REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE
Petitioner,

- versus-

PPI PRIME VENTURE, INC.,
Respondent.

CTA EB NO. 1666
(CTA Case No. 8795)

Present:

DEL ROSARIO, *PJ,*
CASTAÑEDA, JR.,
UY,
FABON-VICTORINO,
MINDARO-GRULLA,
RINGPIS-LIBAN, and
MANAHAN, *JJ.*

Promulgated:

JUL 09 2019 3:32 pm

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RESOLUTION

Manahan, J.:

For resolution is petitioner's *Motion for Reconsideration* filed on January 3, 2019, with respondent's *Comment/Opposition (To Petitioner's Motion for Reconsideration dated December 14, 2018)* filed on March 8, 2019.

In his motion, petitioner seeks reconsideration of the Court's Decision promulgated on November 23, 2018, the dispositive portion of which reads:

> "**WHEREFORE,** in light of the foregoing considerations, the Petition for Review filed by the Commissioner of Internal Revenue in CTA EB No. 1666 is **DENIED** for lack of merit. The assailed

Decision dated November 16, 2016 and the assailed Resolution dated May 22, 2017 are hereby **AFFIRMED.**

SO ORDERED."

Petitioner requests the Court to re-evaluate and revisit its Decision (assailed Decision) on the ground that it erroneously held that the presentation of the succeeding quarterly income tax returns/annual income tax returns (ITRs) is not fatal to respondent's claim for refund of alleged unutilized creditable withholding taxes (CWT) for taxable year 2011.

Petitioner maintains that respondent must prove with absolute certainty that it did not carry-over and apply its 2011 excess tax credits against its quarterly/annual income tax liabilities for the taxable quarters of the succeeding taxable years as provided under Section 76 of the 1997 National Internal Revenue Code (1997 NIRC), as amended.

In the instant case, respondent should have presented in evidence its quarterly income tax returns for taxable years 2013 and 2014 in order to prove that it did not carry-over its excess tax credits against the income tax due for the taxable quarters of the succeeding taxable years. Petitioner avers that without such documents, the Court cannot conclude with absolute certainty that respondent did not avail of double incentives, i.e., claim a refund and at the same time apply its excess tax to its succeeding tax liabilities.

Petitioner elaborates its argument further in this manner and we quote:

> "Although respondent ticked the box "to be issued tax credit certificate " in its 2011 amended annual income tax return filed on January 27, 2014, nevertheless, this evidence is not enough to conclude that it did not change its chosen option and actually carried over and applied the claimed unutilized creditable withholding taxes against the income tax due for the succeeding quarterly returns. Respondent should have presented as evidence its 2013 and 2014 quarterly income tax returns and annual income tax returns. The said 2013 and 2014 quarterly income tax returns and annual income tax returns would reveal whether respondent effectively opted to carry over the 2011 excess creditable withholding taxes to the subsequent quarters of its claim. If respondent applied the said

> unutilized creditable withholding taxes against the income tax due for 2013 and 2014 quarterly income tax returns and annual income tax returns, it therefore effectively exercised the option to carry-over the 2011 unutilized creditable withholding taxes to the succeeding taxable years." xxx xxx xx

Lastly, petitioner cites the oft-repeated doctrine that tax refunds partake the nature of tax exemptions, hence are construed strictly against the taxpayer.

Respondent, in its *Comment/Opposition* contends that the presentation of the annual ITRs of the succeeding taxable quarters of a taxable year is not indispensable in a claim for refund of excess CWT. Respondent cites several Supreme Court cases where it was allegedly held that the requirement of presenting the annual ITRs or the Final Adjustment Returns (FARs) of the succeeding years in a tax refund has no basis in law and jurisprudence.

As a final argument, respondent maintains that the rule of *strictissimi juris* against claims for tax refunds does not apply to claims for refund of overpaid or erroneously paid taxes. What should be applied, according to respondent, is the principle of *solutio indebiti* provided under Article 2154 of the Civil Code and as applied to tax refunds, the government has no right to keep money not belonging to it thereby enriching itself at the expense of law-abiding citizens/taxpayers.

RULING OF THE COURT EN BANC

After a careful review of the parties' respective arguments, this Court finds that petitioner's contentions and reasons for reconsideration are mere reiterations of the same facts and issues which have been extensively passed upon in the decisions of the Court in Division and the Court *En Banc*. We, however find it necessary to emphasize our ruling embodied in the assailed Decision of the Court *En Banc* promulgated on November 23, 2018 relative to the evidentiary standards in proving a claim for refund of excess CWT, and we quote:

> "As implemented by Section 2.58.3 of Revenue Regulations (RR) No. 02-98, the requisites for claiming a refund or a TCC for unutilized CWT are as follows:

1. The claim for refund must be filed with the Commissioner of Internal Revenue within the two-year prescriptive period from the date of payment of the tax as prescribed under Section 204 (C), in relation to Section 229 of the 1997 NIRC, as amended;

2. It must be shown in the return of the recipient that the income payment 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 therefrom.

The above requisites have been affirmed and applied by a myriad of cases through the years but the types of evidence to prove compliance with said requisites have evolved as new issues arise largely due to the peculiar circumstances of each case brought before the courts."

We do not find any legal merit in the contention of petitioner that the claimant taxpayer is required to present its quarterly income tax returns as well as the annual income tax returns of the succeeding taxable years. It is already well settled that the presentation of succeeding quarterly and annual income tax returns is not mandatory to show that the taxpayer did not carry over its excess income tax credits to the succeeding taxable years.

In the case of *Philam Asset Management, Inc. vs. Commissioner of Internal Revenue,*[1] the Supreme Court has already declared that the presentation of the ITR or the Final Adjustment Return (FAR) has no basis in law and jurisprudence. In this case, the Supreme Court went as far as attributing the responsibility to the BIR who ought to have presented documents to support its position against granting the claim for tax refund. We quote portions of the decision of the Supreme Court in the *Philam* case:

"*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

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[1] G.R. Nos. 156637/162004, December 14, 2005.

failure to present this vital document to support its contention against the grant of a tax refund to petitioner is certainly fatal."

Likewise, the Supreme Court reiterated the above ruling in the case of *Winebrenner & Inigo Insurance Brokers, Inc. vs. Commissioner of Internal Revenue*[2] in this manner and we quote:

"Proving that no carry-over has been made does not absolutely require the presentation of the quarterly ITRs. xxx xxx

xxx xxx xxx

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."

xx xxx 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 not say that to prove such a fact, succeeding quarterly ITRs are absolutely needed.**

This simply underscores the rule that any document, other than the 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. 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. xxx xxx" (emphasis supplied)

In sum, petitioner's arguments against the insufficient evidence, particularly the non-presentation of the quarterly income tax returns as well as the annual income tax returns of the succeeding years to prove a claim a refund of excess CWT is without legal merit and is not enough to warrant a reversal of the assailed Decision.

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

WHEREFORE, premises considered, the Motion for Reconsideration filed by petitioner CIR is hereby **DENIED** for lack of merit.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

(On Leave)
JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

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

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice