

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

SYSTRA PHILIPPINES, INC.,
Petitioner,

C.T.A. EB NO. 546
(C.T.A. CASE NO. 7580)

Present:

-versus-

ACOSTA, Presiding Justice,
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA,
PALANCA-ENRIQUEZ,
FABON-VICTORINO,
MINDARO-GRULLA, and
COTANGCO-MANALASTAS, JJ.

COMMISSIONER OF INTERNAL
REVENUE,

Respondent.

Promulgated:

MAY 06 2010

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4:00pm

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DECISION

PALANCA-ENRIQUEZ, J.:

It is not the duty of the government to disprove a taxpayer's claim for refund. Rather, the burden of establishing the factual basis of a claim for a refund rests on the taxpayer [*Commissioner of Internal Revenue vs. Far East Bank and Trust Company (Now Bank of the Philippine Islands)*, G.R. No. 173854, March 15, 2010]. Therefore, a taxpayer claiming for refund of creditable withholding tax must be

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able to prove not only that the claim was filed within the prescriptive period, and the fact of withholding, but must also prove that the income received was declared as part of the gross income in the return.

THE CASE

This is a “Petition for Review” filed by Systra Philippines, Inc. (hereafter “petitioner”), under *Section 2(a) of Rule 4 of the 2005 Revised Rules of the Court of Tax Appeals, in relation to Rule 43 of the 1997 Rules of Civil Procedure, as amended*, praying for the reversal and setting aside of the Decision dated May 28, 2009 and Resolution dated September 22, 2009 rendered by the Former First Division of this Court , in C.T.A. Case No. 7580, entitled “Systra Philippines, Inc. vs. Commissioner of Internal Revenue”, the respective dispositive portions of which read, as follows:

“WHEREFORE, premises considered, the instant Petition for Review is hereby **DENIED** due to insufficiency of evidence.

SO ORDERED”

“WHEREFORE, the instant Motion for Reconsideration is hereby **DENIED** for lack of merit.

SO ORDERED.”



THE PARTIES

Petitioner is a domestic corporation duly organized and existing under and by virtue of the laws of the Philippines, with principal office address at Unit 2204-D, 22nd Floor, West Tower, Philippines Stock Exchange Centre, Exchange Road, Ortigas Center, Pasig City.

Respondent, on the other hand, is the duly appointed Commissioner of Internal Revenue (CIR) vested with authority to carry out all 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. He presently holds office at the 5th Floor, Bureau of Internal Revenue (“BIR”) National Office Building, BIR Road, Diliman, Quezon City, where he may be served summons and other legal processes.

THE FACTS

The facts, as culled from the records, are as follows:

Petitioner was incorporated with the primary purpose of engaging in consultancy and management services for firms and entities engaged in the field of railways, train, and mass transit systems and other areas in transportation and

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communications, and to provide planning and development services, systems/project studies, construction supervision and project management, modernization and rehabilitation of networks, training of technical staff and other related services.

As a rail engineering consultant company, petitioner derives income primarily from the sale of consultancy services to its clients.

On March 28, 2005, petitioner filed with the BIR its Annual Income Tax Return for calendar year (CY) 2004 ending December 31, 2004 and indicated to claim a Tax Credit Certificate (TCC) for its excess and unutilized Creditable Withholding Taxes (CWT) for CY 2004 in the amount of P1,074,792.00.

On July 19, 2005, petitioner filed with the BIR an administrative claim for the issuance of a TCC for its excess and unutilized CWTs for CY 2004 in the amount of P1,074,792.00.

On April 7, 2006, petitioner filed with the BIR its Annual Income Tax Return for CY 2005 ending December 31, 2005 and indicated to claim a TCC for its excess and unutilized CWTs for CY 2005 in the amount of P174,736.00.



On February 2, 2007, petitioner filed with the BIR an administrative claim for issuance of a TCC for its excess and unutilized CWTs for CY 2005 in the amount of P174,736.00.

On March 26, 2007, to preserve its right to claim by judicial action the refund of its excess and unutilized CWTs for CYs 2004 and 2005 due to the inaction of respondent CIR, petitioner filed a Petition for Review with the Former First Division of this Court, docketed as C.T.A. Case No. 7580.

On May 28, 2009, the Former First Division rendered the assailed Decision denying the petition for review.

On June 18, 2009, petitioner filed a Motion for Reconsideration of said decision, which was denied for lack of merit by the Former First Division in a Resolution dated September 22, 2009.

Not satisfied, petitioner filed the instant Petition for Review raising the following:

ISSUE

WHETHER OR NOT THE FORMER FIRST DIVISION ERRED IN ITS CONCLUSION THAT PETITIONER FAILED TO PROVE THAT THE INCOME FROM WHICH THE SUBJECT CREDITABLE WITHHOLDING TAXES WERE WITHHELD WAS REPORTED AS PART OF PETITIONER'S GROSS REVENUES FOR CYS 2004 AND 2005 ON ACCOUNT OF THE

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NET VARIANCE OF PHP 394.44 BETWEEN THE TOTAL AMOUNT OF INCOME REPORTED IN PETITIONER'S CREDITABLE WITHHOLDING TAX CERTIFICATES AND THE TOTAL AMOUNT OF INCOME DECLARED IN PETITIONER'S ANNUAL INCOME TAX RETURNS FOR CYS 2004 AND 2005.

Without necessarily giving due course to the Petition for Review, We ordered respondent to file a comment, not a motion to dismiss, within ten (10) days from notice.

Despite notice, respondent failed to file his comment.

On January 6, 2010, We ordered both parties to file their simultaneous memoranda, within a non-extendible period of thirty (30) days from notice; afterwhich the petition shall be deemed submitted for decision.

On February 12, 2010, petitioner filed its "Memorandum" and for failure of respondent to file his memorandum, despite notice; the case was deemed submitted for decision.

THE COURT *EN BANC*'S RULING

The petition is without merit.

Petitioner claims that the rule that "tax refunds are in the nature of exemptions and, as such, they are to be construed *strictissimi juris* against the taxpayer", upon which the Former First Division premised the Assailed

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Decision, does not apply to claims for refund of overpaid or erroneously paid taxes; that the evidence submitted by petitioner sufficiently proved that the income from which the subject CWTs were withheld was reported as part of petitioner's gross revenues for CYs 2004 and 2005; and that even for the sake of argument that the evidence submitted by petitioner failed to establish how and why the timing difference for the months of February, March, May, July, August, and September 2004, and January and February 2005 arose, the claim for refund for the CWTs for the other months of CYs 2004 and 2005 should have been granted since the related incomes were clearly reported as part of petitioner's gross revenues.

We do not agree.

In the case of *Banco Filipino Savings and Mortgage Bank vs. Court of Appeals*, 519 SCRA 93, 96, reiterated in the most recent case of *Commissioner of Internal Revenue vs. Far East Bank and Trust Company (now Bank of the Philippine Islands)*, GR No. 173854, March 15, 2010, the Supreme Court ruled that a taxpayer claiming for a tax credit or refund of creditable withholding tax must comply with the following requisites:

- 1) The claim must be filed with the Commissioner of Internal Revenue within the two-year period from the date of payment of the tax;

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- 2) It must be shown on the return that the income received was declared as part of the gross income; and
- 3) The fact of withholding must be 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.

The two-year period requirement is based on Section 229 of the NIRC of 1997, as amended, which provides that:

“SEC. 229. Recovery of Tax Erroneously or Illegally Collected. – No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessive or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.

In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment: Provided, however, That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid.”

While the second and third requirements are found under Section 10 of Revenue Regulation No. 6-85, as amended, which reads:

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“SEC. 10. *Claims for tax credit or refund.* – Claims for tax credit or refund of income tax deducted and withheld on income payments shall be given due course only when it is shown on the return that the income payment received was declared as part of the gross income and the fact of withholding is established by a copy of the statement duly issued by the payer to the payee (BIR Form No. 1743.1) showing the amount paid and the amount of tax withheld therefrom.

First requisite:

Petitioner timely filed its claim for refund.

Third requisite:

The fact of withholding was established
By submission of copies of withholding
tax statements duly issued by the payors
to the payee showing the amount paid
and the amount of the tax withheld.

Upon a careful review of the evidence on record, the Court *En Banc* sustains the following findings of the Former First Division that the first and third requirements had been complied with by petitioner:

“Petitioner satisfied the first and third requirements.

Records show that petitioner filed two applications for the issuance of tax credit certificate of excess creditable withholding taxes for taxable years 2004 and 2005 on July 19, 2005 and February 2, 2007, respectively, with BIR Revenue District Office No. 43-Pasig City. Petitioner filed its Annual Income Tax Return for calendar year 2004 on March 28, 2005 and for calendar year 2005 on April 7, 2006. Clearly, petitioner complied with the requisite that the claim must be filed with the Commissioner of

Internal Revenue within the two-year period from the date of payment of the tax.

Furthermore, the fact of withholding was established by the submission of copies of withholding tax statements issued by the payor to petitioner showing the amount paid and the amount of the tax withheld therefrom. A summary of such statements is as follows:

Exhibit	Quarter and Year	Amount of Income	Tax Withheld
"F"	1 st Quarter 2004	P 3,299,999.99	P 495,000.00
"G"	1 st Quarter 2004	61,387.73	9,208.16
"H"	2 nd Quarter 2004	3,299,999.99	495,000.00
"I"	2 nd Quarter 2004	81,716.07	12,257.41
"J"	3 rd Quarter 2004	3,299,999.99	495,000.00
"K"	3 rd Quarter 2004	81,965.00	12,294.75
"L"	4 th Quarter 2004	3,299,999.99	495,000.00
"M"	1 st Quarter 2005	194,145.13	29,121.77
"N"	1 st Quarter 2005	3,018,181.81	452,727.26
"O"	2 nd Quarter 2005	2,472,727.27	370,909.10
"P"	3 rd Quarter 2005	2,690,909.08	403,636.36
"Q"	4 th Quarter 2005	1,654,545.44	248,181.82 "

Second requisite:

Petitioner failed to show on the return that the income received was declared as part of its gross income.

The main dispute in this case is whether or not petitioner's claim for refund complied with the second requisite. It is basic that the one who is claiming for a tax refund must first prove and establish its right to such claim by presenting evidence to attest to its entitlement to the same. In this case, petitioner has the burden of proving that the income payment received was

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declared as part of the gross income in order to be entitled to its claim for refund.

A scrutiny of the evidence on record shows that petitioner presented its Schedule of Creditable Withholding Tax Certificates for calendar years 2004 and 2005 (*Exhibit "R"*), Summary of Creditable Withholding Tax Per Certificate versus Per Books (*Exhibit "S"*), Schedule of Income Per Withholding Tax Certificate versus Per Income Tax Return (*Exhibit "T"*), Sworn Statement of Ms. Kirsten Colleen Carvajal, as Deputy Branch Manager of petitioner, and Sales Book (*Annex "A", petitioner's "Motion for Reconsideration"*) in order to prove that petitioner reported the income from which the subject creditable taxes were withheld as part of its gross income. However, the Court *En Banc* finds that petitioner failed to prove that the subject income payments were declared as part of its gross income for CYs 2004 and 2005.

Petitioner's contention that its claim has been properly substantiated cannot be sustained. To be entitled to the claim sought, petitioner must first establish that the subject income payments were declared as part of its gross income for CYs 2004 and 2005. However, despite the documentary evidence presented by petitioner, the claim must still be denied, as the Court *En Banc*

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cannot determine from the records whether the subject income payments were really declared as part of petitioner's gross income for CYs 2004 and 2005.

As aptly ruled by the Former First Division:

"The court is not persuaded that these documents proved that petitioner declared as part of its gross income for calendar years 2004 and 2005 the subject income payments. The Court cannot also rely on the uncorroborated testimony of Ms. Carvajal that the said income payments were declared as part of petitioner's gross income for being self-serving and unfounded.

Moreover, as it appears from the said pieces of evidence and as admitted by petitioner, there are variances, *inter alia*, between the income per withholding tax certificate and income accrued per books. To explain these variances, a portion of the testimony of Ms. Carvajal is quoted as follows:

'A: The schedules marked as **Exhibits 'S' and 'T'** show the amounts of income payment reported in the Company's books of accounts and income tax returns for CYs 2004 and 2005 *vis-à-vis* the amounts of income stated in the Certificates of Creditable Tax Withheld at Source issued by our income payors for CYs 2004 and 2005.

The schedules also show the amounts of creditable withholding taxes reported in the Company's books of accounts for CYs 2004 and 2005 *vis-à-vis* the amounts of creditable withholding taxes stated in the income tax returns and Certificates of Creditable Tax Withheld at Source issued by our income payors for CYs 2004 and 2005.

The amounts of income and creditable withholding taxes reported in the Company's books of accounts tallies with the amounts of income and creditable withholding taxes reported

in the Certificates of Creditable Tax Withheld at Source for CYs 2004 and 2005, subject to minimal net variances due to rounding off.

There are variances in the amounts of income and creditable withholding taxes reported in the Company's books of accounts and Certificates of Creditable Tax Withheld at Source for CYs 2004 and 2005, as shown in the schedules marked as **Exhibit 'S' and 'T'**. **These variances are primarily due to timing difference.**

In sum, there was a net variance of P394.44 between the income reported in SPI's books of accounts/income tax returns and the creditable withholding tax certificates for CYs 2004 and 2005. There was also a net variance of P78.59 between the amount of creditable withholding taxes reported in SPI's books of accounts and the creditable withholding tax certificates for CYs 2004 and 2005. The net variances were due to rounding off.' (*Emphasis supplied*)

Petitioner however failed to explain and to establish how and why the 'timing difference' arose and to which does it refer, especially since the variances bore significant amounts in 2004, particularly, for the months of February, March, May, July, August, and September and in 2005, for the months of January and February.

As cases filed before this Court are litigated *de novo*, party-litigants should prove every minute aspect of their case. Such being the case, this Court has grave doubts as to the veracity of petitioner's assertion that the income payment received by petitioner, which was subjected to withholding tax, was declared as part of its gross income for calendar years 2004 and 2005."

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Furthermore, we sustain the findings of the Former First Division that the evidence presented by petitioner merely establishes the fact of recording and not the fact that the subject income payments were declared as part of petitioner's gross income.

Pursuant to settled jurisprudence, petitioner, as claimant, has the burden of proof to establish the factual basis of its claim for tax refund. Hence, for failing to prove its entitlement to a tax refund, petitioner's claim must be denied. Since tax refunds partake of the nature of tax exemptions, which are construed *strictissimi juris* against the taxpayer, evidence in support of a claim must likewise be *strictissimi* scrutinized and duly proven [*Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue*, 546 SCRA 150, 163; *Commissioner of Internal Revenue vs. Far East Bank and Trust Company (now Bank of the Philippine Islands)*, *supra*].

Finding no reversible error, the Court *En Banc* has no alternative, but to sustain the findings and conclusion of the Former First Division denying the claim for refund.

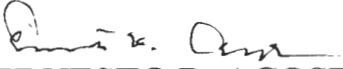


WHEREFORE, premises considered, the present Petition for Review is hereby **DENIED DUE COURSE**, and accordingly, **DISMISSED** for lack of merit.

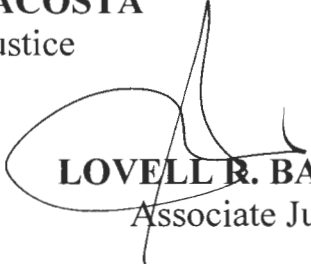
SO ORDERED.


OLGA PALANCA-ENRIQUEZ
Associate Justice

WE CONCUR:

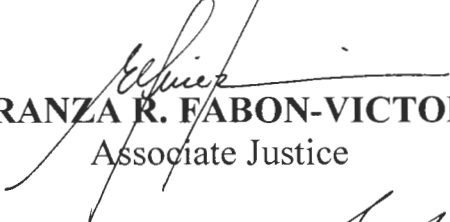

ERNESTO D. ACOSTA
Presiding Justice


JUANITO C. CASTANEDA, JR.
Associate Justice

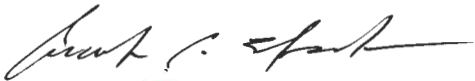

LOVELL R. BAUTISTA
Associate Justice


ERLINDA P. UY
Associate Justice

(On Leave)
CAESAR C. CASANOVA
Associate Justice

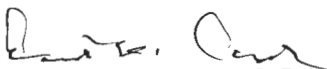

ESPERANZA R. FABON-VICTORINO
Associate Justice


CIELITO N. MINDARO-GRULLA
Associate Justice


AMELIA R. COTANGCO-MANALASTAS
Associate Justice

CERTIFICATION

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


ERNESTO D. ACOSTA
Presiding Justice

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