REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC
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COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**CTA EB No. 1135** (CTA Case No. 8464)
	Present:
- versus -	**DEL ROSARIO,** P.J., **CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, COTANGCO-MANALASTAS,** and **RINGPIS-LIBAN,** JJ.
AXIA POWER HOLDINGS PHILIPPINES CORPORATION, Respondent.	***Promulgated:*** APR 19 2016 1:35 p.m.

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RESOLUTION

UY, J.:

For resolution is petitioner's **"MOTION FOR RECONSIDERATION"**[1] filed on October 21, 2015, with respondent's **"COMMENT/OPPOSITION (To Motion for Reconsideration)"** filed on November 5, 2015, seeking the reconsideration and setting aside of this Court's Decision dated September 21, 2015, the dispositive portion of which reads:

> "**WHEREFORE,** all the foregoing considered, the Petition for Review is hereby **DENIED** for lack of merit.
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> **SO ORDERED.**"

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[1] Docket, pp. 99 to 105.

In support of its Motion, petitioner raises the following arguments, to wit:

1. The taxpayer is required to present its quarterly income tax returns, as well as the annual income tax return of the succeeding taxable years, in order to prove that it did not carry over its excess tax credits.

2. The burden is on the taxpayer to prove its entitlement to the refund. Taxpayers also ought to have copies of their quarterly returns as it is their statutory obligation to file those with the BIR within a certain period. The requirement of presenting the succeeding returns cannot be a superfluity or just another burden, considering that the quarterly returns are readily available in their own files. Hence, it would be appropriate and even more practical for the Honorable Court to require the taxpayer to present these documents to prove that the creditable tax has not yet been carried over and utilized.

In its Comment, respondent counters that:

1. The issues raised by the petitioner in her Motion for Reconsideration were the same issues as the ones argued in her Petition for Review and have already been passed upon by this Court.

2. The issue on whether a taxpayer should have submitted its quarterly/annual tax return for the succeeding years has already been settled by the Supreme Court in the case of *Philam Asset Management, Inc. vs. Commissioner of Internal Revenue.*[2]

3. Petitioner can easily determine whether or not the excess or unutilized creditable withholding tax was carried over by the respondent, by checking its file of the quarterly and annual tax returns filed by respondent.

THE COURT *EN BANC'S* RULING

Petitioner's Motion lacks merit. It must be pointed out that petitioner's arguments have already been passed upon and exhaustively discussed by this Court. However, to further emphasize Our disquisition and dispel any doubts in petitioner's mind, this Court

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[2] G.R. Nos. 156637 & 162004, December 14, 2005.

will reiterate our ruling on the matter.

Jurisprudence has already settled the principle that the presentation of succeeding quarterly income tax returns/annual income tax returns is not mandatory to prove that the taxpayer did not carry over its excess income tax credits.

As early as 2005, the Supreme Court, in *Philam Asset Management, Inc. vs. Commissioner of Internal Revenue,*[3] has already made a categorical pronouncement that *"(r)equiring 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."* In support of this statement, the High Court ratiocinated as follows:

> *"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 taxpayers 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.**" *(Emphases supplied)*

Contrary to petitioner's stance, the Supreme Court attributed the responsibility to petitioner, who ought to have presented documents it had on file to support its contentions against the grant of a tax refund, to wit:

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[3] G.R. Nos. 156637 & 162004, December 14, 2005.

> *"Fourth,* **the BIR ought to have on file its own copies of petitioners 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**."[4] *(Emphasis supplied)*

Simply put, since petitioner ought to know the tax records of all taxpayers, she could have easily disproved the claimants' allegations.[5]

In the same vein, anent the necessity of submitting the succeeding quarterly income tax returns, the Supreme Court, in *Republic of the Philippines, etc. vs. Team (Phils.) Energy Corporation*,[6] has ruled that not only is the presentation thereof discretionary on the part of the taxpayer, but it was likewise pointed out that it is, in fact, petitioner, who ought to have its own copies of the said quarterly returns on file, on the basis of which it could rebut the claim for tax refund, to wit:

> "We are likewise unmoved by the assertion of the petitioner that the respondent should have submitted the quarterly returns of the respondent to show that it did not carry-over the excess withholding tax to the succeeding quarter. **When the respondent was able to establish *prima facie* its right to the refund by testimonial and object evidence, <u>the petitioner should have presented rebuttal evidence to shift the burden of evidence back to the respondent</u>. Indeed, <u>the petitioner ought to have its own copies of the respondent's quarterly returns on file, on the basis of which it could rebut the respondent's claim that it did not carry over its unutilized and excess creditable withholding taxes for the immediately succeeding quarters.</u> The BIR's failure to present such vital document during the trial in order to bolster the petitioner's contention against the respondent's claim for the tax refund was fatal**." *(Emphasis and underscoring supplied.)*

This ratiocination was reiterated in the case of *Winebrenner &*

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[4] *Philam Asset Management, Inc. vs. Commissioner of Internal Revenue, supra.*

[5] *Commissioner of Internal Revenue vs. Ironcon Builders and Development Corporation,* G.R. No. 180042, February 8, 2010.

[6] G.R. No. 188016, January 14, 2015.

Iñigo Insurance Brokers, Inc. vs. Commissioner of Internal Revenue,[7] to wit:

> "xxx. What Section 76 requires, just like in all civil cases, is to prove the *prima facie* entitlement to a claim, including the fact of not having carried over the excess credits to the subsequent quarters or taxable year. **It does <u>not</u> say that to prove such a fact, succeeding quarterly ITRs are absolutely needed.**
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> This simply underscores the rule that any document, other than quarterly ITRs may be used to establish that indeed the non-carry over clause has been complied with, provided that such is competent, relevant and part of the records. <u>**The Court is thus not prepared to make a pronouncement as to the indispensability of the quarterly ITRs in a claim for refund for no court can limit a party to the means of proving a fact for as long as they are consistent with the rules of evidence and fair play**</u>. The means of ascertainment of a fact is best left to the party that alleges the same. The Court's power is limited only to the appreciation of that means pursuant to the prevailing rules of evidence. To stress, what the NIRC merely requires is to sufficiently prove the existence of the non-carry over of excess CWT in a claim for refund
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> xxx. To the Court, it seems that the CIR languished on its duties to ascertain the veracity of the claims and just hoped that the burden would fall on the petitioner's head once the issue reaches the courts.
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> **This mindset ignores the rule that the CIR has the equally important responsibility of contradicting petitioner's claim by presenting proof readily on hand once the burden of evidence shifts to its side**. xxx
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> xxx xxx xxx
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> Verily, with the petitioner having complied with the requirements for refund, and without the CIR showing contrary evidence other than its bare assertion of the absence of the quarterly ITRs, copies of which are easily verifiable by its very own records, the burden of proof of

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[7] G.R. No. 206526, January 28, 2015.

establishing the propriety of the claim for refund has been sufficiently discharged. Hence, the grant of refund is proper." *(Emphasis supplied.)*

Based on the foregoing judicial pronouncements, it is clear that petitioner's contentions with regard to the presentation of succeeding quarterly/annual income tax returns is baseless and insufficient to convince this Court to reverse the assailed Decision.

The principle of *stare decisis et non quieta movere,* as embodied in Article 8 of the Civil Code of the Philippines,[8] enjoins adherence to judicial precedents. **It <u>requires</u> our courts to follow a rule already established in a final decision of the Supreme Court**. That decision becomes a judicial precedent to be followed in subsequent cases by all courts in the land.[9]

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

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

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[8] Article 8. Judicial decisions applying or interpreting the laws or the Constitution shall form a part of the legal system of the Philippines.

[9] *Filinvest Development Corporation vs. Commissioner of Internal Revenue,* G.R. No. 146941, August 9, 2007.

CIELITO N. MINDARO-GRULLA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice