REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION
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MARIONNAUD PHILIPPINES, INC., Petitioner,	**CTA Case No. 8807**
	Members:
- versus -	**DEL ROSARIO,** P.J., **UY,** and **MINDARO-GRULLA,** JJ.
COMMISSIONER OF INTERNAL REVENUE, Respondent.	***Promulgated:*** FEB 08 2017 10:26 a.m.

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RESOLUTION

UY, J.:

For resolution is petitioner's "**MOTION FOR RECONSIDERATION (Of the *Decision* dated 14 September 2016) OR IN THE ALTERNATIVE, MOTION FOR NEW TRIAL**" filed on September 30, 2016, without respondent's comment thereto despite due notice, praying for the reversal of this Court's Decision dated September 14, 2016, the dispositive portion of which reads:

> "**WHEREFORE**, in view of the foregoing considerations, the instant Petition for Review is hereby **DENIED** for lack of merit.
>
> **SO ORDERED**."

In the alternative, petitioner prays that it be allowed to present and offer the pieces of evidence deemed lacking by this Court.

Petitioner asserts that it was able to comply with all the essential basic conditions for a claim for refund, and thus, it requests the Court to take a second hard look and carefully review the facts, law and jurisprudence applicable to the instant case in its determination of the instant controversy.

According to petitioner, this Court's findings that petitioner's excess credits for the entire prior year cannot be applied against its income tax due for calendar year (CY) 2011 in the amount of ₱37,503,008.90 and the same shall be offset against the excess creditable withholding taxes (CWT) being claimed in the amount of ₱26,800,481.07 for failure of petitioner to substantiate its excess credits for the entire prior year in the amount of ₱42,631,744.00, runs counter to Paragraph (C), Section 2.58.3 of Revenue Regulations (RR) No. 2-98, as amended, which allows a taxpayer to automatically credit its excess withholding tax credits against its income tax due.

Pursuant to said provision, petitioner stresses that it need not present all pertinent BIR Form No. 2307 to prove the existence of its excess withholding tax credits for prior years. What RR No. 02-98 requires is the mere attachment of a copy of the first page of its income tax return (ITR) for the previous taxable period showing the amount of his excess withholding tax credits, and on which return it has not opted for a cash refund or tax credit certificate (TCC).

Admittedly, petitioner failed to present its Annual ITR for CY 2010 in the course of the proceedings. However, petitioner was working under the assumption that in order to prove its entitlement to claim its tax refund or issuance of a TCC for its excess and unutilized CWT for CY 2011, it only needs to prove that (1) the claim is filed with the Commissioner of Internal Revenue within the two (2)-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 to the payee showing the amount paid and the amount of the tax withheld therefrom, all of which petitioner was able to comply.

Moreover, petitioner contends that it could not have reasonably conceived that the Court would still require it to substantiate the entry in its 2011 Annual ITR as regards its prior year's excess CWT and adduce proof in support thereof relying on the case of *Citibank, N.A. vs. Court of Appeals*[1], where the Supreme Court had the occasion to state that detailed proof of the truthfulness of each and every item in the income tax return is not required and that the grant of a refund is founded on the assumption that the tax return is valid;

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[1] G.R. No. 107434, October 10, 1997.

that is, the facts stated therein are true and correct. Hence, the entries in petitioner's 2011 Annual ITR, including its prior year's excess withholding tax credits in the amount of ₱42,631,744.00, are true and correct without further need of proof. Moreover, the CIR did not contest nor allege any false declaration in petitioner's 2011 Annual ITR.

Nevertheless, petitioner requests that it be given the opportunity to present additional evidence, including, but not limited to its 2010 Annual ITR, the corresponding BIR Form No. 2307, and other documentary evidence that may be required by the Court in order to verify the veracity of petitioner's prior year's excess withholding tax credits in the amount of ₱42,631,744.00.

As the three essential conditions for the grant of a claim for refund of creditable withholding income tax abovementioned does not require petitioner to adduce proof with regard to its prior year's excess withholding tax credit, then petitioner's non-presentation of documents in support of its prior year's excess withholding tax credit is allegedly akin to mistake or excusable negligence considering that it could not have foreseen that the Court would require further proof to substantiate said amount and ultimately bar its claim for tax refund or issuance of a TCC.

In this regard, petitioner prays that a new trial be granted, allowing it to present and offer pieces of evidence deemed lacking by the Court on the ground of mistake or excusable negligence which ordinary prudence could not have guarded against and by reason of which the rights of such aggrieved party has probably been impaired in his rights as allowed in the 2005 Revised Rules of the Court of Tax Appeals (RRCTA). In support of its Motion for New Trial, petitioner executed an Affidavit of Merit which was attached to the instant Motion.

THE COURT'S RULING

The instant Motion is bereft of merit.

A new trial is not proper.

To justify the granting of the motion for new trial, petitioner argues that mistake or excusable negligence which ordinary prudence could not have guarded against and by reason of which the rights of the aggrieved party has probably been impaired in his rights is present in the instant case.

We do not agree.

Section 5 of Rule 15 of the Revised Rules of Court of Tax Appeals (RRCTA) provides as follows:

> "SEC. 5. *Grounds of motion for new trial.* – A motion for new trial may be based on one or more of the following causes materially affecting the substantial rights of the movant:
>
> (a) Fraud, accident, mistake or excusable negligence which ordinary prudence could not have guarded against and by reason of which the rights of such aggrieved party has probably been impaired in his rights; or
>
> (b) Newly discovered evidence, which the party could not, with reasonable diligence, have discovered and produced at the trial and, which, if presented, would probably alter the result.
>
> A motion for new trial shall include all grounds then available and those not included shall be deemed waived."

Mistake is some unintentional act, omission, or error arising from ignorance, surprise, imposition, or misplaced confidence while excusable negligence means a failure to take the proper steps at the proper time, not in consequence of the party's own carelessness, inattention, or willful disregard of the process of the court, but in consequence of some unexpected or unavoidable hindrance or accident, or reliance on the care and vigilance of his counsel or on promises made by the adverse party.[2] "Mistake" must be a mistake of fact, not of law, which relates to the case;[3] while, negligence, to be "excusable", must be one which ordinary diligence and prudence

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[2] Black's Law Dictionary, Sixth Edition, pp. 1001 and 566.

[3] *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue*, G.R. Nos. 141104 and 148763, June 8, 2007.

could not have guarded against.[4]

In the instant case, petitioner contends that it could not have reasonably conceived that this Court would require it to prove its *"Prior Year's Excess Credits"* for calendar year 2011 in the amount of ₱42,631,744.00. Since, as a corollary, petitioner argues that proving the same is not necessary, it becomes apparent that its legal position is grounded on its interpretation and evaluation that petitioner is not duty bound to prove every minute aspect of its case as jurisprudentially required. Thus, the supposed mistake committed by petitioner is one of law, not one of fact.

As early as August 31, 2005, the Supreme Court has already made the following pronouncements, in *Commissioner of Internal Revenue vs. Manila Mining Corporation* (*Manila Mining* case)[5], *viz*:

> "Under Section 8 of RA 1125,[6] the CTA is described as a court of record. **As cases filed before it are litigated *de novo*, party litigants should prove every minute aspect of their cases.** xxx." *(Emphasis and underscoring supplied)*

Thereafter, on March 16, 2007, in *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue* (*Atlas* case),[7] the same doctrine was couched in this wise by the High Court, to wit:

> "...cases filed in the CTA are litigated *de novo*. Thus, **a petitioner should prove every minute aspect of its case by presenting, formally offering and submitting its evidence to the CTA**. xxx." *(Emphasis and underscoring supplied)*

Subsequently, on April 30, 2008, in *Dizon vs. Court of Tax Appeals, et al.* (*Dizon* case)[8], the Supreme Court reiterated the exact pronouncements, as above quoted, made in the *Manila Mining* case.

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[4] Supra.
[5] G.R. No. 153204, August 31, 2005.
[6] Section 8 of Republic Act No. 1125 (An Act Creating the Court of Tax Appeals) provides, to wit:
"SEC. 8. *Court of record; seal; proceedings.* — **The Court of Tax Appeals shall be a court of record** and shall have a seal which shall be judicially noticed. xxx." *(Emphasis supplied)*
[7] G.R. No. 145526, March 16, 2007.
[8] G.R. No. 140944, April 30, 2008.

Based on the foregoing jurisprudential pronouncements, which forms part of the law of the land,[9] it is clear that a party litigant, as early as August 31, 2005, is already required to *"prove every minute aspect of its case"* before this Court. Petitioner cannot feign ignorance of the said pronouncements, since *"(i)gnorance of the law excuses no one from compliance therewith."*[10] Needless to state, the rulings of the Supreme Court are laws by their own right because they interpret what the laws say or mean.[11]

A party who moves for a new trial on the ground of mistake must show that ordinary prudence could not have guarded against it[12]—this petitioner has not shown.

In the same vein, petitioner's supposed negligence was not "excusable". The *Manila Mining*, *Atlas*, and *Dizon* cases have already been promulgated years before the filing of the instant Petition for Review on April 15, 2014[13]. We see no *"unexpected or unavoidable hindrance or accident"* which prevented petitioner from knowing these cases, as it is its obligation to know the same, not only because on its being a party litigant, but also because, as already pointed out, the rulings of the Supreme Court are laws by their own right. Thus, there is no valid justification for petitioner's non-compliance with the requirement to *"prove every minute aspect of its case by presenting, formally offering and submitting its evidence"* to this Court.

Lastly, in *Atlas Consolidated Mining and Development Corp. vs. Commissioner of Internal Revenue*,[14] the Supreme Court held:

> "*First*, Atlas is guilty of inexcusable negligence in the prosecution of its case. **It is duty-bound to ensure that all proofs required under the rules are duly presented**. Atlas has indeed repeatedly asserted that in its action for the instant judicial claim, the CTA is bound by its rules and suppletorily by the Rules of Court. **It certainly has not exercised the diligence required of a litigant who has the burden of proof to present all that is required.** *Second*, **forgotten evidence, not**

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[9] *Floresca, et al. vs. Philex Mining Corporation, et al.*, G.R. No. L-30642, April 30, 1985.
[10] Article 3, Civil Code of the Philippines (Republic Act No. 386).
[11] *Philippine Veterans Affairs Office vs. Segundo*, G.R. No. L-51570, August 15, 1988.
[12] *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue*, G.R. Nos. 141104 and 148763, June 8, 2007.
[13] Docket – Vol. 1, p. 14.
[14] G.R. No. 159490, February 18, 2008.

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> **presented during the trial nor formally offered, is not newly found evidence that merits a new trial**. *Third*, and most importantly, **it goes against the orderly administration of justice to allow a party to submit forgotten evidence which it could have offered with the exercise of ordinary diligence, more so when a decision has already been rendered**." (*Emphases supplied.*)

Applying the foregoing, and considering that a liberal application of rules of procedure in this case will only result in the wanton disregard of the rules, the Court finds that a denial of the instant Motion is proper.

Section 2.58.3(C) of RR No. 2-98 should only be applied at the administrative level, not at the judicial level.

As a necessary consequence of the doctrine that *"(a)s cases filed before it are litigated* de novo, *party litigants should prove every minute aspect of their cases"*, Section 2.58.3(C) of RR No. 2-98, as it is being invoked by petitioner, should be interpreted in light of the said doctrine. Said provision states:

> "SECTION 2.58.3. *Claim for Tax Credit or Refund.* —
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> xxx xxx xxx
>
> (C) *Excess Credits* — An individual or corporate taxpayer's excess expanded withholding tax credits for the taxable quarter/year shall automatically be allowed as a credit against his income tax due for the taxable quarters/years immediately succeeding the taxable quarters/years in which the excess credit arose, provided he submits with his income tax return, a copy of the first page of his income tax return for the previous taxable period showing the amount of his excess withholding tax credits, and on which return he has not opted for a cash refund or tax credit certificate."

Thus, the above-quoted Section 2.53.3(C) finds application only from the administrative stand point, *i.e.*, only insofar as the Bureau of Internal Revenue is concerned, when the taxpayer is claiming before it a tax refund or credit; and not when proving a tax refund or credit before this Court. This is especially true in that the said administrative agency has all the administrative machinery available to it to easily determine whether the supposed excess credits do exist. This is not so in the case of this Court wherein it has to rely only on all the evidence presented/offered by the parties and admitted by the Court, subject only to the rules of judicial admissions and judicial notice, to dispose of a refund case.

Tax refund or credit is strictly construed.

Moreover, a claim for tax refund or credit, like a claim for tax exemption, is construed strictly against the taxpayer.[15] In this case, since petitioner opted to claim a refund of its excess CWT for CY 2011 in its entirety, *i.e.*, undiminished by any income tax liability, it becomes incumbent upon petitioner to prove that it has sufficient prior year's excess CWT to cover its income tax liability for CY 2011. Failing to do so, the income tax liability for CY 2011 shall be offset with the substantiated unutilized CWT for 2011.

Furthermore, even when petitioner attached a copy of its supposed Annual Income Tax Return (ITR) for the year 2010, the same is of no moment. For one, the said document was not offered in evidence during the trial of this case, and thus, it cannot be considered. This is in the light of Section 34 of Rule 132 of the Rules of Court prescribing that no evidence shall be considered unless formally offered with a statement of the purpose why it is being offered.[16] For another, and more importantly, even granting that this Court ought to consider the said Annual ITR, a cursory examination thereof would reveal that it merely reflects how the amount of ₱42,631,744.00 was arrived at. It does not, in any way, substantiate the every minute aspect of each of the items composing the said amount.

Contrary to the allegations of petitioner, it has not complied with all the requisites for it to be entitled to the refund or issuance of a tax credit certificate.

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[15] *Silicon Philippines, Inc. (formerly Intel Philippines Manufacturing, Inc.) vs. Commissioner of Internal Revenue, etseq.*, G.R. Nos. 184360 & 184361, and 184384, February 19, 2014.

[16] *M.E. Holding Corporation vs. Court of Appeals, et al.*, G.R. No. 160193, March 3, 2008.

It must be pointed out that, contrary to the assertion of petitioner that it has complied with all the requisites to be entitled to the refund claim and as already discussed in the assailed Decision, petitioner failed to prove compliance with the third requisite for a claim for CWT refund, *i.e.*, the income upon which the taxes were withheld must be declared as part of the gross income of the recipient.

As held in the assailed Decision, *"the income per CWT certificates is higher by ₱32,090,675.92 (₱2,675,070,728.00 less ₱2,642,980,052.08) as compared to the income reported per return. Petitioner failed to fully account for this discrepancy. Moreover, petitioner did not present a detailed schedule of its sales/income with the corresponding creditable withholding taxes so that the Court may verify and trace whether the income payments relating to the claimed CWTs were indeed part of the income as per petitioner's ITR. It is in this light that petitioner fell short in complying with the third requisite for the grant of its claim for refund or issuance of a tax credit certificate."*

Notably, petitioner did not squarely address, in the instant Motion or even during the trial, the discrepancy between the income per CWT certificates and the income reported per return. Hence, petitioner failed not only to substantiate its prior year's excess credits, but also to show compliance with the said third requisite.

WHEREFORE, all the foregoing considered, petitioner's *Motion for Reconsideration (Of the Decision dated 14 September 2016) or in the Alternative, Motion for New Trial* is **DENIED** for lack of merit.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

(with Concurring Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

FIRST DIVISION

MARIONNAUD PHILIPPINES, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 8807

Members:

Del Rosario, *Chairperson,*
Uy, and
Mindaro-Grulla, *JJ.*

Promulgated:
FEB 0 8 2017 10:26 a.m.

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CONCURRING OPINION

DEL ROSARIO, P.J.:

I concur with the *ponencia* in denying petitioner's "MOTION FOR RECONSIDERATION (Of the Decision dated 14 September 2016) OR IN THE ALTERNATIVE, MOTION FOR NEW TRIAL" filed on September 30, 2016.

In its Motion, citing ***Citibank, N.A. vs. Court of Appeals***,[1] petitioner argues that the Court in Division erred in requiring it to substantiate its prior year's excess withholding credits as appearing in its 2011 Annual Income Tax Return (ITR) with creditable withholding tax certificates (BIR Form No. 2307). Pursuant to the *Citibank case*, petitioner posits that the entries made by petitioner in its 2011 Annual ITR, including its prior year's excess withholding tax credits in the amount of Php42,631,744.00, are true and correct without further need of proof. Thus, petitioner prays that it be given the opportunity to present additional evidence, including, but not limited to, its: a) 2010 Annual ITR, which shows the amount of its excess withholding tax credits for taxable year 2010 and which also reveals that petitioner has not opted for a cash refund or tax credit certificate; b) BIR Form 2307; and c) such other documentary

[1] G.R. No. 107434, October 10, 1997.

evidence that may be required by the Court to verify the veracity of petitioner's prior year's excess withholding tax credits in the amount of Php42,631,744.00.

I agree with petitioner's position that it is not required to substantiate its prior year's excess creditable withholding tax credits with creditable withholding tax certificates (BIR Form No. 2307). In this regard, I quote hereunder the position I have taken in ***Philippine National Bank vs. Commissioner of Internal Revenue***[2] with regard to substantiation of prior year's excess withholding tax credits, *viz.*:

> "In requiring petitioner to substantiate its prior year's excess credits with CWT certificates, the *ponencia* cites as basis *Commissioner of Internal Revenue vs. Philippine National Bank* where the Supreme Court stressed the importance of presenting the pertinent CWT certificates to substantiate a claim for refund. A plain reading of *PNB case* reveals that it did not, however, declare that the claimant's **prior year's excess credits** against which the income tax liability during the year of the claim may be applied must be substantiated with CWT certificates. Truth to tell, in the *PNB case*, the issue on the substantiation of prior year's excess credits was not raised at all. Thus, since said issue was not submitted for resolution, the pronouncement in said case as to the importance or absolute necessity of presenting CWT certificates in substantiating **prior year's excess credits** cannot be relied upon.
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> To my mind, the **presentation of CWT certificates is not indispensable in proving the existence of prior year's excess credits** since aforesaid credits are not the actual subject of the claim for refund. In the present case, I submit that the 2009 Annual Income Tax Return (ITR) and the Schedule of Creditable Withholding Taxes (CWT) for the years 2000 to 2009 and 2011 and 2013 specifically offered by petitioner to prove the existence of its prior year's excess credits against which its income tax liability for the year 2010 may be applied are sufficient. Notably, respondent never refuted or questioned the truthfulness and existence of petitioner's prior year's excess credits. Since respondent ought to know the tax records of all taxpayers, respondent could have easily disproved petitioner's claim that it has prior year's excess credits in the amount of Php150,175,021.58. Instead, respondent

[2] CTA Case No. 8636, Dissenting Opinion in the Decision dated October 3, 2016.

chose not to question or disprove the same. **In fact, respondent failed to make any objection to petitioner's offer of 2009 Annual ITR and the Schedule of Creditable Withholding Taxes (CWT) for the years 2000 to 2009 and 2011 to prove the existence of petitioner's prior year's excess credits despite the opportunity given him.** Respondent's failure to object to the evidence offered by petitioner renders the same admissible, and this Court cannot, on its own, disregard such evidence.

It may not be amiss to state that while petitioner's 2009 Annual ITR was prepared under penalties of perjury, the figures indicated therein (which necessarily include the amount of its prior year's excess credits of Php150,175,021.58) should be presumed true and correct in the absence of any evidence to the contrary. The pronouncement of the Supreme Court in *Citibank N.A. vs. Court of Appeals* is most enlightening:

> 'A refund claimant is required to prove the inclusion of the income payments which were the basis of the withholding taxes and the fact of withholding. However, **detailed proof of the truthfulness of each and every item in the income tax return is not required. That function is lodged in the Commissioner of Internal Revenue by the NIRC which requires the Commissioner to assess internal revenue taxes within three years after the last day prescribed by law for the filing of the return**. In *San Carlos Milling Co., Inc. vs. Commissioner of Internal Revenue*, the Court held that the internal revenue branch of government must investigate and confirm the claims for tax refund or credit before taxpayers may avail themselves of this option. **The grant of a refund is founded on the assumption that the tax return is valid; that is, the facts stated therein are true and correct**. In fact, even without petitioner's tax claim, the Commissioner can proceed to examine the books, records of the petitioner-bank, or any data which may be relevant or material in accordance with Section 16 of the present NIRC.' (Emphasis supplied)

Since petitioner's prior year's excess credits are duly reported in its 2010 Annual ITR and further supported by figures indicated in its 2009 Annual ITR, as corroborated by the Schedule of Creditable Withholding Taxes (CWT) for the years 2000 to 2009 and 2011 [and 2013], the said prior year's excess credits in the amount of Php150,175,021.58 may be utilized and applied against petitioner's 2010 income tax liability in the amount of Php75,036,131.92.

> Finally, Section 235 of the NIRC of 1997, as amended, requires the preservation of the books of account and records of taxpayers only "for a period beginning from the last entry in each book until the last day prescribed by Section 203." Section 203 of the NIRC of 1997, as amended, provides that internal revenue taxes shall be assessed within three years after the last day prescribed by law for the filing of the return, and no proceeding in Court without an assessment for the collection of such taxes shall begin after the expiration of such period. **To require a taxpayer to produce all CWT certificates in support of its prior year's excess credit (which may include all CWT certificates from the start of its commercial operations) will be excessively burdensome, unreasonable and violative of Section 235 in relation to Section 203 of the NIRC of 1997, as amended.**" (Citations omitted)

As afore-stated, petitioner moves for a new trial to allow it to present evidence to prove the existence of its prior year's excess credits. The *ponencia* does not, however, find sufficient basis to grant petitioner's prayer.

I assent with the *ponencia* in denying petitioner's motion for new trial for the sole reason that even if petitioner is allowed, in a new trial, to substantiate its prior year's excess withholding tax credits, **petitioner's claim for refund would still be denied as petitioner failed to comply with one of the following essential requirements** set forth under pertinent provisions of the National Internal Revenue Code (NIRC) of 1997, as amended, its implementing revenue regulations, and existing jurisprudence, to be entitled thereto:

(1) The claim for refund must be filed within the two-year prescriptive period provided under Sections 204(C) and 229 of the NIRC of 1997, as amended;

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

(3) The income upon which the taxes were withheld must be declared as part of the gross income of the recipient.

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A perusal of the assailed Decision reveals that petitioner's claim was denied, not only on the basis of its failure to substantiate its prior year's excess withholding tax credits, but also based on petitioner's failure to comply with the above-stated third requirement, that is, petitioner failed to prove that **"income payment received was declared as part of its gross income"**. Pertinent portion of the assailed Decision is quoted hereunder:

> "Apparently, **the income per CWT certificates is higher by P32,090,675.92 (P2,675,070,728.00 less P2,642,980,052.08) as compared to the income reported per return**. Petitioner failed to fully account for this discrepancy. Moreover, petitioner did not present a detailed schedule of its sales/income with corresponding creditable withholding taxes **so that the Court may verify and trace whether the income payments relating to the claimed CWTs were indeed part of the income as per petitioner's ITR. It is in this light that petitioner fell short in complying with the third requisite for the grant of its claim for refund or issuance of a tax credit certificate.**"[3] (Boldfacing supplied)

A plain reading of petitioner's present Motion reveals that petitioner does not question the Court's finding that petitioner failed to prove that the **income upon which the taxes were withheld were declared as part of petitioner's gross income.** Needless to say, the infirmity of evidence on this aspect is fatal to its cause.

In fine, the subsequent substantiation of petitioner's prior year's excess withholding tax credits with its prior year's Annual ITR and corresponding withholding tax certificates, in a new trial, will not alter the conclusion reached by the Court in Division. Petitioner's claim for refund would still be denied for petitioner's failure to prove that the **income upon which the taxes were withheld were declared as part of petitioner's gross income.**

All told, I **VOTE** to **DENY** petitioner's "MOTION FOR RECONSIDERATION (Of the Decision dated 14 September 2016) OR IN THE ALTERNATIVE, MOTION FOR NEW TRIAL" for lack of merit.

ROMAN G. DEL ROSARIO
Presiding Justice

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[3] Page 16, Assailed Decision, CTA Docket, p. 1356.