Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

En Banc

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus -

UNIVATION MOTOR PHILIPPINES, INC. [Formerly, NISSAN MOTOR PHILIPPINES, INC.],
Respondent.

CTA EB No. 1236
(CTA Case No. 8420)

Present:
DEL ROSARIO, PJ,
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA,
FABON-VICTORINO,
MINDARO-GRULLA,
COTANGCO-MANALASTAS, and
RINGPIS-LIBAN, *J.J.*

Promulgated:

OCT 28 2015
3:58 p.m.

x- -x

DECISION

CASANOVA, *J*.:

This is an appeal, by way of Petition for Review, filed by petitioner-Commissioner of Internal Revenue, seeking the reversal of the Decision[1] (the "Assailed Decision") dated July 3, 2014 and Resolution[2] (the "Assailed Resolution") dated September 22, 2014, both rendered by the Court of Tax Appeals (CTA) First Division, partially granting respondent's claim for refund of its unutilized creditable withholding taxes for calendar year 2009.

The facts of the case, as narrated in the Assailed Decision, are as follows:

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[1] En Banc Rollo, pp. 18-40
[2] Ibid, pp. 41-47

"Petitioner is a corporation duly organized and existing under the laws of the Republic of the Philippines, with principal place of business at the Nissan Technopark, Barangay Pulong Sta. Cruz, Sta. Rosa, Laguna. It was incorporated for the primary purpose of carrying out the business of 'buying, acquiring, manufacturing, assembling, producing, importing, holding, selling, disposing, distributing, dealing in motor trucks, cars, engines and other kinds of automobiles and mechanically propelled vehicles, means of transportation and industrial machinery, their bodies, spare parts, accessories; and to repair, maintain, service, condition and/or recondition said projects'. It is a registered taxpayer with the Bureau of Internal Revenue ('BIR') with Taxpayer Identification No. 000-389-353-000.

On the other hand, respondent is the duly appointed Commissioner of Internal Revenue, vested with authority to carry out all the functions, duties and responsibilities of said office, including, *inter alia*, the power to decide, approve, and grant refunds and/or tax credits of overpaid and erroneously paid or collected internal revenue taxes. She may be served with summons, pleadings and other processes of this Court at her office at the BIR National Office Building, BIR Road, Diliman, Quezon City.

On April 14, 2010, petitioner filed with the BIR, via the Electronic Filing and Payment System, its Annual Income Tax Return for the calendar year ('CY') ending December 31, 2009, declaring the following:

Sales/Revenues/Receipts/Fees	₱1,709,363,915.00
Less: Cost of Sales/Services	1,650,581,931.00
Gross Income from Operation	58,781,984.00
Add: Non-operating & Taxable Other Income	67,603,905.00
Total Gross Income	126,385,889.00
Less: Deductions	411,909,405.00
Taxable Income	(285,523,516.00)
Tax Rate	30%
Income Tax	0.00
Minimum Corporate Income Tax	2,527,717.78
Tax Due	2,527,717.78
Less: Tax Credits/Payments	
Prior Year's Excess Credits	18,104,555.00

Creditable Tax Withheld for the First Three Quarters	5,033,217.00
Creditable Tax Withheld for the Fourth Quarter	9,209,671.00
Total Tax Credits/Payments	32,347,443.00
Tax Payable/(Overpayment)	(29,819,725.22)

On March 31, 2011, petitioner filed with the Large Taxpayers Excise Audit Division II of the BIR (BIR-LTEAD II) an administrative claim for refund of excess and unutilized creditable withholding taxes for CY 2009 in the amount of ₱14,242,888.00. On November 25, 2011, petitioner filed a letter with the BIR-LTEAD II to follow up the status of its administrative claim for refund.

Claiming inaction on the part of respondent, petitioner filed on January 30, 2012 the present Petition for Review invoking Sections 76, 204(C) and 229 of the National Internal Revenue Code of 1997. Petitioner prays for a refund or issuance of tax credit certificate in the amount of ₱14,242,888.00 allegedly representing its excess and unutilized creditable income taxes withheld for CY 2009.

In her Answer filed on February 20, 2012, 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 amount of P14,242,888.00 allegedly representing excess and unutilized creditable income taxes withheld for calendar year 2009 was not properly documented.
>
> 6. 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.
>
> 7. The instant case involves a claim for refund of alleged excess and unutilized creditable withholding taxes for calendar year 2009. Thus, it is incumbent upon petitioner to

discharge its burden of proving entitlement thereto, which basically must include the fact of withholding of taxes and its subsequent remittance to the BIR.

8. Petitioner must prove that it has complied with the following requisites as ruled by the Supreme Court and the Honorable Court in a number of cases, to wit: (a) the claim is filed with the Commissioner of Internal Revenue within the two-year period from the date if *(sic)* payment of the tax; (b) it is shown on the return of the recipient that the income payment received was declared as part of the gross income; and (c) 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.

9. Petitioner must likewise prove that it has not exercised the option to carry over any excess credits in the succeeding quarters as provided under Section 76 of the National Internal Revenue Code of 1997 (NIRC of 1997) xxx.

10. The power to tax is the most effective instrument to raise needed revenues to finance and support the myriad activities of the government for the delivery of basic services essential to the promotion of the general welfare and enhancement of peace, progress, and prosperity of the people *(Mactan Cebu International Airport Authority vs. Marcos, 261 SCRA 667, 690)*. Consequently, any delay in implementing tax measures would be to the detriment of the public. It is for this reason that claims for refund are required to be done within certain time frames. In the instant petition, the failure of the petitioner to comply with such periods is fatal to its cause.

> The claimant has the burden of proof to establish the factual basis of his claim for tax credit or refund. After all tax refunds, like tax exemptions, are construed strictly against the taxpayer (Citibank N.A. vs. Court of Appeals and Commissioner of Internal Revenue, 280 SCRA 459; Commissioner of Internal Revenue vs. Tokyo Shipping Co., Ltd., 244 SCRA 332, both cited in Benguet Corporation vs. Commissioner of Internal Revenue, CTA Case No. 5392 promulgated October 30, 1998).
>
> Partaking of the nature of exemptions, claims for refund are strictly construed against the claimant and cannot be allowed unless granted in the most explicit and categorical language (Sps. Aguilar vs. Commissioner of Internal Revenue, et al., CA G.R. SP No. 16432, March 30, 1999). Being in the nature of tax exemptions, these claims are regarded as in derogation of sovereign authority and to be construed strictissimi juris against the claimant and liberally in favor of the taxing authority (Commissioner of Internal Revenue vs. Procter and Gamble Philippines Manufacturing Corporation, 204 SCRA 377).
>
> 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 Pre-Trial, the parties filed their Joint Stipulation of Facts and Issues and Supplemental Joint Stipulation of Facts and Issues on March 29, 2012 and on April 19, 2012, respectively, and the Court approved the same in the Resolution dated April 25, 2012. In the same Resolution, the pre-trial was terminated and the parties were ordered to proceed with the trial, limiting the presentation of their evidence to matters that have not been covered by their joint stipulations of facts and issues.

During trial, petitioner presented its testimonial and documentary evidence. Its pieces of documentary evidence were admitted in the Resolution dated June 4, 2013 and October 29, 2013. On the other hand, in a hearing held on December 3, 2013, respondent's counsel manifested that respondent will not be presenting any evidence as there is no report of investigation. Upon motion of the parties, they were granted a period of thirty (30) days from December 3, 2013 to file their respective memoranda.

With the filing of the parties' respective memoranda, the petition for review was deemed submitted for decision in the Resolution dated January 29, 2014. xxx."

On July 3, 2014, the CTA First Division rendered the Assailed Decision partially granting respondent's Petition for Review and ordering herein petitioner to issue a tax credit certificate in favor of respondent-Nissan in the reduced amount of ₱13,468,575.78 representing its unutilized creditable withholding taxes for calendar year 2009.

In the Assailed Resolution dated September 22, 2014, petitioner's Motion for Partial Reconsideration was denied for lack of merit.

On October 16, 2014, petitioner filed the instant Petition for Review[3] with respondent's Comment (To the Petition for Review dated October 14, 2014) filed on December 22, 2014.

On January 20, 2015, this Court promulgated a Resolution giving due course to the Petition for Review and requiring the parties to submit their respective memorandum within thirty (30) days from receipt of the Resolution.

On January 27, 2015, petitioner filed a Manifestation[4] stating that she is adopting the arguments raised in the Petition for Review filed on October 16, 2014, as her Memorandum in the above-entitled case, in

[3] Id., pp. 1-17
[4] Id., pp. 83-86

compliance with this Court's Resolution promulgated on January 20, 2015.

On January 30, 2015, respondent filed a Manifestation and Motion[5] praying for the substitution of the name of respondent from "NISSAN MOTOR PHILIPPINES, INC." to "UNIVATION MOTOR PHILIPPINES, INC." in all existing records of the case and that notices, orders and other correspondence from this Court be addressed henceforth to UNIVATION MOTOR PHILIPPINES, INC. The Court subsequently granted said Manifestation and Motion in a Minute Resolution[6] promulgated on February 17, 2015.

On February 27, 2015, respondent filed a Motion For Extension of Time To File Memorandum[7] requesting an additional thirty (30) days extension from February 27, 2015 or until March 29, 2015, within which to file its Memorandum. The Court granted said Motion, as prayed for, in a Minute Resolution[8] dated March 3, 2015.

On March 30, 2015, respondent filed its Memorandum[9] and the case was deemed submitted for decision per Resolution dated April 16, 2015.

Hence, this Decision.

Petitioner argues that the doctrine laid down in the Philam case[10] (G.R. No. 156637) cannot be applied in the instant case as the irrevocability rule was not yet in issue there and the case merely centered on Section 76 as reproduced from Section 69 of the Old Tax Code. Petitioner further states that the second half of the Philam case (G.R. No. 162004) is the one applicable as the irrevocability rule was now factored in and the Supreme Court then examined the succeeding year's income tax returns and consequently relied on the subsequent acts of the taxpayer in arriving at the decision.

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[5] Id., pp. 88-91
[6] Id., p. 116
[7] Id., pp. 117-119
[8] Id., p. 120
[9] Id., pp. 121-147
[10] Philam Asset Management vs. Commissioner of Internal Revenue, G.R. Nos. 156637/162004, December 14, 2005

Petitioner, thus, concludes that "the irrevocable option to carry-over is actually exercised by applying the excess amount to the quarterly income tax liability of the succeeding year. Since the operative act is the application to the quarterly income tax liability then, naturally, the evidence of this act is the quarterly income tax return of the succeeding year."[11]

Respondent, on the other hand, maintains, in its Comment, that the presentation of the quarterly ITRs for the years subsequent to the period of claim is not among the requisites enumerated under Section 2.58.3 of Revenue Regulations No. 2-98 for the grant of claims for refund of excess and unutilized CWT.

Respondent further argues that, contrary to petitioner's view that the second part of the Philam case (G.R. No. 162004) supports its stand on the necessity of presenting respondent's quarterly ITRs for the succeeding year, nowhere in the said decision did the Supreme Court state that a taxpayer is duty bound to offer, as part of its evidence, its quarterly ITR for the succeeding year, failing which, the claim for refund should be denied.

Finally, in its Memorandum, respondent claims that petitioner's failure to raise her objection on the non-presentation of respondent's quarterly ITRs in her Answer must be deemed a waiver thereof.

After a careful and thorough evaluation of the case as well as the arguments of both parties in their respective pleadings, the Court En Banc finds no merit in the Petition for Review.

We quote and uphold the following relevant portion of the Assailed Resolution, dated September 22, 2014, of the CTA First Division:

> "There is no legal basis in requiring petitioner to present the quarterly income tax returns (ITR) of the succeeding period of its claim. Neither Section 76 of the National Internal Revenue Code, which is the governing provision allowing refund or credit of an excess income tax payments or unutilized creditable taxes withheld (CWT),

[11] Petition for Review, 2nd Par., p. 11

nor jurisprudence requires presentation of the quarterly income tax returns of the subsequent period of claim.

In *Philam Asset Management, Inc. vs. Commissioner of Internal Revenue*, it was ruled that the presentation of the succeeding year's income tax return is not necessary in proving a claim for refund of excess creditable income tax credits, *viz*:

> **'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.**' *(Boldfacing supplied)*

A similar stand was enunciated in *State Land Investment Corporation vs. Commissioner of Internal Revenue* where the Supreme Court ruled that:

> 'xxx. It was not necessary on the part of petitioner to file with the BIR its income tax return for 1999. In Philam Asset Management, Inc. v. Commissioner of Internal Revenue, we held that the Tax Code merely requires the filing of the final adjustment return for the preceding - not the succeeding - taxable year.

> Indeed, any refundable amount indicated therein corresponding to the preceding taxable year may be credited against the estimated income tax liabilities for the taxable quarters of the succeeding taxable year. **Requiring that the income tax return or the final adjustment return of the succeeding year be presented to the BIR in requesting a tax refund has no basis in law and jurisprudence.**' *(Boldfacing supplied)*

Finally, in *Commissioner of Internal Revenue vs. PERF Realty Corporation*, the issue of presentation of subsequent year's annual income tax return was declared irrelevant to the claim for refund of excess creditable withholding taxes as it is the duty of the CIR to verify whether or not the taxpayer carried over its excess tax credits to the succeeding year. The Supreme Court held that:

> '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.'

Based from the foregoing, the presentation of quarterly income tax returns for the subsequent taxable year has no basis in law and jurisprudence."

In the most recent case of Winebrenner & Iñigo Insurance Brokers, Inc. vs. Commissioner of Internal Revenue[12], the Supreme Court upheld and reitereated the doctrine laid down in the cases of Philam Asset Management, Inc. vs. Commissioner of Internal Revenue[13], Stateland Investment Corporation vs. Commissioner of Internal Revenue[14], Commissioner of Internal Revenue vs. PERF Realty Corporation[15] and Commissioner of Internal Revenue vs. Mirant

[12] G.R. No. 206526, January 28, 2015
[13] G.R. No. 156637/162004, December 14, 2005
[14] G.R. No. 171956, January 18, 2008
[15] G.R. No. 163345, July 4, 2008

(Philippines) Operations Corporation[16] that the presentation of ITR/quarterly ITRs of the succeeding year is not necessary in a claim for tax refund.

The High Court ruled as follows:

> "Proving that no carry-over has been made does not absolutely require the presentation of quarterly ITRs.
>
> In *Philam*, the petitioner therein sought for recognition of its right to the claimed refund of unutilized CWT. The CIR opposed the claim, on the grounds similar to the case at hand, that no proof was provided showing the non-carry over of excess CWT to the subsequent quarters of the subject year. In a categorical manner, the Court ruled that the presentation of the quarterly ITRs was not necessary. xxx
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> xxx xxx xxx
>
> It has been submitted that *Philam* cannot be cited as a precedent to hold that the presentation of the quarterly income tax returns is not indispensable as it appears that *the quarterly returns for the succeeding year were presented* when the petitioner therein filed an administrative claim for the refund of its excess taxes withheld in 1997.
>
> It appears however that there is misunderstanding in the ruling of the Court in *Philam*. That factual distinction does not negate the proposition that subsequent quarterly ITRs are not indispensable. The logic in not requiring quarterly ITRs of the succeeding taxable years to be presented remains true to this day. What Section 76 requires, just like in all civil cases, is to prove the *prima facie* entitlement to a claim, including the fact of not having carried over the excess credits to the subsequent quarters or taxable year. It does not say that the prove such a fact, succeeding quarterly ITRs are absolutely needed. (Underscoring supplied)

This simply underscores the rule that any document, other than quarterly ITRs may be used to establish that

[16] G.R. Nos. 171742 and 176165, June 15, 2011

indeed the non-carry over clause has been complied with, provided that such is competent, relevant and part of the records. The Court is thus not prepared to make a pronouncement as to the indispensability of the quarterly ITRs in a claim for refund for no court can limit a party to the means of proving a fact for as long as they are consistent with the rules of evidence and fair play. The means of ascertainment of a fact is best left to the party that alleges the same. The Court's power is limited only to the appreciation of that means pursuant to the prevailing rules of evidence. To stress, what the NIRC merely requires is to sufficiently prove the existence of the non-carry over of excess CWT in a claim for refund.

The implementing rules similarly support this conclusion, particularly Section 2.58.3 of Revenue Regulations No. 2-98 thereof. There, it provides as follows:

> SECTION 2.58.3. Claim for Tax Credit or Refund.
>
> (A.) The amount of creditable tax withheld shall be allowed as a tax credit against the income tax liability of the payee in the quarter of the taxable year in which income was earned or received.
>
> (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 payer to the payee showing the amount paid and the amount of tax withheld therefrom.
>
> xxx xxx xxx

Evident from the above is the absence of any categorical pronouncement of requiring the presentation of the succeeding quarterly ITRs in order to prove the fact of non-carrying over. To say the least, the Court rules that as to the means of proving it, It has no power to *unduly* restrict it.

xxx xxx xxx

At this point, worth mentioning is the fact that subsequent cases affirm the proposition as correctly pointed out by petitioner. *Stateland*, *PERF* and *Mirant* reiterated the rule that the presentation of the quarterly ITRs of the subsequent year is not mandatory on the part of the claimant to prove its claims.

There are some who challenges the applicability of *PERF* in the case at bar. It is said that *PER*F is not in point because the annual ITR for the succeeding year had actually been attached to *PERF*'s motion for reconsideration with the CTA and had formed part of the records of the case.

Clearly, if the Annual ITR has been recognized by this Court in *PERF*, why then would the submitted 2004 Annual ITR in this case be insufficient despite the absence of the quarterly ITRs? Why then would this Court require more than what is enough and deny a claim even if the minimum burden has been overcome? At best, the existence of quarterly ITRs would have the effect by strengthening a proven fact. And as such, may only be considered corroborative evidence, obviously not indispensable in character. *PERF* simply affirms that quarterly ITRs are not indispensable, provided that there is sufficient proof that carrying over excess CWT was not effected.

Stateland and *Mirant* are equally challenged. In all these cases, however, the factual distinctions only serve to bolster the proposition that succeeding quarterly ITRs are not indispensable. <u>Implicit from all these cases is the Court's recognition that proving carry-over is an evidentiary matter and that the submission of quarterly ITRs is but a means to prove the fact of one's entitlement to a refund and not a condition *sine qua non* for the success of refund</u>. (Underscoring supplied) True, it would have been better, easier and more efficient for the CTA and the CIR to have as basis the quarterly ITRs, but it is not the only way considering further that, in this case, the Annual ITR for

2004 is sufficient. Courts are here to painstakingly weigh evidence so that justice and equity in the end will prevail.

xxx xxx xxx."

Accordingly, finding no new matters or issues raised in the Petition for Review before Us, the Court En Banc finds no cogent reason to reverse the Assailed Decision dated July 3, 2014 and the Assailed Resolution dated September 22, 2014, both rendered by the CTA First Division.

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

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

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

(On Leave)
AMELIA R. COTANGCO-MANALASTAS
Associate Justice

Ma. Belen
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 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.

ROMAN G. DEL ROSARIO
Presiding Justice