Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

EN BANC

SHELL SERVICES INTERNATIONAL SENDIRIAN BERHAD,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. E.B. NO. 196
(C.T.A. CASE NO. 6658)

Present:

ACOSTA, *P.J.*
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA, *and*
PALANCA-ENRIQUEZ, *JJ.*

Promulgated:

JUN 1 3 2007

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DECISION

CASANOVA, J.:

This is a Petition for Review before the Court of Tax Appeals *En Banc* filed by petitioner on August 16, 2006 under Republic Act No. 9282, seeking a review of the Decision and Resolution by the *Second Division* of this Court (Court in Division) in CTA Case No. 6658, entitled "*Shell Services International Sendirian Berdad vs. Commissioner of Internal Revenue*", to wit:

1) Decision promulgated on March 14, 2006 denying herein petitioner's claim for refund or issuance of tax credit certificate in the amount of FOUR MILLION TWENTY TWO THOUSAND SIX HUNDRED EIGHTY FIVE PESOS (P4,022,685.00) allegedly representing unutilized creditable withholding taxes for the year 2000.

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2) Resolution promulgated on July 6, 2006 denying herein petitioner's Motion for Reconsideration of the aforesaid Decision for lack of merit.

THE FACTS

As culled from the assailed Decision and the records of the case, the undisputed facts are as follows:

Petitioner is a corporation organized and existing under the laws of Malaysia and is licensed to do business in the Philippines through a branch office located at 156 Valero Street, Salcedo Village, 1227 Makati City. Respondent is the duly appointed Commissioner of Internal Revenue who holds office at the 5th Floor of the BIR National Office Building located at Agham Road, Diliman, Quezon City, where he may be served with summons and other legal processes.

Petitioner is authorized to do business in the Philippines primarily to provide the operating units of Shell Companies in the Philippines with a *source of information technology best practice advice* and to act as business consultants, as well as to act as intermediaries in the introduction of sellers and purchasers of information technology products and services.

On April 17, 2000, petitioner filed its Annual Income Tax Return (ITR) (BIR Form No. 1702) for the taxable year 1999 showing a taxable income of P231,229.00 and a tax due of P76,306.00.

On April 18, 2001, petitioner filed a Tentative Annual Income Tax Return (BIR Form No. 1702) for the taxable year 2000 showing a net loss of P2,816,419.00 and showing an income tax overpayment of P4,022,685.00.

On May 30, 2001, petitioner filed its Final Annual Income Tax Return for the taxable year 2000, this time showing a net loss of P628,620.00 and showing the same amount of income tax overpayment of P4,022,685.00 as that of the abovementioned Tentative Annual Income Tax Return.

In both the Tentative and Final Annual Income Tax Returns for 2000, petitioner opted for the refund of the P4,022,685.00 representing excess creditable income taxes withheld at source during taxable year 2000 as shown under Item 31 of both tax returns.

On April 15, 2002, petitioner filed its Annual Income Tax Return (BIR Form No. 1702) for taxable year 2001 showing a net loss of P14,863,822.00 and showing an income tax overpayment of P4,563,963.00. Petitioner also reflected as "Prior Year's Excess Credits" the amount of P4,022,685.00 in the said return.[1]

Effective November 30, 2002, petitioner allegedly ceased commercial operations and formally retired from business as a result of the reorganization of petitioner's head office in Malaysia.

On December 16, 2002, petitioner filed a letter-petition dated December 9, 2002 with the Securities and Exchange Commission (SEC) for the withdrawal of petitioner's license to do business in the Philippines.

On April 4, 2003, petitioner timely filed a formal claim for refund with respondent, through Revenue District Office No. 50 of the Bureau of Internal Revenue, for the refund of the amount of P4,022,685.00 representing excess creditable income taxes withheld at source during taxable year 2000.

On April 15, 2003, petitioner filed a Final Short Period Return for the period January 1, 2002 to November 30, 2002, which it amended on May 15, 2003.[2] Petitioner's *amended* Final Short Period Return for the period January 1, 2002 to November 30, 2002 reported a net loss of P38,325,580.30 and an income tax overpayment of P1,762,013.54.

However, respondent has not acted upon petitioner's claim for refund. Meanwhile, the statutory period of two (2) years within which to file a judicial action for the recovery of internal revenue taxes that have been erroneously,

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[1] *Line 26A of Exhibit "F", Division Rollo, p. 235.*

[2] *This was jointly stipulated by the parties but petitioner did not present as part of its exhibits the original (not amended) BIR Form 1702 or Annual Income Tax Return [Final Short Period Return] for the year 2002.*

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wrongfully, illegally or excessively assessed or collected, such as the P4,022,685.00 excess creditable withholding tax, is about to prescribe.

Therefore, on April 14, 2003, petitioner filed a Petition for Review. The same was raffled and assigned before the *Second Division* of this Court.

After trial on the merits, the CTA *Second Division* promulgated a Decision on March 14, 2006 wherein petitioner's claim for refund or issuance of tax credit certificate in the amount of P4,022,685.00 was denied. The reasons, *inter-alia*, were: *(a)* that the petitioner has already carried-over the said amount of income overpayment as tax credit in the subsequent year (2001) and *(b)* that petitioner failed to adequately prove that it had actually ceased operations. Specifically, the Court in Division ruled that, to wit:

> " x x x applying *Section 76 of the Tax Code*, since petitioner had opted to carry-over and apply its 2000 excess tax credits against its 2001 tax liability, such option to carry-over is now irrevocable. Therefore, petitioner's alleged 2000 unutilized/excess tax credits cannot anymore be refunded or be applied as a tax credit certificate. x x x"

Accordingly, the dispositive portion of the Decision reads as follows:

> "**WHEREFORE**, premises considered, the present Petition for Review is **DENIED DUE COURSE**, and accordingly, **DISMISSED.**
>
> SO ORDERED."

On April 7, 2006, petitioner filed a Motion for Reconsideration. Petitioner stated therein, among others, that the Second Division erred in ruling that petitioner's act of exercising its option to carry-over its 2000 alleged excess creditable withholding taxes to 2001 was not a bar on its claim for refund and that the Second Division erred in ruling that petitioner was not able to adequately prove that it had actually ceased operations.

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On July 6, 2006, the Second Division, in a Resolution, denied petitioner's Motion for Reconsideration for lack of merit. Hence, this appeal by way of a Petition for Review filed with the CTA *En Banc.*

THE ASSIGNED ERRORS

Petitioner raised the following grounds in support of the instant petition, to quote:

I. THE HONORABLE COURT ERRED IN DENYING PETITIONER'S CLAIM FOR REFUND ON THE GROUND THAT PETITIONER OPTED TO CARRY OVER ITS EXCESS CREDITABLE WITHHOLDING TAXES FOR THE YEAR 2000 TO THE TAXABLE YEAR 2001.

II. THE HONORABLE COURT ERRED IN RULING THAT, FOR PURPOSES OF DETERMINING THE OPTION EXERCISED BY PETITIONER WITH REGARD TO ITS EXCESS CREDITABLE WITHHOLDING TAXES FOR THE YEAR 2000, THE OPERATIVE ACT WAS NOT PETITIONER'S MARKING OF THE BOX "TO BE REFUNDED" IN BOTH ITS TENTATIVE AND FINAL ANNUAL INCOME TAX RETURNS FOR THE YEAR 2000 BUT ITS INADVERTENT CARRY-OVER OF SUCH 2000 EXCESS CREDITABLE WITHHOLDING TAXES TO THE YEAR 2001.

III. THE HONORABLE COURT ERRED IN RULING THAT PETITIONER WAS NOT ABLE TO ADEQUATELY PROVE THAT IT HAD ACTUALLY CEASED OPERATIONS.

IV. THE HONORABLE COURT ERRED IN RULING THAT PETITIONER'S FAILURE TO SUBMIT A TAX CLEARANCE ISSUED BY THE BIR OR A CERTIFICATE OF WITHDRAWAL OF LICENSE TO TRANSACT BUSINESS IN THE PHILIPPINES ISSUED BY THE SECURITIES AND EXCHANGE COMMISSION ("SEC") PREVENTS IT FROM GRANTING A REFUND OR ISSUING A TAX CREDIT CERTIFICATE FOR PETITIONER'S EXCESS CREDITABLE WITHHOLDING TAXES FOR THE YEAR 2000.

THIS COURT *EN BANC'S* RULING

The petition is bereft of merit.

This case involves a refund of excess creditable withholding taxes. As correctly ruled by the *Second Division,* petitioner has already complied with the following three (3) substantiation requirements[3] which were needed, among others, in order for it to be entitled to a refund or issuance of tax credit certificate, to wit:

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 National Internal Revenue Code (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 (*BIR Form No. 1743-A [now BIR Form 2307]*), showing the amount paid and the amount of tax withheld therefrom; and
3) The income upon which the taxes were withheld were included in the return of the recipient.

The *first* requirement was complied with by the petitioner.

It timely filed both the administrative and judicial claims for refund as required under *Section 204 (C)*, in relation to *Section 229 of the NIRC of 1997, as amended.*

The two-year prescriptive period for the filing of a claim for refund commences from the date of filing of the final adjustment return.[4] The subject withholding taxes pertain to taxable year 2000, to which petitioner filed its Tentative Annual Income Tax Return on April 18, 2001.[5] Counting from this date, petitioner had until April 18, 2003 within which to file a claim for refund/tax credit certificate both in the administrative and judicial levels. Petitioner filed its administrative claim on April 4, 2003, while the instant Petition for Review before this Court was filed on April 14, 2003. Clearly, petitioner has complied with the two-year prescriptive period.

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[3] *As prescribed under Section 2.58.3 of Revenue Regulations No. 2-98, otherwise known as the Withholding Tax Regulations; PHILAM Asset Management, Inc. vs. Commissioner of Internal Revenue, G.R. Nos. 156637/162004, December 14, 2005.*

[4] *ACCRA Investments Corporation vs. Court of Appeals, 204 SCRA 957*

[5] *Exhibit A*

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administrative claim on April 4, 2003, while the instant Petition for Review before this Court was filed on April 14, 2003. Clearly, petitioner has complied with the two-year prescriptive period.

The *second* requirement was also met by the petitioner.

As properly ruled by the Second Division, to quote:

"Petitioner has complied with the second requirement. Petitioner has proven the fact of withholding on its income payments received for services rendered for taxable year 2000 by presenting the corresponding certificates of creditable tax withheld at source (BIR Form 2307), showing the amount of income paid and the amount of tax withheld therefrom, to wit:

Exhibit	Period Covered	Income Payments	Tax Withheld
B	1st Quarter	5,859,015.18	292,950.76
C	2nd Quarter	58,034,544.48	2,901,727.21
D	3rd Quarter	17,994,819.01	662,053.43
E	4th Quarter	16,595,494.76	165,954.93
		P98,483,873.43	**P4,022,686.33**

As to the discrepancy between the tax overpayment of P4,022,685.00, as reported by the petitioner, and the amount of P4,022,686.33, as reflected in the certificates of creditable tax withheld at source, this was explained by petitioner's witness during the trial.

On direct examination, petitioner's witness, Joseph Libo-on identified the certificates of income taxes withheld at source issued to petitioner in the year 2000 and explained that the discrepancy is only the result of rounding off (*Exhibit "RR"; TSN, May 25, 2004, pp. 16-20*).

Thus, the fact of withholding by petitioner was duly substantiated by various certificates of creditable tax withheld at source on income payments derived from services rendered in the amount of P98,483,873.43."[6]

[6] *Pages 12-13 of the March 14, 2006 Decision.*

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The petitioner also complied with the *third* requirement.

It was clear in petitioner's 1999 and 2000 income tax returns that the income corresponding to the creditable withholding taxes had been declared as part of its gross income therein.

The *Second Division* correctly ruled in this matter, to wit:

> "As clearly shown in petitioner's Reconciliation of Income per Certificates of Creditable Withholding Tax (CWT) and Income per Income Tax Return (ITR) with attached supporting Schedules *(Exhibits "SS", "SS-1", "SS-2")*, and sales invoices issued by petitioner to Pilipinas Shell Petroleum Corp. (PSPC) (*Exhibits "J" to "QQ"*), of the total income payment of P98,483,873.43, the amount of P41,013,106.08 formed part of petitioner's declared income in its 1999 Income Tax Return *(Exhibit "TT")*. The remaining income payment of P57,470,767.35 was included in petitioner's reported income of P76,522,139.00 in its year 2000 Income Tax Return. To illustrate:

Year	Income Per Annual Income Tax Return	Amount of Income Payment Subjected CWT	Applicable CWT
1999	43,271,748.00	41,013,106.08	2,050,655.38
2000	76,522,139.00	57,470,767.35	1,972,030.95
	119,793,887.00	98,483,873.43	4,022,686.33

> Thus, on direct examination, petitioner's witness, Joseph Libo-on, categorically declared:
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> Q. Why was a portion of the income covered by these Creditable Withholding Tax Certificate for the year 2000 declared by Shell Services in its 1999 Annual Income Tax Return?
>
> A. Because while Shell Services received the income payment in the year 2000, the services for which the income was paid were rendered in 1999. Hence, Shell Services properly reported the income in its 1999 Annual Income Tax Return.

Q. If a portion of the income covered by these Certificates was for services rendered in 1999, why didn't PSPC issue Creditable Withholding Tax Certificates in 1999, if you know?

A. Because PSPC paid Shell Services for services rendered in 1999 only in the year 2000. Since PSPC paid Shell Services in 2000, taxes were withheld only in the year 2000. Hence, PSPC issued the Creditable Withholding Tax Certificates only in 2000.

Q. And why did PSPC pay, and Shell Services receive, the income only in the year 2000?

A. PSPC paid Shell Services in the year 2000 for services rendered in 1999 because PSPC could not pay Shell Services without invoices from the latter. In 1999, Shell Services was still awaiting the BIR permit to Use Computer Generated Sales Invoice and Debit/Credit Note without which it could not issue invoices. Since the approval was issued only in the year 2000, it started issuing invoices only in that year. Hence, while Shell Services accrued the income from services rendered in 1999 in its books for that year, income payments for such services were received only in the following year 2000 and withholding tax credits pertinent thereto were accordingly recorded in its books only in 2000." (*Exhibit "RR"*)."[7]

As disclosed by the records of the case, petitioner has complied with the three (3) aforementioned substantiation requirements. However, to be entitled for refund or issuance of tax credit certificate, petitioner has to further comply with the rule set forth under *Section 76 of the NIRC of 1997*, as amended, to quote:

"**SEC. 76. Final Adjustment Return –** Every corporation liable to tax under Section 27 shall file a final adjustment return covering the total taxable income for the preceding calendar or fiscal year. If the sum of the quarterly tax payments made during the said taxable year is not equal to the total tax due on

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[7] *Pages 13-15 of the March 14, 2006 Decision.*

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> the entire taxable income of that year, the corporation shall either:
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> (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.
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> In case the corporation is entitled to a tax credit or refund of the excess estimated quarterly income taxes paid, the excess amount shown on its final adjustment return may be carried over and credited against the estimated quarterly income tax liabilities for the taxable quarters of the succeeding taxable years. **Once the option to carry-over** and apply the excess quarterly income tax against income tax due for the taxable quarters of the succeeding taxable years **has been made, such option shall be considered irrevocable for that taxable period and no application for cash refund or issuance of a tax credit certificate shall be allowed therefore.**[8]

The law decrees that the corporate taxpayer's excess tax credits or overpaid income tax in a given taxable year may be refunded or claimed as a tax credit or carried over and applied against its income tax liabilities for the taxable quarters of the succeeding taxable years. These remedies are to be availed of in the alternative and not cumulatively.

Furthermore, once the taxpayer has exercised the option to carry-over and to apply the excess quarterly income tax against income tax due for the taxable quarters of the succeeding taxable years, such option is irrevocable for that taxable year and no application for cash refund or issuance of a tax credit certificate shall be allowed.

In the case before *Us*, while petitioner marked with an "x" the box corresponding to the phrase "to be refunded" in its 2000 ITR, petitioner had *actually exercised* the option to carry-over its 2000 excess creditable withholding tax to the year 2001, and in fact, *it had already carried over* to the succeeding

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[8] *Underscoring supplied*

year its unutilized creditable taxes withheld for the taxable year 2000. By express mandate of *Section 76*, once the option to carry-over has been made, such option is irrevocable for that taxable period and no application for cash refund or issuance of tax credit certificate shall be allowed therefore.

Again, as quoted by the Second Division, applicable in this situation is the case of *Paseo Realty & Development Corporation vs. Court of Appeals, Court of Tax Appeals and Commissioner of Internal Revenue, 440 SCRA 235*, wherein the Supreme Court held that:

> "As clearly seen from this provision, the taxpayer is allowed three (3) options if the sum of its quarterly tax payments made during the taxable year is not equal to the total tax due for that year: (a) pay the balance of the tax still due; (b) carry-over the excess credit; or (c) be credited or refunded the amount paid. If the taxpayer has paid excess quarterly income taxes, it may be entitled to a tax credit or refund as shown in its final adjustment return which may be carried over and applied against the estimated quarterly income tax liabilities for the taxable quarters of the succeeding taxable years. However, once the taxpayer has exercised the option to carry-over and to apply the excess quarterly income tax against income tax due for the taxable quarters of the succeeding taxable years, such option is irrevocable for that taxable period and no application for cash refund or issuance of a tax credit certificate shall be allowed."

As applied in the case of *Philam Asset Management, Inc., vs. Commissioner of Internal Revenue, G.R. No. 156637/162004, December 14, 2005*, the Supreme Court reiterated the said ruling, and said:

> "These two options under Section 76 are alternative in nature. The choice of one precludes the other. Indeed, in Philippine Bank of Communications vs. Commissioner of Internal Revenue, the Court ruled that a corporation must signify its intention – whether to request a tax refund or claim a tax credit – by marking the corresponding option box provided in the FAR. While a taxpayer is required to mark its choice in the form provided by the BIR, this requirement is only for the purpose of facilitating tax collection.
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> xxx xxx

> The carry-over option under Section 76 is permissive. A corporation that is entitled to a tax refund or a tax credit for excess payment of quarterly income taxes may carry over and credit the excess income taxes paid in a given taxable year against the estimated income tax liabilities of the succeeding quarters. Once chosen, the carry-over option shall be considered irrevocable for that taxable period, and no application for a tax refund or issuance of a tax credit certificate shall then be allowed.
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> xxx xxx
>
> Whether the FIFO principle is applied or not, Section 76 remains clear and unequivocal. Once the carry-over option is taken, actually or constructively, it becomes irrevocable. Petitioner has chosen that option for its 1998 creditable withholding taxes. Thus, it is no longer entitled to a tax refund of P459,756.07, which corresponds to its 1998 excess tax credit. x x x"

Pursuant to the aforequoted rulings of the Supreme Court, applying *Section 76 of the Tax Code* and as correctly ruled by the *Second Division*, since petitioner had opted to carry-over and applied its 2000 excess tax credits against its 2001 tax liability, such option to carry-over is now irrevocable.

Therefore, petitioner's alleged 2000 unutilized/excess tax credits cannot anymore be refunded or be applied as a tax credit certificate.

