REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

JARDINE LLOYD THOMPSON INSURANCE BROKERS, INC.,
Petitioner,

- versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 7916

Members:

BAUTISTA, *Chairperson*
PALANCA-ENRIQUEZ, and
COTANGCO-MANALASTAS, *JJ.*

Promulgated:

SEP 23 2011
ABFernand 3:38p.m.

x- x

D E C I S I O N

COTANGCO-MANALASTAS, *J.*:

THE CASE

This Petition for Review filed on April 15, 2009 by Jardine Lloyd Thompson Insurance Brokers, Inc. (petitioner), seeks the refund and/or issuance of tax credit certificate in the aggregate amount of P8,021,037.00, representing alleged unutilized creditable withholding taxes for taxable year ended December 31, 2006.

STATEMENT OF FACTS

Petitioner is a corporation duly organized and existing under and by virtue of the laws of the Philippines, with principal place of business at 25/F, Philamlife Tower, 8767 Paseo de Roxas, Makati City.[1]

Respondent is the Commissioner of the Bureau of Internal Revenue (BIR), the government agency tasked, among others, to collect national internal revenue taxes. She holds office at the BIR National Office Building, Diliman, Quezon City.

On April 16, 2007, petitioner filed its Annual Income Tax Return for taxable year 2006[2], but subsequently filed an amended Annual Income Tax Return[3] on April 26, 2007, showing the following details:

Total Gross Income	P 61,324,266.00
Less: Deductions	61,324,266.00
Taxable Income	0
Minimum Corporate Income Tax (MCIT)/Aggregate Income Tax Due	1,226,485.32
Less: Prior Year's Excess Credits	43,596,570.00
Creditable Tax Withheld for the year	8,021,037.00
Total	51,617,607.00
Tax Payable (Overpayment)	**P(50,391,121.68)**

On April 3, 2009, petitioner filed with the Large Taxpayers Audit and Investigation Division of the Bureau of Internal Revenue a claim for refund of its purported unutilized creditable tax withheld for the year 2006 in the amount of P8,021,037.00.[4]

Alleging inaction on the part of respondent on its claim for refund and in order to preserve its right to file a refund claim, petitioner filed before this Court the instant Petition for Review on April 15, 2009.

[1] Par. a, Joint Stipulation, *rollo*, p. 79.
[2] Exhibit "A".
[3] Exhibit "B".
[4] Exhibit "C"; Par. d, Joint Stipulation, *rollo*, p. 80.

On May 22, 2009, respondent filed her Answer[5] and raised the following arguments:

> "6. Petitioner's alleged claim for refund is subject to administrative routinary investigation/examination by the Bureau of Internal Revenue (BIR).
>
> 7. Petitioner miserably failed to show that the amount of P8,021,037.00 being claimed by petitioner as alleged unutilized creditable tax withheld for taxable year 2006 was erroneously or illegally collected, or that the same was properly documented.
>
> 8. Taxes paid and collected are presumed to have been paid in accordance with law; hence, not refundable.
>
> 9. Petitioner must show that it has fully complied with the requisites to sustain a claim for refund or tax credit of unutilized creditable tax credits as ruled by the Honorable Supreme Court in ***F. Jacinto Group, Inc. vs. CIR and Citibank N.A. vs. Court of Appeals, et al.*** These requisites are as follows:
>
>> a.) That the claim for refund was filed within the two-year period;
>>
>> b.) That 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
>>
>> c.) That the income upon which the taxes were withheld in the return of the recipient.
>
> 10. In an action for refund/credit, 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 **(Asiatic Petroleum Co. vs. Llanes, 49 Phil. 466 cited in Collector of Internal Revenue v. Manila Jockey Club, Inc., 98 Phil. 670)**."

During trial, the Court commissioned the services of Ms. Ma. Milagros Padernal, as Independent Auditor, to examine and verify petitioner's voluminous documents.[6]

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[5] *Rollo*, pp. 43-49.
[6] Minutes of the hearing held on March 1, 2010, *rollo*, p. 160.

On August 5, 2010, petitioner presented its documentary and testimonial evidence; which were admitted via Resolutions[7] dated October 28, 2010 and December 23, 2010.

On the other hand, respondent manifested that she will not present any evidence and rested her case on March 28, 2011.[8]

The case was submitted for decision on May 24, 2011[9], considering the "Memorandum for Petitioner" and the "Amended Memorandum for Petitioner", respectively filed on April 26, 2011 and May 2, 2011, and respondent's "Manifestation" filed on May 17, 2011, stating that she intends to adopt the declaration in her Answer as her Memorandum.

STATEMENT OF ISSUES

The parties submitted the following issues[10] for this Court's disposition:

> "1. Whether or not JLTIBI[11] is entitled to claim for tax refund/credit in the amount of Php8,021,037.00 representing its unutilized creditable income tax withheld for the taxable year ended December 31, 2006.
>
> 2. Whether or not petitioner have exhausted administrative remedies prior to the filing of the instant petition."

Basically, the issue is whether petitioner is entitled to a refund or issuance of tax credit certificate in the amount of P8,021,037.00, allegedly representing its unutilized creditable tax withheld for taxable year 2006.

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[7] *Rollo*, pp. 199-200 and 219-220.
[8] Minutes of the hearing held on March 28, 2010, *rollo*, p. 223.
[9] Resolution dated May 24, 2010, *rollo*, p. 274.
[10] *Rollo*, p. 81.
[11] Petitioner

DISCUSSION/RULING

Petitioner contends that it was in a net loss position for taxable year 2006; thus, it failed to fully utilize the prior year's excess credits of P43,596,570.00 and the creditable withholding tax for 2006 in the amount of P8,021,037.00.

Petitioner maintains that it is entitled to be refunded or issued a tax credit certificate for its unutilized creditable withholding tax for the year 2006 because of the following reasons:

> 1. it filed its claim for refund or issuance of tax credit certificate within the two-year prescriptive period pursuant to Section 229 of the NIRC of 1997, as amended;
>
> 2. it did not carry-over the unutilized creditable tax withheld for the year 2006 to the following taxable year as shown in its Annual Income Tax Return for 2007;
>
> 3. it was able to support P7,916,324.67 out of its claimed amount of P8,021,037.00 with original Certificates of Creditable Tax Withheld at Source (BIR Form No. 2307) as reported by the Court-commissioned Independent Certified Public Accountant (CPA), and the same should be considered by the Court in granting the refund; and
>
> 4. its Income Tax Return for 2006 shows that it suffered a net loss resulting in its failure to utilize the prior year's and current year's excess credit.

In support of its claim, petitioner presented its Annual Income Tax Return for 2006[12], Annual Income Tax Return for 2007[13], Quarterly Income Tax Returns for 2006[14], report/findings of the Independent CPA, various Schedules of Creditable Taxes Withheld[15], General Ledgers of Account Nos. 100001 and 120003[16], and Annual Income Tax Return for 2008.

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[12] Exhibits "A" (original) and "B" (amended).
[13] Exhibits "E" (original) and "F" (amended).
[14] Exhibits "I" to "K".
[15] Exhibits "AA" to "EE".
[16] Exhibits "FF" and "GG".

The provisions of Sections 76, 204(C) and 229 of the NIRC of 1997, as amended, being material to this case, are quoted hereunder:

> "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*)
>
> "SEC. 204. *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.* - The Commissioner may -
>
> xxx xxx xxx
>
> (C) Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. No credit or refund of taxes or penalties shall be allowed unless **the taxpayer files in writing with the Commissioner a claim for credit or refund within two (2) years after the payment of the tax or penalty: *Provided, however*, That a return filed showing an overpayment shall be considered as a written claim for credit or refund.**" (*Emphasis supplied*)
>
> "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 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." (*Emphasis supplied)*

Based on the foregoing, if a corporate taxpayer has excess tax credits or overpaid income tax in a given taxable year, the same may either be refunded in the form of cash or tax credit certificate, or carried over/applied to the succeeding taxable years until fully utilized.

The Supreme Court expounded on the two options in the case of *Philam Asset Management, Inc. vs. Commissioner of Internal Revenue*[17], in this wise:

> **"The first option is relatively simple. Any tax on income that is paid in excess of the amount due the government may be refunded, provided that a taxpayer properly applies for the refund.**
>
> **The second option works by applying the refundable amount, as shown on the FAR of a given taxable year, against the estimated quarterly income tax liabilities of the succeeding taxable year.**
>
> **These two options under Section 76 are alternative in nature. The choice of one precludes the other**. Indeed, in *Philippine Bank of Communications v. Commissioner of Internal Revenue*, the Court ruled that a corporation must signify its intention — whether to request a *tax refund* or claim a *tax credit* — by marking the corresponding option box provided in the FAR. While a taxpayer is required to mark its choice in the form provided by the BIR, this requirement is only for the purpose of facilitating tax collection.
>
> **One cannot get a *tax refund* and *a tax credit* at the same time for the same excess income taxes paid**. Failure to signify one's intention in the FAR does not mean outright barring of a valid request

[17] G.R. Nos. 156637 and 162004, December 14, 2005.

for a refund, should one still choose this option later on. A tax credit should be construed merely as an alternative remedy to a tax refund under Section 76, subject to prior verification and approval by respondent.

The reason for requiring that a choice be made in the FAR upon its filing is to ease tax administration, particularly the self-assessment and collection aspects. A taxpayer that makes a choice expresses certainty or preference and thus demonstrates clear diligence. Conversely, a taxpayer that makes no choice expresses uncertainty or lack of preference and hence shows simple negligence or plain oversight." *(Emphasis supplied)*

Clearly, the two options are in the alternative and the choice of one precludes the other. This is so because of the irrevocability rule embodied in the last sentence of Section 76 of the NIRC of 1997, as amended, where the phrase "such option shall be considered irrevocable for that taxable period" means that the option to carry over the excess tax credits of a particular taxable year can no longer be revoked. The rule prevents a taxpayer from claiming twice the excess quarterly taxes paid: (1) as automatic credit against taxes for the taxable quarters of the succeeding years for which no tax credit certificate has been issued, and (2) as a tax credit either for which a tax credit certificate will be issued or which will be claimed for cash refund.[18]

Therefore, it is imperative to determine if the corporate taxpayer availed of one option only with respect to its excess credits.

In addition to the foregoing, in case the corporate taxpayer chooses to be refunded, it must satisfy the following requisites in order that its claim for refund may be granted:

1. That the claim for refund was filed within the two-year prescriptive period prescribed under Section 204(C), in relation to Section 229 of the NIRC of 1997, as amended;

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

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[18] *Systra Phils., Inc. vs. Commissioner of Internal Revenue*, G.R. No. 176290, September 21, 2007.

3. That it is shown on the return of the recipient that the income payment received was declared as part of the gross income.[19]

In the present case, petitioner opted to be refunded by marking the box "To be refunded" in its original and amended Annual Income Tax Returns.[20]

Applying the preceding discussion, records show that petitioner filed its original Annual Income Tax Return[21] on April 16, 2007. This means that petitioner had until April 15, 2009 within which to file a claim for refund for taxable year 2006, both in the administrative and judicial levels.

Undisputedly, petitioner's administrative claim for refund filed on April 3, 2009[22] and its judicial claim, through the instant Petition for Review, filed on April 15, 2009 fall within the two-year prescriptive period.

Be that as it may, the Court must deny petitioner's claim.

Review of the records reveals that petitioner failed to prove that it did not carry over and/or apply the claimed excess creditable withholding taxes to the succeeding quarters of 2007, and that the income, related to the excess creditable withholding taxes, was reported in petitioner's return.

Petitioner's Annual Income Tax Return for taxable year 2006[23] shows that the excess credit as of December 31, 2006 in the amount of P50,391,121.68[24] is composed of the balance of the prior year's (2005) excess credits in the amount of P42,370,084.68 and creditable taxes withheld during the year (2006) in the amount of P8,021,037.00, detailed as follows:

[19] Section 2.58, Revenue Regulations No. 2-98, as amended*; ACCRA Investments Corporation vs. The Honorable Court of Appeals, et. al.*, G.R. No. 96322, December 20, 1991.
[20] Exhibits "A" and "B".
[21] Exhibit "A".
[22] Par. d, Joint Stipulation, *rollo*, p. 80.
[23] Exhibit "B".
[24] Exhibit "B-3".

Gross income	P 107,184,728.00
Less: Deductions	111,739,282.00
Taxable Income	(4,554,554.00)
Income Tax Due (MCIT)	1,226,485.32
Less: Prior Year's Excess Credits	43,596,570.00
Balance of Prior Year's Excess Credits	42,370,084.68
Add: Creditable Taxes Withheld for the year 2006	8,021,037.00
Total Excess Tax Credits as of December 31, 2006	**P50,391,121.68**

Petitioner presented its Annual Income Tax Return for taxable year 2007[25], which showed that the amount of P42,370,085.00, reflected as "Prior Year's Excess Credits"[26], pertains to its excess tax credits as of December 31, 2005. However, the same is not enough to conclude that petitioner did not carry over and/or apply the excess creditable withholding taxes to the first three quarters of 2007.

Petitioner should have presented its Quarterly Income Tax Returns for the first, second, and third quarters of 2007 in order for the Court to ascertain that petitioner did not carry over the 2006 excess creditable withholding taxes to the subsequent taxable quarter/s.

Moreover, petitioner failed to establish the existence of its prior year's excess credits in the amount of P43,596,570.00, from which the amount of Minimum Corporate Income Tax (MCIT) due for 2006 was applied or credited. It is crucial for petitioner to show that indeed it had enough prior year's excess credits to cover its MCIT liability; if not, the said MCIT liability shall be deducted from petitioner's 2006 creditable withholding taxes. Petitioner should have submitted the Certificates of Creditable Taxes Withheld at Source and Annual Income Tax Returns for prior years.

[25] Exhibits "E" (original) and "F" (amended).
[26] Exhibit "F", line 28A.

Anent the requisite that the income related to the claimed creditable withholding taxes must be reported in petitioner's income tax return, an examination of the summary of creditable withholding taxes, various withholding tax certificates and report of the Independent CPA only proves that petitioner failed to satisfy said requirement.

Petitioner was able to substantiate the excess creditable withholding taxes for the year 2006 in the amount of P7,302,349.56, to wit:

Amount of Claimed CWT		P 8,021,037.00
Less:	Disallowances	
	CWT supported with original certificates issued under petitioner's name but recorded twice	84,633.97
	CWT not supported with certificates	20,079.00
	CWT supported with certificates certified as true copy but the named certifier/signature appearing above or below the phrase "certified true copy" is not the same as the name/signature of the authorized person who signed the original certificate	613,974.47
	Total Disallowances	718,687.44
Claimed CWT with Valid Certificates		**P 7,302,349.56**

The aforesaid amount of P7,302,349.56 was withheld from the total income payments of P78,612,932.91, as shown below:

		Nature of Income			
	Tax Withhled	**Commission**	**Service Fees**	**Rental**	**Total**
Claimed CWT	P 5,678,912.61	P56,765,989.92			P 56,765,989.92
	2,283,799.43		P 30,100,849.64		30,100,849.64
	58,325.56			P1,142,179.28	1,142,179.28
Total	**P 8,021,037.60**	**P56,765,989.92**	**P 30,100,849.64**	**P1,142,179.28**	**P 88,009,018.84**
Less: Disallowances					
Recorded Twice	P 84,633.97	P 788,339.68		P 116,000.00	P 904,339.68
W/o Certificates	20,079.00		P 120,000.00	353,580.00	473,580.00
Supported with Certificates marked as "Certified True Copy"	613,974.47	3,977,550.00	4,040,616.25		8,018,166.25
Total Disallowances	**P 718,687.44**	**P 4,765,889.68**	**P 4,160,616.25**	**P 469,580.00**	**P 9,396,085.93**
Total Amount of Claim w/ Valid Certificates	**P 7,302,350.16**	**P52,000,100.24**	**P 25,940,233.39**	**P 672,599.28**	**P 78,612,932.91**

However, petitioner reflected the amount of P111,739,282.00, as its total gross income in its 2006 Annual Income Tax Return[27]:

Gross Income from Operation	
Sale of Services	**P107,184,728.00**
Non-Operating & Other Income	
Gain on sale of fixed assets	499.00
Interest	393,668.00
Others	4,160,387.00
Total Non-Operating and Other Income	**4,554,554.00**
Total Gross Income	**P111,739,282.00**

Comparing the income shown per valid certificates *vis-à-vis* the income per petitioner's 2006 Annual Income Tax Return, a difference of P29,916,993.65 is evident, as shown below:

	Per Certificates	**Per Income Tax Return**	**Discrepancy**
Total Commission and Service Fees (Sales of Services)	P 77,940,333.63	P 107,184,728.00	P 29,244,394.37
Rental	672,599.28	-	672,599.28
Total	**P78,612,932.91**	**P107,184,782.00**	**P29,916,993.65**

Petitioner explains that the discrepancy of P29,244,394.37 was brought about by the timing difference between the recording of revenue by petitioner and the recognition by its clients of the creditable withholding taxes, and the discrepancy of P672,599.28 pertains to the sublease of its office space which was recorded as a reduction against the rent expense account in its general ledger.[28]

Nevertheless, petitioner failed to support its claim with pieces of documentary evidence. Except for the General Ledgers for Account Nos. 100001 (Brokerage and Others)[29] and 120003 (Profit Commission)[30], nothing more was presented by petitioner to bolster its claim and convince the Court that it deducted the rental income of P672,599.28 from its rental expense for the year 2006 and that the

[27] Exhibit "B".
[28] Exhibits "L" and "M".
[29] Exhibit "FF".
[30] Exhibit "GG".

P29,244,394.37 discrepancy in its revenues from sales of services was merely due to timing difference. Petitioner should have submitted documents such as, but not limited to, lease contracts, breakdown of the rental expense per income tax return, books of accounts such as general journal, detailed general ledger, sales journal, sales invoices/billing statements, official receipts, prior year's income tax return or any other document whereby the Court can verify that it properly reported the income related to the claimed CWT either in the current or prior year. Petitioner's non-compliance with the third requisite is fatal to its claim.

It bears stressing that a claimant has the burden of proof to establish the factual basis of his or her claim for tax credit or refund.[31] Tax refunds are in the nature of tax exemptions. As such, they are regarded as in derogation of sovereign authority and to be construed *strictissimi juris* against the person or entity claiming the refund.[32]

WHEREFORE, premises considered, petitioner's claim for refund or issuance of tax credit certificate is hereby **DENIED** due to insufficiency of evidence.

SO ORDERED.

AMELIA R. COTANGCO- MANALASTAS
Associate Justice

WE CONCUR:

See attached Concurring + Dissenting Opinion

LOVELL R. BAUTISTA
Associate Justice

(With Concurring and Dissenting Opinion)
OLGA PALANCA-ENRIQUEZ
Associate Justice

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[31] *Citibank, N.A. vs. Court of Appeals and the Commissioner of Internal Revenue*, G.R. No. 107434, October 10, 1997.
[32] *Commissioner of Internal Revenue vs. S.C. Johnson & Son, Inc., et al.*, G.R. No. 127105, June 25, 1999.

ATTESTATION

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.

LOVELL R. BAUTISTA
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, 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.

ERNESTO D. ACOSTA
Presiding Justice

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

THIRD DIVISION

JARDINE LLOYD THOMPSON INSURANCE BROKERS, INC., ***Petitioner,***	**C.T.A. Case No. 7916**
	Members:
-versus-	BAUTISTA, *Chairperson* PALANCA-ENRIQUEZ, and COTANGCO-MANALASTAS, JJ.
COMMISSIONER OF INTERNAL REVENUE, ***Respondent.***	**Promulgated:** SEP 23 2011 ABFunard 3:38p.m.

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CONCURRING AND DISSENTING OPINION

PALANCA-ENRIQUEZ, J.:

Concurring

I concur with the *Ponente* in ruling that petitioner is not entitled to the refund of taxes paid for failure to submit supporting documentary evidence. Basic is the rule that a claimant has the burden of proof to establish the factual basis of his or her claim for tax credit or refund.

Dissenting

As regards the other ground in denying the claim for refund, to wit: that petitioner failed to present its quarterly tax returns for the first, second, and third quarters of 2007 after a careful examination of the pertinent facts of the case, in relation to applicable laws and jurisprudence, I find it hard to agree with the *Ponente.*

In the case of *Philam Asset Management, Inc. vs. Commissioner of Internal Revenue, 634 SCRA 193,* the Supreme Court ruled that there is no basis in law and jurisprudence in requiring the submission of the Income Tax Return (ITR) or the Final Adjustment Return (FAR) of the succeeding year to the BIR in the application for a tax refund of excess CWT. Thusly:

> "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.
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> *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 x x x 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 x x x [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.
>
> *Third*, there is no automatic grant of a *tax refund*. As

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a matter of procedure, the BIR should be given the opportunity "to investigate and confirm the veracity" of a taxpayer's claim, before it grants the refund. Exercising the option for a tax refund or a tax credit does not *ipso facto* confer upon a taxpayer the right to an immediate availment of the choice made. Neither does it impose a duty on the government to allow tax collection to be at the sole control of a taxpayer.

Fourth, the BIR ought to have on file its own copies of petitioner's FAR for the succeeding year, on the basis of which it could rebut the assertion that there was a subsequent credit of the excess income tax payments for the previous year. Its failure to present this vital document to support its contention against the grant of a *tax refund* to petitioner is certainly fatal.

Fifth, the CTA should have taken judicial notice of the fact of filing and the pendency of petitioner's subsequent claim for a refund of excess creditable taxes withheld for 1998. The existence of the claim ought to be known by reason of its judicial functions. Furthermore, it is decisive to and will easily resolve the material issue in this case. If only judicial notice were taken earlier, the fact that there was no carry-over of the excess creditable taxes withheld for 1997 would have already been crystal clear.

Sixth, the Tax Code allows the refund of taxes to a taxpayer that claims it in writing within two years after payment of the taxes erroneously received by the BIR. Despite the failure of petitioner to make the appropriate marking in the BIR form, the filing of its written claim effectively serves as an expression of its choice to request a *tax refund*, instead of a *tax credit*. To assert that any future claim for a tax refund will be instantly hindered by a failure to signify one's intention in the FAR is to render nugatory the clear provision that allows for a two-year prescriptive period.

The above ruling in the Philam case was reiterated in the case of *State Land Investment Corporation vs. Commissioner of Internal Revenue, 542 SCRA 117,* where the Supreme Court ruled, as follows:

> "As previously mentioned, after paying P4,187,523.00 as income tax due in 1998, there remained an unutilized tax credit of P9,742,270.51. 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. vs. 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."

Pursuant to the above rulings of the Supreme Court, the submission of the succeeding ITR or FAR is not a requisite in applying for a refund of excess CWT. Logically, there is no sufficient basis to require the claimant to submit quarterly income tax returns for the succeeding periods.

For all the foregoing, I concur with the *Ponente* to deny petitioner's claim for refund solely on the ground of failure to submit supporting documentary evidence.

OLGA PALANCA-ENRIQUEZ
Associate Justice