 13, 2008 by respondent, petitioner filed its claim for refund or issuance

of tax credit certificate of its excess payment of income tax liability in the amount of ₱74,598,430.47.

Due to respondent's inaction, petitioner filed the present Petition for Review on April 11, 2008.

On June 2, 2008, respondent filed his Answer, interposing the following Special and Affirmative Defenses:

5. Petitioner's alleged claim for refund is subject to administrative routinary investigation/examination by the Bureau of Internal Revenue (BIR);

6. The amount of ₱74,598,430.47 being claimed by petitioner as alleged creditable withholding taxes for taxable year 2005 is not properly documented;

7. Petitioner must show that it has complied with the provisions of Section 204 (C) and 229 of the 1997 Tax Code on the prescriptive period for claiming tax refund/credit;

8. Furthermore, in an action for refund/credit, 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. 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 common burden cannot be permitted to exist upon vague implications **(Asiatic Petroleum Co. vs. Llanes, 49 Phil. 466; cited in Collector of Internal Revenue vs. Manila Jockey Club, Inc., 98 Phil. 670);** and

9. 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 as such; they are looked upon with disfavor **(Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 1211).**"[3]

On September 30, 2011, the former Third Division of this Court rendered the assailed Decision denying the

[3] *En Banc* Docket, pp. 44-46.

petition on the ground that the evidence presented by petitioner was insufficient to substantiate its claim for refund or issuance of tax credit certificate in the amount of ₱74,598,430.47. The pertinent portion of which states:

> "Therefore, petitioner's Annual Income Tax Return for the calendar year 2006 is not enough for the presentation of its Quarterly Income Tax Returns are vital, without which the Court cannot fully ascertained whether petitioner did not carry over the excess/unutilized creditable withholding taxes to the subsequent quarters of the calendar year 2006.
>
> This doubt could have been avoided had petitioner presented the Quarterly Income Tax Returns for calendar year 2006.
>
> xxx
>
> In sum, the Court finds the evidence adduced by petitioner to be insufficient to support its claim for the issuance of tax credit certificate of excess and unutilized creditable income taxes withheld for the year 2005 in the amount of ₱74,598,430.47."[4]

Petitioner moved for reconsideration of the assailed Decision, which was subsequently denied in a Resolution[5] dated December 29, 2011.

Hence, petitioner filed the instant petition.

Petitioner states therein that the sole issue is whether the presentation of its quarterly income tax returns for the succeeding taxable year of 2006 is necessary to establish its claim for refund of its excess/unutilized creditable withholding taxes (CWT) for taxable year 2005.

Petitioner argues that the said presentation of its quarterly income tax returns is unnecessary, as follows:

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[4] *Id.*, at pp. 55-56.
[5] *Supra* note 2.

"A.

As early as 2005, the Supreme Court has already ruled in the Philam Asset Case that requiring the presentation of Annual or Quarterly Income Tax Returns for the succeeding taxable year in claims has no basis in law and jurisprudence. *Stare Decisis Et Non Quieta Movere*. Being at the apex of the judicial hierarchy, the Supreme Court's pronouncement must be respected and implemented.

B.

The CIR did not raise the issue of whether petitioner is required to present its quarterly income tax returns for the succeeding taxable year of 2006. Thus, this should not have been a justiciable issue cognizable by the CTA Third Division.

C.

The CTA Third Division, through its 05 May 2010 resolution, already admitted that the presentation of petitioner's quarterly income tax returns for the succeeding taxable year is no longer necessary."[6]

However, respondent in her comment[7] maintains that the Third Division of this Court correctly denied petitioner's claim for refund for failure to present its Quarterly Income Tax Returns for the taxable year 2006; and that petitioner's claim for refund must be similarly denied on the ground that the alleged certificates of creditable taxes withheld were not properly identified.

Also, respondent alleges that the issue on whether the presentation of petitioner's Quarterly Income Tax Return for the succeeding taxable year 2006 is required is necessarily included in the issue agreed upon by the parties in the Joint Stipulation of Facts and Issues.

Further, respondent asserts that the Resolution dated May 5, 2010 of the Third Division of this Court pertains only to the validity and legality of the motion and it has nothing

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[6] Petition for Review, *En Banc* Docket, p. 9.
[7] En Banc Docket, pp. 79-101.

to do with the merits of the case. She maintains that it is incumbent upon petitioner to prove that it is entitled to the refund sought because a claim for refund is not *ipso facto* granted upon filing of the claim.