In addition, petitioner alleged that it is entitled to a refund or the issuance of a tax credit certificate *even if* the subject amount of P4,022,685.00 was "inadvertently" carried-over to the year 2001 by reflecting the same in its 2001 ITR as "Prior Year's Excess Credits" because effective November 30, 2002, it had *allegedly ceased commercial operations and formally retired from business.*

Petitioner specifically stated that, to quote:

> "More importantly, petitioner would no longer have any occasion to utilize its excess tax credits for the year 2000 in subsequent years as, **effective November 30, 2002, it had already ceased commercial operations and formally retired from business** as a result of the reorganization of petitioner's head

> office in Malaysia. **In fact, on December 16, 2002, it filed a <u>letter-petition</u> dated December 9, 2002 with the Securities and Exchange Commission for the withdrawal of its license to do business in the Philippines** and filed, **on <u>April 15, 2003, a Final Short Period Return</u> for the period January 1, 2002 to November 30, 2002, which it amended on May 15, 2003.** To deny petitioner a refund of its excess tax credits for the year 2000 would thus constitute unjust enrichment on the part of the government."[9] (*Emphasis and underscoring Ours*)

We do not agree.

The words used by the petitioner to convince *Us* to grant its claim were praiseworthy. However, the fact remains that to prove and support its claim, petitioner presented, as found by the *Second Division*, *only* the following documents:

1) Audited Financial Statements for 1999 and 2000[10];
2) Letter-petition for withdrawal of petitioner's license to do business in the Philippines to the Securities and Exchange Commission[11]; and
3) Judicial affidavit of witness Joseph Libo-on.[12]

In addition, the Court *En Banc* noted that, for the year 2002, petitioner used an Annual Income Tax Return (BIR Form 1702) with a sub-heading of "Final Short Period Return"[13] which covered the period that ended on November 2002. However, this was only an amended ITR. The original (not amended) 2002 ITR of the petitioner was not presented before this Court by the latter. Hence, this Court cannot determine whether or not petitioner carried-over the subject claim for refund in the amount of P4,022,685.00 to the year 2002 using the original (not amended) 2002 ITR.

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9 *Paragraph 41 of Petition for Review, En Banc Rollo. pp. 61-62.*
10 *Exhibits G and TT-3, Division Rollo. pp. 249-266 and pp. 327-347 respectively.*
11 *Annex E of Petition for Review. Division Rollo .pp. 29-34.*
12 *Exhibit RR, Division Rollo. pp. 315-322.*
13 *Exhibit G, Ibid.*

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We further noted that attached to amended 2002 ITR were petitioner's 2002 Audited Financial Statements[14] wherein, its external auditors, *Joaquin Cunanan and Co.*, made a disclosure in its opinion, to wit:

> "As discussed in Note 1, to the financial statements, the Board of Directors of Shell Information Technology International Sendirian Berhad (Formerly Shell Services International Sendirian Berhad) resolved to discontinue the operations of its Philippine Branch effective November 30, 2002. While the *going concern basis* has been used in the preparation of the financial statements, all assets are stated at the lower of cost or estimated realizable amounts and all known losses and liabilities have been provided for."[15] *(Underscoring and emphasis supplied)*

In addition to the above, this Court further noted that, as stated in Note 5 of the Notes to Financial Statements of the same auditor's report, and *We* quote:

> "xxx the Branch [petitioner] has sold all computer hardware and software carried in its books to third parties and to its affiliates SPEX and PSPC for P122.4 million, from which the Branch realized a gain of P28.9 million."[16]

The Court *En Banc* cross-referred the said amount of gain on sale on the same Financial Statements' Statement of Cash Flows. The Cash Flow Statement showed the amount of P28,892,949.00 as "Gain on sale of hardware and software".[17] We noted that the same amount was included as part of petitioner's "Non-Operating & Other Income" for a total of P57,636,023.35[18] in its 2002 ITR. The composition of the P57,636,023.35 is a follows:

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[14] *Division Rollo. pp. 253-266.*
[15] *Last Paragraph of Report of Independent Accountants, Division Rollo p. 256.*
[16] *Note 5 on Notes to Financial Statement, Division Rollo. pp. 264-265.*
[17] *Statement of Cash Flows, Division Rollo. p. 260.*
[18] *Line 17c of Exhibit G. Division Rollo 249.*

Schedule of Taxable Other Income (Schedule 4)[19]

	Nature of Income	Taxable Amount
Line 54	INTEREST INCOME STAFF	257,233.09
Line 55	**GAIN ON SALE OF ASSETS**	**28,892,949.20**
Line 56	OTHERS	28,485,841.06
Total Other Income (to line 17)		57,636,023.35

The Court *En Banc* found the aforementioned petitioner's external auditor's opinion as well the Notes to Financial Statements attached with its 2002 ITR *of little value* for the simple reason that petitioner's external auditors *are not* this Courts' duly appointed independent Certified Public Accountant in accordance with Rule 13 of the Revised Rules of the Court of Tax Appeals.

It may seem that petitioner may be taking some steps to close its business. However, petitioner should be reminded that if it wants to attain its goal, it should first comply with *Sections 52 (C)* and *235 of the NIRC of 1997* as amended, to wit:

> **"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 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.
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> 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

[19] *Lines 54-61 of Exhibit G, Division Rollo. 250.*

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."(*Underscoring and emphasis Ours*)

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

xxx xxx xxx

(e) x x x 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**." (*Emphasis Ours*)

It is crystal from the above provisions of law that there is a need for petitioner to be cleared with any tax liability before it can be allowed to legally retire from business.

In addition, *Section 136 of the Corporation Code* provides:

"**SEC. 136.** ***Withdrawal of foreign corporations.***- Subject to existing laws and regulations, 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."

Petitioner failed to prove that it was cleared of any tax liability, as mandated by *Section 235 of the NIRC of 1997, as amended*, in relation to *Section 136 of the Corporation Code of the Philippines*. Petitioner failed to present any BIR tax clearance to the Securities and Exchange Commission. It is only upon submission of the BIR tax clearance to the SEC will it then issue a Certificate of Withdrawal of License to transact business in the Philippines. Absent a certificate of withdrawal of license issued by the SEC, this Court cannot ascertain if indeed petitioner has paid all its tax liabilities as to entitle it to the refund being claimed in this case. A letter-petition for withdrawal of petitioner's license to do business in the Philippines to the SEC is not the same as a *duly issued* Certificate of Withdrawal of License.

Settled is the rule that a claim for tax refund is in the nature of tax exemption. Laws granting exemption from tax are construed s*trictissimi juris* against the taxpayer and liberally in favor of the taxing authority.[20] Taxation is the rule and exemption is the exception. The law does not look with favor on tax exemptions and that he who would seek to be thus privileged must justify it by words too plain to be mistaken and too categorical to be misinterpreted.[21] Petitioner has failed to meet the burden of proof required in order to establish the factual basis of its claim for tax refund.[22]

In the light of the foregoing discussions and after considering the arguments raised by herein petitioner in this Petition for Review, the Court *En Banc* finds no reversible error committed by the *Second Division* of this Court when it rendered its assailed Decision and Resolution dated March 14, 2006 and July 6, 2006, respectively.

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20 *Tax Principles and Remedies, 2nd ed. 2005, p. 111, by Justice Japar B. Dimaampao*

21 *Sea-land Service, Inc. vs. Court of Appeals, 357 SCRA 444; BPI-Family Savings Bank vs. Court of Appeals, et al., 330 SCRA 507*

22 *Philam Asset Management, Inc. vs. Commissioner of Internal Revenue, G.R. Nos. 156637/162004, December 14, 2005.*

WHEREFORE, premises considered, the instant petition is hereby **DENIED** for lack of merit.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

C E R T I F I C A T I O N

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

ERNESTO D. ACOSTA
Presiding Justice