REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS

QUEZON CITY

SECOND DIVISION

PHILIPPINE REALTY AND HOLDINGS CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 8070

Members:

CASTAÑEDA, JR.,
CASANOVA,
MINDARO-GRULLA, *JJ.*

Promulgated:

DEC 2 0 2011

11:35 a.m.

X- X

DECISION

CASANOVA, *J.*:

This is a Petition for Review filed by petitioner-Philippine Realty and Holdings Corporation, seeking the refund/issuance of the tax credit certificate in the amount of P9,783,619.00, allegedly representing petitioner's unutilized creditable tax withheld for taxable year ending December 31, 2007.

In their Joint Stipulation of Facts[1], the parties stipulated as follows:

"1. Petitioner PHILIPPINE REALTY AND HOLDINGS CORPORATION, INC. is a corporation organized under Philippine

[1] Docket, pp. 131-134

laws with principal offices and business address at 33/F East Tower, Philippine Stock Exchange, Exchange Road, Ortigas Center, Pasig City.

2. Respondent is the duly appointed Commissioner of Internal Revenue, vested by law in general to implement and enforce the provisions of the National Internal Revenue Code ("NIRC") and other tax laws, and in particular, decide claims for refund of internal revenue taxes. *(Par. 2, Petition for Review; Par. 1, Answer)*

3. Petitioner is engaged in the business of dealing, engaging, investing, and transacting directly or indirectly, in all forms of business and mercantile acts and transaction concerning all kinds of real property including but not limited to the acquisition, development, utilization, and disposition of residential, industrial and commercial property and concerning all kinds of personal property, including but not limited to technical and industrial equipment and machineries, commercial paper and documents, securities, evidences of indebtedness, instruments of value, and other forms of obligations, services and all rights to personal properties.

4. Petitioner is registered with the Bureau of Internal Revenue ("BIR") and was issued Tax Identification Number ("TIN") 000-188-233-000 and BIR Certificate of Registration bearing RDO Control No. 3RC0000419979."

On April 14, 2008, petitioner electronically filed its original Annual Income Tax Return[2] for taxable year 2007.

On October 21, 2009, petitioner filed its administrative claim[3] for refund of its unutilized creditable taxes withheld at source for the taxable year 2007 in the amount of P9,783,619.00.

Due to respondent's inaction on its claim for refund, petitioner thus filed the instant Petition for Review[4] on April 13, 2010.

On June 7, 2010, respondent filed his Answer[5] and interposed the following Special and Affirmative Defenses[6], to wit:

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[2] Exhibit "I"; "I-1"
[3] Exhibit "C"; "C-2"
[4] Docket, pp. 1-16

"5. Respondent hereby repleads the above admissions and denials as part of his special and affirmative defenses.

6. Petitioner must prove that it is entitled to a claim for refund under the strictest terms.

7. Claims for refund are subject to routinary administrative investigation.

8. Pertinent to the claim for refund for alleged erroneously paid corporate income tax are the following provisions of the National Internal Revenue Code of 1997 (NIRC of 1997):

> Section 229. Recovery of Tax Erroneously or Illegally Collected. – No suit or proceeding shall be maintained in any court for the recovery of erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority of any sum alleged to have been excessively or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner, but such suit or 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.

9. Petitioner must have been able to comply with pertinent rules and regulations on claims for refund.

10. Petitioner must prove by clear and convincing evidence that the requirements for refund claim were met.

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[5] Ibid, pp. 105-110
[6] Answer, Ibid, pp. 106-108

10.1. There must be a written claim for refund filed by the taxpayer with respondent.

10.2. The claim for refund must be a categorical demand for reimbursement.

10.3. The claim for refund must be filed within two (2) years from the date of payment of tax or penalty regardless of any supervening cause.

11. It is well established in this jurisdiction that a claim for refund partakes the nature of an exception and is therefore held against the claimant and in favour of the State.

11.1. The burden of proof in establishing the factual and legal basis for refund claims is on the claimant.

11.2. In the case of *Far East bank (sic) & Trust Company vs. Commissioner of Internal Revenue*, the Supreme Court held:

> A tax refund is in the nature of a tax exemption which must be construed *strictissimi juris* against the taxpayer. To stress, the taxpayer must present convincing evidence to substantiate a claim for refund.

11.3. Indeed, a claim for refund is in the nature of an exemption and is construed in *strictissimi juris* against the taxpayer. In the 2008 case of *M.E. Holding Corp. vs. Court of Appeals* the Supreme Court held that "(w)e reiterate at this juncture that claims for refund/credit, as in the instant case, are in the nature of claims for exemption."

12. All told, petitioner's claim for refund filed before the Honorable Court should be denied for lack of merit."

The parties filed their Joint Stipulation of Facts on July 23, 2010 which was subsequently approved by the Court per Resolution[7] promulgated on July 27, 2010;

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[7] Docket, p. 135

After presentation of its testimonial and documentary evidence, petitioner filed its Formal Offer of Evidence on December 8, 2010, which was admitted by the Court except for Exhibit "AA" and "AA-1" for being provisionally marked per Resolution dated February 16, 2011.

On June 3, 2011, petitioner filed its Memorandum while respondent failed to file any.

In a Resolution promulgated on June 28, 2011, the case was deemed submitted for decision sans respondent's memorandum.

The parties have jointly stipulated on the following issues for this Court's resolution:

> "I. WHETHER OR NOT PETITIONER OVERPAID ITS CREDITABLE WITHHOLDING TAXES FOR THE TAXABLE YEAR 2007 IN THE AMOUNT OF PHP9,783,619.00.
>
> II. WHETHER OR NOT THE INCOME UPON WHICH THE TAXES WERE WITHHELD FOR THE TAXABLE YEAR 2007 WERE INCLUDED IN THE INCOME TAX RETURN OF PETITIONER FOR THE YEAR 2007.
>
> III. WHETHER OR NOT PETITIONER'S OVERPAID CREDITABLE WITHHOLDING TAX IN THE AMOUNT OF PHP9,783,619.00 IS SUBSTANTIATED BY DOCUMENTARY EVIDENCE.
>
> IV. WHETHER OR NOT PETITIONER IS ENTITLED TO THE REFUND OF THE AMOUNT OF PHP9,783,619.00 REPRESENTING ITS OVERPAID CREDITABLE WITHHOLDING TAX FOR THE TAXABLE YEAR 2007."

The instant case involves a claim for refund of petitioner's alleged unutilized creditable tax withheld for taxable year ending December 31, 2007.

To be entitled to a claim for refund of excess/unutilized creditable withholding tax at source, the taxpayer-claimant must satisfy/comply with the following requirements/conditions[8]: (1) the claim is filed with the CIR within the

[8] 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

two-year period from the date of payment of the tax; (2) it is shown on the return of the recipient that the income payment received was declared as part of the gross income; and (3) 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 the tax withheld therefrom.

As to the first requisite/condition, the reckoning of the two-year prescriptive period for filing a claim for refund of excess creditable withholding tax (CWT) or quarterly income tax payment starts from the date of filing of the Annual Income Tax Return because it is only from this time that the refund is ascertained.[9]

Petitioner electronically filed its original Annual Income Tax Return for taxable year 2007 on April 14, 2008.[10] Counting from this date, petitioner had until April 14, 2010 within which to file its claim for refund both administratively and judicially. Thus, petitioner's administrative claim, filed on October 21, 2009[11], and the instant Petition for Review, filed on April 13, 2010, fall within the two-year prescriptive period provided under Sections 204(C) and 229 of the NIRC of 1997, as amended.

We go now to determine petitioner's compliance with the second requirement, i.e. that the income payments (from which the taxes were withheld) were included and reported by petitioner in its 2007 Annual Income Tax Return.

A perusal of the certificates revealed that the creditable withholding taxes (CWT) of P11,442,371.73 were withheld on gross income payments of P211,761,354.86 broken down as follows:

Nature	Income Payments	Income Tax Withheld
Payments for Rental	P 12,050,078.41	P 602,482.23
Payments for Sale of Services		

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[9] Commissioner of Internal Revenue vs. The American Life Insurance Co., G.R. No. 105208, May 29, 1995
[10] Exhibit "I-1"
[11] Exhibit "C-2"

	Payments for Prime Contractors/Sub-Contractors	52,301.50	2,096.03
	Payments made by Top 10,000 Corporations	57,880.72	1,157.62
	Subtotal	110,182.22	3,253.65
Refund from MERALCO to Customers		**3,172,522.80**	**1,015,207.28**
Payment from Sale of Real Property		**196,428,571.43**	**9,821,428.57**
Total		**P 211,761,354.86**	**P 11,442,371.73**

On the other hand, petitioner's amended 2007 Annual Income Tax Return disclosed the following amounts of income:

	Amount	
Sale of Real Estate	**P 196,428,571.00**	
Lease of Properties	27,953,702.00	
Subtotal	*P 224,382,273.00*	[12]
Non Operating and Other Income		
Interest Discount	P 80,486,937.00	
Liabilities Written Off	66,025,975.00	
Meralco Refund	**3,172,523.00**	
Interest Income	457,477.00	
Miscellaneous Income	439,032.00	
Subtotal	*P 150,581,944.00*	[13]
TOTAL	**P 374,964,217.00**	

Evidently, petitioner was able to establish that the income payments arising from its sale of real estate in the amount of P196,428,571.43 and refunds from Meralco in the amount of P3,172,522.80 from which the claimed creditable taxes for P9,821,428.57 and P1,015,207.28 were withheld, respectively, were the very same figures (except for rounding off differences) declared in its 2007 Annual Income Tax Return.

As to the rental income payments of P12,050,078.41, related to the claimed CWT of P602,482.23, records reveal that there is a discrepancy of P15,903,623.59 between the rental income of P27,953,702.00 as reflected in petitioner's 2007 Annual Income Tax Return and the total rental income of

[12] Exhibit "J", page 2, Section A, Schedule 1.
[13] Exhibit "J", page 2, Section A, Schedule 4.

P12,050,078.41 as shown in the certificates. Since petitioner failed to account for the said discrepancy and it cannot be verified whether the rental income payments of P12,050,078.41 were actually declared in petitioner's return, the claimed CWT in the amount of P602,482.23 shall be denied.

With regard to the income payments from petitioner's sale of services in the amount of P110,182.22 related to the claimed CWT of P3,253.65, petitioner failed to prove that it declared the said income payments in its income tax return as no amount of "Sale of Services"[14] was indicated in its returns. While petitioner reported a "Miscellaneous Income" of P439,032.00,[15] it cannot be verified whether the same included the income payments of P110,182.22. Petitioner should have submitted documents wherein the income payments of P110,182.22 can be traced as forming part of its reported miscellaneous income of P439,032.00. Thus, the CWT of P3,253.65 related to the income payments of P110,182.22 shall, likewise, be denied.

Anent compliance with the third requirement, petitioner submitted various Certificates of Creditable Tax Withheld at Source (BIR Form No. 2307) for taxable year 2007, to prove the fact of withholding, the details of which are as follows:

Exhibit	Withholding Agent	Income Payment	CWT
Payments for Rental			
"Y"	A Taste of Country , Inc.	P 878,714.00	P 43,935.70
"AA"	AG Finance, Inc.	3,125.00	156.25
"BB"	AG Finance, Inc.	15,178.60	758.93
"CC"	AG Finance, Inc.	24,017.80	1,200.89
"DD"	AG Finance, Inc.	5,357.20	267.86
"GG"	Amos Trading	10,800.00	540.00
"HH"	Amos Trading	10,800.00	540.00
"II"	Asian Cable Communications	15,000.00	750.00

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[14] Exhibit "J", p. 2, Section A, Schedule 1, line 37
[15] Sum of P10,587,628.00 (Exhibit "J", line 28C) and P1,237,220.00 (Exhibit "J", line 28D)

"JJ"	Asian Cable Communications	15,000.00	750.00
"KK"	Asian Cable Communications	15,000.00	750.00
"LL"	Asian Cable Communications	15,000.00	750.00
"MM"	Cable Technology Asia Corp.	30,000.00	1,500.00
"NN"	Central CATV, Inc.	704,400.00	35,220.00
"OO"	Central CATV, Inc.	704,400.00	35,220.00
"PP"	Central CATV, Inc.	704,400.00	35,220.00
"QQ"	Central CATV, Inc.	704,400.00	35,220.00
"RR"	Central CATV, Inc.	704,400.00	35,220.00
"SS"	Central CATV, Inc.	737,220.00	36,861.00
"TT"	Central CATV, Inc.	737,220.00	36,861.00
"UU"	Central CATV, Inc.	737,220.00	36,861.00
"VV"	Central CATV, Inc.	737,220.00	36,861.00
"WW"	Chikka Asia, Inc.	1,785.71	89.29
"XX"	Chikka Asia, Inc.	1,985.77	99.29
"EEE"	Citiseconline Com. Inc.	4,464.29	223.21
"GGG"	PRHC for Country House ng Lucena	33,540.00	1,677.00
"HHH"	PRHC for Country House ng Lucena	35,100.00	1,755.00
"III"	PRHC for Country House ng Lucena	45,944.87	2,297.24
"JJJ"	PRHC for Country House ng Lucena	38,019.85	1,900.99
"KKK"	PRHC for Country House ng Lucena	35,100.00	1,755.00
"LLL"	Crown Synergy Trading Corp.	9,900.00	495.00
"NNN"	Citisecurities, Inc.	35,000.00	1,750.00
"OOO"	Citisecurities, Inc.	70,000.00	3,500.00
"PPP"	Decadence Culinary Services	38,689.00	1,934.45
"QQQ"	Decadence Culinary Services	35,051.40	1,752.57
"RRR"	Decadence Culinary Services	37,995.00	1,899.75
"SSS"	Decadence Culinary Services	31,069.20	1,553.46
"TTT"	Decadence Culinary Services	37,246.40	1,862.32
"UUU"	Decadence Culinary Services	35,370.00	1,768.50
"VVV"	Decadence Culinary Services	37,278.20	1,863.91
"WWW"	Decadence Culinary Services	37,068.40	1,853.42
"XXX"	Decadence Culinary Services	35,050.00	1,752.50
"YYY"	Decadence Culinary Services	46,051.20	2,302.56
"ZZZZ"	Dunamis Staples Food Products, Inc.	26,481.20	1,324.06
"AAAA"	Dunamis Staples Food Products, Inc.	24,193.64	1,209.60
"BBBB"	Dunamis Staples Food Products, Inc.	27,666.13	1,383.33
"CCCC"	Dunamis Staples Food Products, Inc.	23,520.00	1,176.00
"DDDD"	Dunamis Staples Food Products, Inc.	25,876.79	1,293.84

"EEEE"	Dunamis Staples Food Products, Inc.	24,729.24	1,236.46
"FFFF"	Dunamis Staples Food Products, Inc.	27,527.23	1,376.36
"GGGG"	Dunamis Staples Food Products, Inc.	27,564.18	1,378.21
"HHHH"	Dunamis Staples Food Products, Inc.	32,937.61	1,646.88
"IIII"	Dunamis Staples Food Products, Inc.	34,938.62	1,746.93
"JJJJ"	Dunamis Staples Food Products, Inc.	29,207.25	1,460.36
"KKKK"	Dunamis Staples Food Products, Inc.	26,974.33	1,348.72
"LLLL"	Earth+Style Corp.	14,872.86	743.64
"MMMM"	First Gen Corp.	4,017.80	200.89
"OOOO"	Common Foods, Inc.	118,124.17	5,906.20
"PPPP"	Common Foods, Inc.	106,023.36	5,301.16
"QQQQ"	Common Foods, Inc.	115,925.34	5,796.26
"RRRR"	Common Foods, Inc.	107,428.79	5,371.44
"SSSS"	Jovita U. Herrera	10,800.00	540.00
"TTTT"	Jovita U. Herrera	10,800.00	540.00
"UUUU"	Jovita U. Herrera	10,800.00	540.00
"VVVV"	Jovita U. Herrera	10,800.00	540.00
"WWWW"	Ink for Less in Quezon City, Inc.	4,032.00	180.00
"XXXX"	Ink for Less in Quezon City, Inc.	3,600.00	180.00
"YYYY"	Ink for Less in Quezon City, Inc.	3,600.00	180.00
"ZZZZ"	Ink for Less in Quezon City, Inc.	3,600.00	180.00
"AAAAA"	Ink for Less in Quezon City, Inc.	3,600.00	180.00
"BBBBB"	Ink for Less in Quezon City, Inc.	3,600.00	180.00
"CCCCC"	Ink for Less in Quezon City, Inc.	3,600.00	180.00
"DDDDD"	Ink for Less in Quezon City, Inc.	3,600.00	180.00
"EEEEE"	Ink for Less in Quezon City, Inc.	3,600.00	180.00
"FFFFF"	Ink for Less in Quezon City, Inc.	10,800.00	540.00
"GGGGG"	Kapunan Lotilla Flores Garcia & Castillo Law Offices	232,324.00	11,616.20
"HHHHH"	Littman Drug Corp.	15,420.00	771.00
"IIIII"	Littman Drug Corp.	15,420.00	771.00
"JJJJJ"	Littman Drug Corp.	31,170.00	1,558.50
"KKKKK"	Littman Drug Corp.	31,170.00	1,558.50
"LLLLL"	Manila North Tollways Corp.	399,019.25	19,950.96
"MMMMM"	Manila North Tollways Corp.	528,857.14	26,442.86
"NNNNN"	Manila North Tollways Corp.	509,975.59	25,498.78
"OOOOO"	Manila North Tollways Corp.	304,980.80	15,249.04
"PPPPP"	Megalicious Foods Corp.	62,045.94	3,102.30
"QQQQQ"	Megalicious Foods Corp.	89,925.39	4,496.26
"RRRRR"	Megalicious Foods Corp.	89,555.00	4,477.75

"SSSSS"	Megalicious Foods Corp.	93,204.34	4,660.22
"TTTTT"	Nu Skin Enterprises Phils. Inc.	7,232.14	361.61
"UUUUU"	Phil. Stock Exchange	883.93	44.20
"VVVVV"	Pilipino Cable Corp.	66,000.00	3,300.00
"WWWWW"	PRHC Property Managers, Inc.	36,000.00	1,800.00
"XXXXX"	PRHC Property Managers, Inc.	36,000.00	1,800.00
"YYYYY"	PRHC Property Managers, Inc.	36,000.00	1,800.00
"ZZZZZZ"	PRHC Property Managers, Inc.	36,000.00	1,800.00
"AAAAAA"	RCBC Savings Bank	13,392.80	669.64
"BBBBBB"	RCBC Savings Bank	5,803.60	290.18
"CCCCCC"	RCBC Savings Bank	19,321.40	966.07
"DDDDDD"	RCBC Savings Bank	9,660.40	483.02
"EEEEEE"	RCBC Savings Bank	5,803.60	290.18
"FFFFFF"	RCBC Savings Bank	5,803.60	290.18
"GGGGGG"	RCBC Savings Bank	7,964.20	398.21
"HHHHHH"	RCBC Savings Bank	14,285.80	714.29
"IIIIII"	Taste of Asia, Inc. Corp.	25,200.00	1,260.00
"JJJJJJ"	Taste of Asia, Inc. Corp.	25,200.00	1,260.00
"KKKKKK"	Taste of Asia, Inc. Corp.	29,429.09	1,471.45
"LLLLLL"	Taste of Asia, Inc. Corp.	26,880.00	1,344.00
"MMMMMM"	Taste of Asia, Inc. Corp.	54,260.11	2,713.01
"NNNNNN"	Terumo Marketing Phils. Inc.	12,000.00	600.00
"OOOOOO"	Terumo Marketing Phils. Inc.	18,600.00	930.00
"PPPPPP"	Terumo Marketing Phils. Inc.	18,600.00	930.00
"QQQQQQ"	Terumo Marketing Phils. Inc.	18,600.00	930.00
"RRRRRR"	Viva Video, Inc.	13,392.86	669.64
"SSSSSS"	Wide Wide World Express Corp.	10,800.00	540.00
"TTTTTT"	Wide Wide World Express Corp.	10,800.00	540.00
"UUUUUU"	Wide Wide World Express Corp.	10,800.00	540.00
	Subtotal	**P 12,053,203.41**	**P 602,638.48**
Payments for Prime Contractors/Sub-Contractors			
"Z"	Accenture , Inc.	P 16,480.00	P 329.60
"MMM"	Citisecurities, Inc.	35,000.00	1,750.00
"HHHHHH"	RCBC Savings Bank	821.50	16.43
	Subtotal	**P 52,301.50**	**P 2,096.03**
Payments made by Top 10,000 Corporations to their local supplier of services			
"EE"	Alliance Tuna International, Inc.	P 2,000.00	P 40.00
"FF"	Alliance Tuna International, Inc.	10,700.00	214.00
"YY"	Citiseconline Com. Inc.	600.00	12.00

"ZZ"	Citiseconline Com. Inc.	4,217.86	84.36
"AAA"	Citiseconline Com. Inc.	6,896.43	137.93
"BBB"	Citiseconline Com. Inc.	5,557.14	111.14
"CCC"	Citiseconline Com. Inc.	6,786.79	135.74
"DDD"	Citiseconline Com. Inc.	2,120.00	42.40
"EEE"	Citiseconline Com. Inc.	200.00	4.00
"FFF"	Citiseconline Com. Inc.	10,781.43	215.63
"NNNN"	Fujitsu Ten Solutions Phils. Inc.	7,342.50	146.85
"TTTTT"	Nu Skin Enterprises Phils. Inc.	678.57	13.57
	Subtotal	**P 57,880.72**	**P 1,157.62**
Refund from MERALCO to Customers			
"VVVVVV"	Manila Electric Co.	P 793,130.70	P 253,801.82
"WWWWWW"	Manila Electric Co.	793,130.70	253,801.82
"XXXXXX"	Manila Electric Co.	793,130.70	253,801.82
"YYYYYY"	Manila Electric Co.	793,130.70	253,801.82
	Subtotal	**P 3,172,522.80**	**P 1,015,207.28**
Payment from Sale of Real Property			
"ZZZZZZ"	Lochinver Assets, Inc.	**P196,428,571.43**	**P 9,821,428.57**
	Subtotal	**P196,428,571.43**	**P 9,821,428.57**
	Total	**P211,764,479.86**	**P 11,442,527.98**

However, the CWT reflected per certificates in the total amount of P11,442,527.98 is lower than the total tax credits of P11,824,848.00[16] reported per petitioner's Annual Income Tax Return for taxable year 2007. Thus, the discrepancy of P382,320.02 shall be denied from petitioner's claim.

Moreover, petitioner's claimed CWT, in the amount of P156.25, shall be disallowed because the corresponding certificate[17] was denied admission by the Court in its Resolution[18] dated February 16, 2011 for beiing merely provisionally marked.

In sum, petitioner proved compliance with the third requirement but only to the extent of P11,442,371.73 (P11,442,527.98 less 156.25) out of the declared CWT for taxable year 2007 in the amount of P11,824,848.00.

[16] Sum of P10,587,628.00 (Exhibit "J", line 28C) and P1,237,220.00 (Exhibit "J", line 28D)
[17] Exhibit "AA"
[18] Docket, p. 000499

In summary, petitioner was able to prove compliance with the three (3) basic requirements/conditions for refund of excess CWT but only to the extent of P10,836,635.85, computed as follows:

Creditable Taxes Withheld during the four quarters of 2007 per income tax return				P 11,824,848.00
Less:	Disallowances			
	a) Difference between the CWT per return and CWT per certificates			
		Per Return	P 11,824,848.00	
		Per Certificates	11,442,527.98	
		Difference	P 382,320.02	P 382,320.02
	b) CWT supported by certificate which was denied admission by the Court for being provisionally marked			156.25
	c) CWT, the related income of which was not ascertained to be forming part of petitioner's taxable income per return			
		CWT on rental income	P 602,482.23	
		CWT on sale of services	3,253.65	605,735.88
	Total Disallowances			988,212.15
Substantiated CWT for the four quarters of 2007				**P 10,836,635.85**

However, only the amount of P8,770,053.85 represents petitioner's excess CWT for the year 2007. Petitioner's Minimum Corporate Income Tax (MCIT) due for the year 2007 amounted to P2,066,582.00.[19] Since petitioner failed to substantiate with withholding tax certificates its prior year's excess credits of P25,354.00, the MCIT due of P2,066,582.00 shall be entirely offset against the substantiated CWT of P10,836,635.85 leaving an excess CWT for taxable year 2007 in the amount of P8,770,053.85, computed as follows:

Substantiated CWT for the year 2007		P 10,836,635.85
Less:	MCIT Due	2,066,582.00
Excess CWT for the year 2007		**P 8,770,053.85**

WHEREFORE, premises considered, the instant Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, respondent is hereby ordered to

[19] Exhibit "J", lines 25 and 27

refund/issue tax credit certificate in favor of petitioner the reduced amount of **EIGHT MILLION SEVEN HUNDRED SEVENTY THOUSAND FIFTY THREE AND 85/100 PESOS** (P8,770,053.85), representing petitioner's unutilized creditable taxes withheld at source for taxable year 2007.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

(With Dissenting Opinion)
CIELITO N. MINDARO-GRULLA
Associate Justice

A T T E S T A T I O N

I attest 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's Division.

JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson, Second Division

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's Division.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Acting Presiding Justice

Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

SECOND DIVISION

PHILIPPINE REALTY AND HOLDING CORPORATION,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 8070

Present:
CASTAÑEDA, JR., Chairperson
CASANOVA, and
MINDARO-GRULLA, JJ.

Promulgated:

DEC 2 0 2011

11:35 a.m.

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DISSENTING OPINION

MINDARO-GRULLA, J.:

With all due respect to my colleagues, I dissent from the majority decision partially granting the petition for review and ordering the refund or issuance of a tax credit certificate in the reduced amount of P8,770,053.85. It is my opinion that the petition should be denied for insufficiency of evidence.

Cases filed before this Court are litigated de novo and taxpayer-claimant should prove every minute aspect of its judicial claim.[1] Hence, there should be no room for inconsistencies, especially on the part of the taxpayer-

[1] Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue, G.R. No. 145526, March 16 2007.

claimant, who has the burden of proof to establish the factual basis of its claim for tax refund.[2]

Suffice it to say, that no application for refund or issuance of a tax credit certificate is allowed should the taxpayer carry over the excess amount shown on its final adjustment return against the estimated quarterly income tax liabilities for the taxable quarters of the succeeding taxable years. Such is the consequence of the irrevocability rule[3] under Section 76 of the 1997 NIRC as amended.[4]

Concomitantly, before a refund for creditable withholding tax is granted, it is essential for the taxpayer claimant to prove that the excess creditable withholding tax should have not been carried over to the succeeding taxable quarters. In the instant case, to prove that petitioner did not carry-over and/or

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[2] *Commissioner of Internal Revenue vs. Far East Bank & Trust Company, etc.,* G.R. No. 173854, March 15, 2010.

[3] Systra Philippines, Inc. vs. Commissioner of Internal Revenue, G.R. No. 176290, September 21, 2007.

[4] 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 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 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 therefor.** (Emphasis supplied) apply the claimed excess tax credits for the taxable year 2007 to the succeeding quarters of the taxable year 2008, petitioner presented its Amended Quarterly Income Tax Returns[5] and Annual Income Tax Returns[6] for the succeeding year 2008. However, these documents are insufficient. Petitioner should likewise present its Original Quarterly Income Tax Return for the taxable year 2008. The original quarterly income tax return would help this Court to ascertain whether petitioner have opted to carry over its 2007 excess credits.

Significantly, a taxpayer may amend its quarterly income tax return or annual income tax return which in either case may modify the previous intention to carry-over, apply as tax credit certificate or refund, as the case may be. As in the instant case, petitioner presented only its Amended Quarterly Income Tax Returns for the succeeding year 2008. However, the option to carry-over in the succeeding taxable quarters under the irrevocable rule cannot be modified.

The Court en banc in the case of Shell Services International Sendirian Berhad vs. Commissioner of Internal Revenue, "CTA EB No. 196, June 13, 2007 (CTA Case No. 6658, March 14, 2006)", affirmed the irrevocability of the carry-over despite the previous intention to claim for refund, to wit:

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[5] Exhibits "EEEEEEE", "FFFFFFF" and "GGGGGGG".
[6] Exhibits "CCCCCCC".

"(W)hile 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 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."

In Millennium Business Services, Inc. vs. Commissioner of Internal Revenue, "CTA EB Case No. 510 promulgated on September 28, 2010 (CTA Case No. 7441, February 11, 2009)", the Court en banc affirmed that the burden to prove that the taxpayer claimant did not carry over or utilize the claimed excess creditable withholding taxes to the succeeding taxable quarters belongs to the taxpayer claimant. Thus, the Court en banc ruled that:

"Although, petitioner presented its 2004 Annual Income Tax Return wherein it shows that it did not carry over as tax credit its claimed unutilized creditable withholding taxes of P1,341,623.00 to the succeeding taxable year 2004, however, this evidence is not enough to conclude that petitioner did not apply the said unutilized creditable withholding taxes against the income tax due for the first three quarters of 2004. Petitioner should have presented its 2004 quarterly income tax returns. The said quarterly income tax returns could help the Court determine whether petitioner effectively opted to carry over the 2003 excess creditable withholding taxes to the subsequent taxable year. If petitioner applied the said unutilized creditable withholding taxes against the income tax due for the first three quarters of taxable year 2004, it therefore effectively exercised the option to carry over the 2003 unutilized creditable withholding taxes to the succeeding taxable year 2004; thus, its claim for refund should be denied pursuant to Section 76 of the 1997 Tax Code, . . ."

Further, the Court en banc in the case of UPSI Management, Inc. vs. Commissioner of Internal Revenue, "CTA EB CASE NO. 670(CTA Case No. 7762)" October 19, 2011, held that the fact of whether the taxpayer claimant carried over its excess creditable withholding taxes to the taxable quarters of the succeeding taxable year is not only necessary but indispensable in arriving at a just decision. The factual milieu of said case reveals that the taxpayer claimant's petition for review (before the Court in Division[7]) was denied for insufficiency of evidence.

Taxpayer claimant seeks reconsideration and attached its succeeding quarterly returns to prove that it did not utilize its claimed excess creditable withholding taxes to the succeeding quarters of the taxable year 2006, however, the Court in Division[8] found that taxpayer claimant effectively carried over its excess tax credit in the 1st ,2nd and 3rd succeeding quarters. The Court en banc affirmed that the taxpayer claimant effectively carried over its excess tax credit though unutilized. The pertinent portion thereof states:

> *"In the instant case, petitioner signified its intention to refund the 2005 excess creditable withholding tax through the issuance of a tax credit certificate in its 2005 final tax return. However, the same 2005 excess creditable withholding tax which petitioner seeks to refund was actually carried over and included as "prior years excess credits" in the1st, 2nd and 3rd quarterly income tax returns for the taxable year 2006. The fact that petitioner was not able to actually utilize said tax credit is irrelevant. The fact remains that petitioner actually carried over the 2005 excess creditable withholding tax in the first three taxable quarters of the succeeding taxable year and it negated its previous intention to claim for a refund. Having exercised the option to carry-over with respect to its claimed 2005 excess tax credits as evidenced by the quarterly income tax return, petitioner is bound by the irrevocability rule under Section 76 of the NIRC of 1997, as amended. This is the significance of the presentation of the succeeding quarterly income tax return and the annual income tax return of the subsequent taxable year."*

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[7] First Division
[8] Ibid.

Well-settled it is in our jurisprudence that tax refunds are in the nature of tax exemptions and as such, they are regarded as in derogation of sovereign authority. Thus, tax refunds are construed in *strictissimi juris* against the person or entity claiming the same. In the instant case, not only should petitioner establish that it is entitled to the claim[9] but it must most importantly prove that it did not carry over the claimed excess tax credits even though not utilized.

If petitioner carried over the 2007 excess credits in its original quarterly income tax return in 2008, petitioner effectively exercised the option to carry-over with respect to its claimed 2007 excess tax credits and it would not be entitled to refund. As entitlement to a tax refund is for the taxpayer to prove and not for the government to disprove[10], and having failed to sufficiently prove that it did not carry over its claimed 2007 excess credit to the succeeding quarters of the taxable year 2008, I vote to deny the petition for insufficiency of evidence.

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

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[9] (1)The claim must be filed with the CIR within the two-year period from the date of payment of the tax; (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

[10] Commissioner of Internal Revenue vs. Far East Bank & Trust Company, etc., G.R. No. 173854, March 15, 2010.