In its "Reply/Manifestation (Re: Respondent's Comment dated 24 February 2012)",[8] petitioner reiterates that the sole issue raised in the instant petition is whether it is necessary on the part of petitioner to present the Quarterly Income Tax Returns for the succeeding taxable year of 2006 in order to establish its claim for refund of its excess/unutilized CWT for the taxable year 2005. Petitioner avers that respondent in her Comment merely lifted verbatim her arguments contained in the "Memorandum" dated December 8, 2010 and "Comment/Opposition" dated November 16, 2011, which bears no relation to the sole issue in the instant petition.

Petitioner thereafter filed its Memorandum[9] on April 27, 2012 while respondent filed her Manifestation on April 19, 2012 that she is adopting her Comment to the instant petition as her Memorandum.

The issue is whether petitioner is entitled to the claim for refund of or the issuance of a tax credit certificate of its excess or unutilized creditable withholding taxes for the taxable year 2005 amounting to ₱74,598,430.47.

The crux of the issue is whether the presentation of the succeeding quarterly income tax returns is indispensable to petitioner's claim for refund of its excess/unutilized CWT for the taxable year 2005 in order to prove that it did not utilize or carry over its claimed excess CWT to the succeeding quarters.

The issue is answered affirmatively.

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[8] Filed on March 16, 2012; *En Banc* Docket, pp. 102-111.
[9] *En Banc* Docket, pp. 121-162.

Section 76 of the NIRC of 1997 provides:

> Section 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 refund of the excess estimated quarterly income taxes paid, the refundable amount shown on its final adjustment return may be credited against the estimated quarterly income tax liabilities for the taxable quarters of the succeeding taxable years. **Once the option to carry-over and apply the excess quarterly income tax against income tax due for the taxable quarters of the succeeding taxable years has been made, such option shall be considered irrevocable for that taxable period and no application for tax refund or issuance of a tax credit certificate shall be allowed therefor.** [Emphasis supplied.]

The predecessor provision of Section 76 of the NIRC of 1997 is Section 69 of the NIRC of 1977, as amended, which reads:

> Section 79. *Final Adjustment Return*. – Every corporation liable to tax under Section 24 shall file a final adjustment return covering the total net 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 net income of that year the corporation shall either:
>
> (a) Pay the excess tax still due; or
> (b) Be refunded the excess amount paid, as the case may be.
>
> In case the corporation is entitled to a refund of the excess estimated quarterly income taxes-paid, the refundable amount shown on its final adjustment return

may be credited against the estimated quarterly income tax liabilities for the taxable quarters of the succeeding taxable year.

Apparently, the "irrevocability rule" was introduced under Section 76 of the NIRC of 1997, to wit:

> xxx Once the option to carry-over and apply the excess quarterly income tax against income tax due for the taxable quarters of the succeeding taxable years has been made, **such option shall be considered irrevocable for that taxable period** and no application for tax refund or issuance of a tax credit certificate shall be allowed therefor. [Emphasis supplied.]

Notably, the rationale in adding the "irrevocability rule" under the last sentence to Section 76 of the NIRC of 1997 is to keep the taxpayer from flip-flopping on its options, and avoid confusion and complication as regards said taxpayer's excess tax credit.[10] More importantly, the rule prevents a taxpayer from claiming twice the excess quarterly taxes paid:

(1) as automatic credit against taxes for the taxable quarters of the succeeding years for which no tax credit certificate has been issued and

(2) as a tax credit either for which a tax credit certificate will be issued or which will be claimed for cash refund.[11]

In *Belle Corporation v. Commissioner of Internal Revenue*,[12] the Supreme Court had the occasion to discuss the distinctions between Section 69 of the old (1977) NIRC and Section 76 of the 1997 NIRC, thus:

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[10] Commissioner of Internal Revenue v. Bank of Philippine Islands, G.R. No. 178490, July 7, 2009.
[11] Systra Philippines, Inc. v. Commissioner of Internal Revenue, G.R. No. 176290, September 21, 2007.
[12] G.R. No. 181298, January 10, 2011.

"Under Section 69 of the old NIRC, in case of overpayment of income taxes, a corporation may either file a claim for refund or carry-over the excess payments to the succeeding taxable year. Availment of one remedy, however, precludes the other.

Although these remedies are mutually exclusive, we have in several cases allowed corporations, which have previously availed of the tax credit option, to file a claim for refund of their unutilized excess income tax payments.

In *BPI-Family Savings Bank* [386 Phil. 719 (2000)], the bank availed of the tax credit option but since it suffered a net loss the succeeding year, the tax credit could not be applied; thus, the bank filed a claim for refund to recover its excess creditable taxes. Brushing aside technicalities, we granted the claim for refund.

Likewise, in *Calamba Steel Center, Inc.* [497 Phil. 23 (2005)], we allowed the refund of excess income taxes paid in 1995 since these could not be credited to taxable year 1996 due to business losses. In that case, we declared that "a tax refund may be claimed even beyond the taxable year following that in which the tax credit arises x x x provided that the claim for such a refund is made within two years after payment of said tax."

In *State Land Investment Corporation* [G.R. No. 171956, January 18, 2008, 542 SCRA 114], we reiterated that "if the excess income taxes paid in a given taxable year have not been entirely used by a x x x corporation against its quarterly income tax liabilities for the next taxable year, the unused amount of the excess may still be refunded, provided that the claim for such a refund is made within two years after payment of the tax."

Thus, **under Section 69 of the old NIRC, unutilized tax credits may be refunded as long as the claim is filed within the two-year prescriptive period.**

This rule, however, no longer applies as Section 76 of the 1997 NIRC...

x x x

Under the new law, in case of overpayment of income taxes, the remedies are still the same; and the availment of one remedy still precludes the other. **But unlike Section 69 of the old NIRC, the carry-over of excess income tax payments is no longer limited to the succeeding taxable**

> **year. Unutilized excess income tax payments may now be carried over to the succeeding taxable years until fully utilized. In addition, the option to carry-over excess income tax payments is now irrevocable. Hence, unutilized excess income tax payments may no longer be refunded."** [Emphasis supplied.]

Consequently, while Section 69 of the 1977 NIRC, as amended, allows unutilized tax credits to be refunded as long as the claim is filed within the prescriptive period, the same no longer holds true under Section 76 of the 1997 NIRC as the option to carry-over excess income tax payments to the succeeding taxable year is now irrevocable.[13] For emphasis, unlike in Section 69 of the old code, the unutilized excess income tax payments may now be carried over to the succeeding taxable years until fully utilized.[14] Therefore, once the option to carry-over is exercised, the taxpayer may no longer be refunded of its unutilized excess income tax payments.

It is on this premise that the submission of the taxpayer's succeeding quarterly income tax returns and final adjustment return becomes indispensable to its claim for refund under Section 76 of the 1997 NIRC in order to ensure that it did not exercise the option to carry over its claimed unutilized excess income tax payments to the first (1st), second (2nd), third (3rd) taxable quarters and final adjustment return (FAR) of the succeeding taxable year.

In ***Millenium Business Services, Inc. v. Commissioner of Internal Revenue***,[15] this Court *En Banc* held that the presentation of the succeeding quarterly income tax returns and FAR is indispensable for the taxpayer to prove its entitlement to its claim for refund/tax credit under Section 76 of the NIRC, thus:

> "Since the burden of proof is upon the claimant to show that the amount claimed was not utilized or carried over to the succeeding taxable quarters, the presentation of the succeeding quarterly income tax return and final

[13] Belle Corporation v. Commissioner of Internal Revenue, G.R. No. 181298, January 10, 2011.
[14] *Id.*
[15] CTA EB Case No. 510 (CTA Case No. 7441), September 28, 2010.

adjustment return is indispensable to prove that it did not carry over or utilize the claimed excess creditable withholding taxes. Absent thereof, there will be no basis for a taxpayer's claim for refund since there will be no evidence that the taxpayer did not carry over or utilize the claimed excess creditable withholding taxes to the succeeding taxable quarters.

Significantly, a taxpayer may amend its quarterly income tax return or annual Income tax return or Final Adjustment Return which in any case may modify the previous intention to carry-over, apply as tax credit certificate or refund, as the case may be. But the option to carry-over in the succeeding taxable quarters under the irrevocable rule cannot be modified in its final adjustment return.

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

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

> In the same vein, if the government wants to disprove that the excess creditable withholding tax was not utilized or carried over to the succeeding taxable quarters, the presentation of the succeeding quarterly income tax return and the annual income tax return of the subsequent taxable year indicating utilization or carrying over are indispensable. However, the claimant must first establish its claim for refund, such that it did not utilize or carry over or that it opted to utilize and carry over to the 1st, 2nd, 3rd quarters and final adjustment return of the succeeding taxable year.
>
> Concomitantly, the presentation of the quarterly income tax return and the annual income tax return to prove the fact that excess creditable withholding tax was not utilized or carried over or opted to be utilized and carried over to the 1st, 2nd, 3rd quarters and final adjustment return of the succeeding taxable year is not only for convenience to facilitate the tax administration process but it is part of the requisites to establish the claim for refund. Section 76 of the NIRC of 1997 provides that if the taxpayer claimant carries-over and applies the excess quarterly income tax against the income tax due for the taxable quarters of the succeeding taxable years, the same is irrevocable and no application for cash refund or issuance of a tax credit certificate shall be allowed."[16]

In the instant case, petitioner failed to submit its quarterly income tax returns for the succeeding taxable year 2006. Instead, it merely submitted its final adjustment return for the succeeding taxable year in order to prove that it did not carry-over its excess/unutilized CWT to the subsequent quarters of the calendar year 2006. Thus, the Court *a quo* correctly held that the evidence adduced by petitioner is insufficient to support its claim for the issuance of a tax credit certificate of excess and unutilized creditable income taxes withheld for the year 2005.

To bolster its claim, petitioner cites the Supreme Court cases in ***Philam Asset Management, Inc. v. Commissioner of Internal Revenue*** (the "*Philam Case*"),[17] and ***State Land Investment Corporation v. Commissioner of Internal***

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[16] *Id.*
[17] G.R. Nos. 156637 & 162004, December 14, 2005.

Revenue (the "*State Land Case*")[18] in concluding that there is no need to present its quarterly income tax returns and final adjustment return for the succeeding taxable year of 2006 as there is no basis in law to require the submission of these documents for its entitlement to a tax refund or credit.

We are not persuaded.

Suffice it to say that the cases cited by petitioner are not on all fours with the instant case. Hence, We see no reason how the concept of *stare decisis* can be held to be applicable in the case at bench.

Interestingly, the *Philam Case* is a consolidated case which involves interpretation of Section 69 of the old code in G.R. No. 156637 and Section 76 of the new code in G.R. No. 162004; while the *State Land Case* was an interpretation of the Supreme Court of Section 69 of the old code, where the "irrevocability rule" was not yet enforced.

In interpreting Section 69 of the old code, the Supreme Court in *Philam Case* (G.R. No. 156637) and reiterated in *State Land Case* held that the presentation of the ITR or the FAR of the succeeding year to the BIR in requesting a tax refund has no basis in law and jurisprudence.

Petitioner's reliance on the aforesaid doctrine is misplaced. It bears stressing that there was yet no "irrevocability rule" under Section 69 of the old code. On the contrary, Section 76 of the new code expressly mandates that "[o]nce the option to carry-over and apply the excess quarterly income tax against income tax due for the taxable quarters of the succeeding taxable years has been made, **such option shall be considered irrevocable for that taxable period** and **no application for tax refund or issuance of a tax credit certificate shall be allowed** therefor." Thus, under the irrevocability rule, the taxpayer has the burden to prove that the amount being

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[18] G.R. No. 171956, January 18, 2008.

claimed as refund or tax credit was not actually carried over and credited against the estimated quarterly income tax liabilities for the taxable quarters of the succeeding taxable years. In fact, in interpreting Section 76 of the new code, the Supreme Court in the *Philam Case* emphasized the importance of determining the taxpayer's subsequent acts whether it has actually or effectively chosen the carry-over option. Thus:

> "x x x The subsequent acts of petitioner reveal that it has *effectively chosen* the carry-over option.
>
> *First*, the fact that it filled out the portion "Prior Year's Excess Credits" in its 1999 FAR means that it categorically availed itself of the carry-over option. In fact, the line that precedes that phrase in the BIR form clearly states "Less: Tax Credits/Payments." The contention that it merely filled out that portion because it was a requirement -- and that to have done otherwise would have been tantamount to falsifying the FAR -- is a long shot.
>
> The FAR is the most reliable firsthand evidence of corporate acts pertaining to income taxes. In it are found the itemization and summary of additions to and deductions from income taxes due. These entries are not without rhyme or reason. They are required, because they facilitate the tax administration process.
>
> Failure to indicate the amount of "prior year's excess credits" does not mean falsification by a taxpayer of its current year's FAR. On the contrary, if an application for a *tax refund* has been -- or will be -- filed, then that portion of the BIR form should necessarily be blank, even if the FAR of the previous taxable year already shows an overpayment in taxes.
>
> *Second*, the resulting redundancy in the claim of petitioner for a *refund* of its 1998 excess tax credits on November 14, 2000 cannot be countenanced. It cannot be allowed to avail itself of a *tax refund* and a *tax credit* at the same time for the *same* excess income taxes paid. Besides, disallowing it from getting a *tax refund* of those excess tax credits will not enervate the two-year prescriptive period under the Tax Code. That period will apply if the carry-over option has not been chosen.

> Besides, "tax refunds x x x are construed strictly against the taxpayer." Petitioner has failed to meet the burden of proof required in order to establish the factual basis of its claim for a *tax refund*."

In fine, We reiterate the long-standing principle in taxation that actions for tax refund, as in this case, are in the nature of a claim for exemption and the law must be construed in *strictissimi juris* against the taxpayer. Therefore, since taxes are the lifeblood of the nation, a claim of statutory exemption from taxation should be manifest and unmistakable from the language of the law on which it is based.[19]

In view of our foregoing disquisitions, there is no longer a need to still delve into and resolve the other issues raised in the said petition. Thus, we find no cogent reason to reverse the findings of this Court's former Third Division.

WHEREFORE, premises considered, the Petition for Review is hereby **DENIED**. The Decision and Resolution of the former Third Division of this Court in CTA Case No. 7760 dated September 30, 2011 and December 29, 2011, respectively, are hereby **AFFIRMED**. No pronouncement as to costs.

SO ORDERED.

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

WE CONCUR:

- with separate dissenting opinion
(*Joins the Dissenting Opinion of Justice Victorino.*)
ROMAN G. DEL ROSARIO
Presiding Justice

[19] Commissioner of Internal Revenue vs. Court of Appeals, et al., G.R. No. 124043, October 14, 1998, 298 SCRA 83.

Juanito C. Castañeda, Jr.
(Joins the Dissenting Opinion of Justice Victorino.)
JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

(Joins the Dissenting Opinion of Justice Victorino.)
CAESAR A. CASANOVA
Associate Justice

(With Dissenting Opinion)
ESPERANZA R. FABON-VICTORINO
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

(No part)
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

<u>CERTIFICATION</u>

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

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

PHILIPPINE NATIONAL BANK,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB No. 859
(CTA Case No. 7760)

Present:

DEL ROSARIO, *PJ,*
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA,
FABON-VICTORINO,
MINDARO-GRULLA,
COTANGCO-MANALASTAS, *JJ.*

Promulgated:

JUN 05 2013 [illegible]
9:05 a.m.

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DISSENTING OPINION

DEL ROSARIO, PJ:

I join the dissenting opinion of the Honorable Associate Justice Esperanza R. Fabon-Victorino.

In this case, the CTA-Third Division found the evidence presented by petitioner to be insufficient to support its claim for issuance of tax credit certificate of excess and unutilized creditable income taxes withheld for the year 2005 in the amount of ₱74,598,430.47.

The CTA-Third Division ruled that the presentation of petitioner's Annual Income Tax Return for calendar year 2006 is not sufficient to establish that petitioner did not apply its claimed unutilized creditable income taxes withheld for the year 2005 to the first three quarters of 2006.

The CTA-Third Division further held that the presentation of petitioner's Quarterly Income Tax Returns are vital for it to ascertain whether petitioner did not carry over the excess and unutilized creditable withholding taxes to the subsequent quarters of calendar year 2006.

It is well-settled that in order to be entitled to a refund or issuance of a tax credit certificate of excess and unutilized creditable income taxes withheld, petitioner must only satisfy the following requirements:

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

2. The fact of withholding must be 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. [1]

It is worthy to note that in the cases of **Philam Asset Management Inc. vs. Commissioner of Internal Revenue**[2] (*Philam Asset case*) and **State Land Investment Corporation vs. Commissioner of Internal Revenue**[3] (*State Land Investment case*), the Supreme Court emphasized that the requirement to submit the income tax return or the final adjustment return of the succeeding year in requesting a tax refund has no basis in law and jurisprudence.

Since the issue has been settled by no less than the Supreme Court, it is this Court's duty to apply the ruling of the Supreme Court. This is in consonance with the well-entrenched rule that the Supreme Court, by tradition and in our system of judicial administration, has the last word on what the law is.[4] It is the final arbiter of any justiciable controversy.[5] There

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[1] Section 2.58 of Revenue Regulations No. 2-98, as amended; Citibank N.A. vs. Court of Appeals , G.R. No. 107434, October 10, 1997, 280 SCRA 459; ACCRA Investment Corporation vs. Court of Appeals, G.R. No. 96322, December 20, 1991, 204 SCRA 957.
[2] G.R. Nos. 1566371 & 162004, December 14, 2005.
[3] G.R. No. 171956, January 18, 2008.
[4] Church Assistance Program, Inc. v. Hon. Sibulo, G.R. No. 76552, March 21, 1989; Inocencio Tugade vs. Court of Appeals, G.R. No. L-47772, August 31, 1978; Lourdes Barrera vs. Leon Barrera, G.R. No. L-31589, July 31, 1970; Mariano A. Albert vs. The Court of First Instance of Manila (Br. VI), G.R. No. L-26364, May 29, 1968
[5] Id.

is only one Supreme Court from whose decisions all other courts should take their bearings.[6]

Accordingly, following the pronouncement of the Supreme Court in the *Philam Asset case* and the *State Land Investment case*, there is no legal basis to require the presentation of the Quarterly Income Tax Returns of the succeeding year in a claim for refund or issuance of tax credit certificate of excess and unutilized creditable income taxes withheld.

While it is true that in a claim for tax refund, the taxpayer has the burden of proving that it is entitled to the refund, it is worthy to note that once the taxpayer-claimant has complied with all the requirements to sustain a tax refund or credit, the burden is then shifted to the Bureau of Internal Revenue (BIR) to show the factual or legal basis for the denial of the taxpayer's claim for refund. In the *Philam Asset case*, the Supreme Court noted that the BIR should have presented the taxpayer's Final Adjustment Return (FAR) for the succeeding year to support its contention against the grant of the tax refund, to wit:

> "Requiring that the ITR or the FAR of the succeeding year be presented to the BIR in requesting a tax refund has no basis in law and jurisprudence.
>
> First, Section 76 of the Tax Code does not mandate it. The law merely requires the filing of the FAR for the preceding — not the succeeding — taxable year. Indeed, any refundable amount indicated in the FAR of the preceding taxable year may be credited against the estimated income tax liabilities for the taxable quarters of the succeeding taxable year. However, nowhere is there even a tinge of a hint in any of the provisions of the Tax Code that the FAR of the taxable year following the period to which the tax credits are originally being applied should also be presented to the BIR.
>
> Xxx xxx xxx.
>
> Fourth, **the BIR ought to have on file its own copies of petitioner's FAR for the succeeding year, on the basis of which it could rebut the assertion that there was a subsequent credit of the excess income tax payments for the previous year. Its failure to present this vital document to support its contention against the grant of a tax refund to petitioner is certainly fatal.**
>
> Xxx xxx xxx." (Emphasis supplied)

6 *Id.*

Amplifying this point, in the case of **Commissioner of Internal Revenue vs. PERF Realty Corporation**[7], the Supreme Court confirmed that once the taxpayer has complied with the requirements for a tax refund, the duty to verify whether or not the taxpayer had carried over the excess income taxes rests with the BIR, to wit:

> "Further, We sustain the CA that there is no need to rule on the issue of the admissibility of the 1998 ITR since **the CTA ruled that PERF already complied with the requisites of applying for a tax refund. The verification process is not incumbent on PERF; it is the duty of the CIR to verify whether or not PERF had carried over the 1997 excess income taxes**." (Emphasis supplied)

In this case, petitioner was able to show that it complied with the three (3) requirements enumerated above. Thus, it is incumbent upon the BIR to disprove petitioner's entitlement thereto by showing that petitioner carried over the excess and unutilized creditable income taxes withheld for the year 2005.

Interestingly, respondent did not present any evidence on its behalf to dispute or contest petitioner's claim for issuance of tax credit certificate of excess and unutilized creditable income taxes withheld for the year 2005.

In conclusion, I vote to grant petitioner's claim for refund or issuance of tax credit certificate, representing excess and unutilized creditable income taxes withheld for the year 2005, but in the reduced amount of Php74,026,451.67 in view of the factual findings of the Honorable Associate Justice Fabon-Victorino.

ROMAN G. DEL ROSARIO
Presiding Justice

[7] G.R. No. 163345, July 4, 2008.

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

PHILIPPINE NATIONAL BANK, Petitioner,	C.T.A. EB NO. 859 (C.T.A. Case No. 7760)
	Present:
- versus -	DEL ROSARIO, *PJ* CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, and COTANGCO-MANALASTAS, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: JUN 05 2013

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DISSENTING OPINION

Fabon-Victorino, J.:

With all due respect to the majority, I submit that the presentation of the quarterly Income Tax Returns (ITRs) of the subsequent taxable year is not a legal requisite in a claim for refund of excess Creditable Withholding Tax (CWT).

This was the ruling of the Supreme Court in the case of *Philam Asset Management Inc. vs. Commissioner of Internal Revenue* (Philam case),[1] which was reiterated in the case of *State Land Investment Corporation vs. Commissioner of Internal Revenue* (State Land case)[2]. The Final Arbiter, in

[1] G.R. Nos. 1566371 & 162004, December 14, 2005.
[2] G.R. No. 171956, January 18, 2008.

no uncertain term, held that the requirement to submit the annual ITR or the Final Adjustment Return (FAR) of the succeeding taxable year in cases of tax refund of excess CWT has no basis in law and jurisprudence, thus:

> Requiring that the ITR or the FAR of the succeeding year be presented to the BIR in requesting a tax refund has no basis in law and jurisprudence.
>
> *First*, Section 76 of the Tax Code does not mandate it. The law merely requires the filing of the FAR for the preceding — not the succeeding — taxable year. Indeed, any refundable amount indicated in the FAR of the preceding taxable year may be credited against the estimated income tax liabilities for the taxable quarters of the succeeding taxable year. However, nowhere is there even a tinge of a hint in any of the provisions of the Tax Code that the FAR of the taxable year following the period to which the tax credits are originally being applied should also be presented to the BIR.
>
> *Second*, Section 5 of RR 12-94, amending Section 10(a) of RR 6-85, merely provides that claims for the refund of income taxes deducted and withheld from income payments shall be given due course only (1) when it is shown on the ITR that the income payment received is being declared part of the taxpayer's gross income; and (2) when 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 income tax withheld from that amount.
>
> Undisputedly, the records do not show that the income payments received by petitioner have not been declared as part of its gross income, or that the fact of withholding has not been established.

According to the CTA, '[p]etitioner substantially complied with the . . . requirements' of RR 12-94 '[t]hat 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 . . . [t]hat the income upon which the taxes were withheld were included in the return of the recipient.'

The established procedure is that a taxpayer that wants a cash refund shall make a written request for it, and the ITR showing the excess expanded withholding tax credits shall then be examined by the BIR. For the grant of refund, RRs 12-94 and 6-85 state that all pertinent accounting records should be submitted by the taxpayer. These records, however, actually refer only to (1) the withholding tax statements; (2) the ITR of the present quarter to which the excess withholding tax credits are being applied; and (3) the ITR of the quarter for the previous taxable year in which the excess credits arose. To stress, these regulations implementing the law do not require the proffer of the FAR for the taxable year following the period to which the tax credits are being applied.

Third, there is no automatic grant of a tax refund. As a matter of procedure, the BIR should be given the opportunity 'to investigate and confirm the veracity' of a taxpayer's claim, before it grants the refund. Exercising the option for a tax refund or a tax credit does not ipso facto confer upon a taxpayer the right to an immediate availment of the choice made. Neither does it impose a duty on the government to allow tax collection to be at the sole control of a taxpayer.

Fourth, the BIR ought to have on file its own copies of petitioner's FAR for the succeeding year, on the basis of which it could rebut the assertion that there was a subsequent credit of the excess income tax payments for the previous year. Its failure to present this vital document to support its contention against the grant of a tax refund to petitioner is certainly fatal.

Fifth, the CTA should have taken judicial notice of the fact of filing and the pendency of petitioner's subsequent claim for a refund of excess creditable taxes withheld for 1998. The existence of the claim ought to be known by reason of its judicial functions. Furthermore, it is decisive to and will easily resolve the material issue in this case. If only judicial notice were taken earlier, the fact that there was no carry-over of the excess creditable taxes withheld for 1997 would have already been crystal clear.

Sixth, the Tax Code allows the refund of taxes to a taxpayer that claims it in writing within two years after payment of the taxes erroneously received by the BIR. Despite the failure of petitioner to make the appropriate marking in the BIR form, the filing of its written claim effectively serves as an expression of its choice to request a tax refund, instead of a tax credit. To assert that any future claim for a tax refund will be instantly hindered by a failure to signify one's intention in the FAR is to render nugatory the clear provision that allows for a two-year prescriptive period.

To be entitled to refund of excess CWT, petitioner needs only to comply with the following conditions:

1. That the claim for refund was filed within the two-year prescriptive period prescribed under Section 204

(C), in relation to Section 229 of the NIRC of 1997, as amended;

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

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

Truly, in a claim for tax refund, the burden of proof rests on the taxpayer-claimant. The taxpayer claiming the tax credit or refund has the burden of proving that he is entitled to the refund or credit by submitting evidence that he has complied with the requirements laid down in the Tax Code and the BIR's revenue regulations under which such privilege of credit or refund is accorded.[4] However, when the taxpayer-claimant has complied with all the requirements for a tax refund, the burden is shifted to the BIR to show the factual or legal basis for the denial of the claim for refund.

Thus, in the case of *Commissioner of Internal Revenue vs. PERF Realty Corporation*,[5] the Supreme Court reiterated that the presentation of the annual ITR of the succeeding taxable year is not necessary and further expounded that its non-presentation is not fatal to the claim for refund as it is the duty of the Commissioner of Internal Revenue to verify whether or not the taxpayer-claimant carried over the excess CWT to the succeeding taxable year. The pertinent discussion states:

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[3] Section 2.58 of Revenue Regulations (R.R.) No. 2-98, as amended; *Banco Filipino Savings and Mortgage Bank vs. Court of Appeals, Court of Tax Appeals and Commissioner of Internal Revenue*, G.R. No. 155682, March 27, 2007; *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.
[4] *Microsoft Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 180173, April 06, 2011.
[5] G.R. No. 163345, July 4, 2008.

> We must also point out that, simply by exercising the CIR's power to examine and verify petitioner's claim for tax exemption as granted by law, respondent CIR could have easily verified petitioner's claim by presenting the latter's 1997 Income Tax Return, the original of which it has in its files. However, records show that in the proceedings before the CTA, respondent CIR failed to comment on petitioner's formal offer of evidence, waived its right to present its own evidence, and failed to file its memorandum. Neither did it file an opposition to petitioner's motion to reconsider the CTA decision to which the 1997 Income Tax Return was appended.
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> xxx xxx xxx
>
> Further, We sustain the CA that there is no need to rule on the issue of the admissibility of the 1998 ITR since the CTA ruled that PERF already complied with the requisites of applying for a tax refund. **The verification process is not incumbent on PERF; it is the duty of the CIR to verify whether or not PERF had carried over the 1997 excess income taxes.** (*Emphases supplied*)

Following the principle of *stare decisis et non quieta movere* (follow past precedents and do not disturb what has been settled), once a case has been decided one way, any other case involving exactly the same point at issue, as in the instant case, should be decided in the same manner.[6]

In the instant case, petitioner was able to sufficiently prove its claim for refund by complying with the legal requisites set forth under the law. Its claim for refund was filed within the two-year prescriptive period. It was able to substantiate, albeit partially, its claim by presenting the

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[6] *Commissioner of Internal Revenue v. Trustworthy Pawnshop, Inc.*, G.R No. 149834, May 2, 2006, 488 SCRA 538, 545.

creditable withholding tax certificates issued by the payors. And finally, it was able to establish that the income upon which the taxes were withheld were included in its annual ITR for taxable year 2005.

In fine, I vote to grant petitioner's claim for refund of excess CWT but in the reduced amount of Php74,026,451.67 the details of which are shown in my draft decision.

ESPERANZA R. FABON-VICTORINO
Associate Justice