Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

REPUBLIC OF THE PHILIPPINES, represented by the COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**G.R. No. 188016**
	Present:
-versus-	SERENO, *C.J.*, LEONARDO-DE CASTRO, BERSAMIN, PEREZ, and PERLAS-BERNABE, *JJ.*
TEAM (PHILS.) ENERGY CORPORATION (formerly MIRANT (PHILS.) ENERGY CORPORATION), Respondent.	Promulgated: JAN 14 2015

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DECISION

BERSAMIN, *J.*:

The Republic of the Philippines, represented by the Commissioner of Internal Revenue, appeals the decision promulgated on April 15, 2009,[1] whereby the Court of Tax Appeals *En Banc* (CTA *En Banc*) upheld the decision of the CTA in Division rendered on May 15, 2008 ordering the Commissioner of Internal Revenue to refund or to issue a tax credit certificate in favor of the respondent in the modified amount of ₱16,366,412.59 representing the respondent's excess and unutilized creditable withholding taxes for calendar years 2002 and 2003.

Antecedents

Respondent Mirant (Philippines) Energy Corporation, a domestic corporation, is primarily engaged in the business of developing, designing, constructing, erecting, assembling, commissioning, owning, operating, maintaining, rehabilitating, and managing gas turbine and other power

[1] *Rollo*, pp. 31-45.

generating plants and related facilities for conversion into electricity, coal, distillate and other fuel provided by and under contract with the Government, or any subdivision, instrumentality or agency thereof, or any government-owned or controlled corporations or any entity engaged in the development, supply or distribution of energy.[2] On August 16, 2001, the respondent filed with the Securities and Exchange Commission (SEC) its Amended Articles of Incorporation stating its intent to change its corporate name from Mirant (Philippines) Mobile Corporation to Mirant (Philippines) Energy Corporation; and to include the business of supplying and delivering electricity and providing services necessary in connection with the supply or delivery of electricity. The SEC approved the amendment on October 22, 2001.[3]

The respondent filed its annual income tax return (ITR) for calendar years 2002 and 2003 on April 15, 2003 and April 15, 2004, respectively, reflecting overpaid income taxes or excess creditable withholding taxes in the amounts of ₱6,232,003.00 and ₱10,134,410.00 for taxable years 2002 and 2003, respectively.[4] It indicated in the ITRs its option for the refund of the tax overpayments for calendar years 2002 and 2003.[5]

On March 22, 2005, the respondent filed an administrative claim for refund or issuance of tax credit certificate with the Bureau of Internal Revenue (BIR) in the total amount of ₱16,366,413.00, representing the overpaid income tax or the excess creditable withholding tax of the respondent for calendar years 2002 and 2003.[6]

Due to the inaction of the BIR and in order to toll the running of the two-year prescriptive period for claiming a refund under Section 229 of the National Internal Revenue Code (NIRC) of 1997, the respondent filed a petition for review in the Court of Tax Appeals (CTA) on April 14, 2005.[7]

In the answer, the petitioner interposed the following special and affirmative defenses, to wit:

> x x x x
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> 3. He reiterates and repleads the preceding paragraphs of this answer as part of his Special and Affirmative Defenses;
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> 4. Petitioner's claim for refund is still subject to the administrative routinary investigation/examination by the respondent's Bureau;

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2 Id. at 32.
3 Id.
4 Id. at 33.
5 Id.
6 Id.
7 Id.

> 5. Taxes paid and collected are presumed to have been made in accordance with law and implementing regulations, hence, not refundable.
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> 6. Petitioner's claim for refund/issuance of tax credit in the amount of **P16,366,413.00**, as alleged overpaid income taxes or excess creditable withholding taxes for taxable year ended December 31, 2002 and December 31, 2003 were not fully substantiated by proper documentary evidence.
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> 7. Petitioner failed to prove that the amount of **₱16,366,413.00** as alleged overpaid income taxes or excess creditable withholding taxes for taxable year ended December 31, 2002 and December 31, 2003 were included as part of its gross income for the said taxable years 2002 and 2003, and did not carry-over to the succeeding taxable quarter/year the subject of its claim, and the same were not utilized in payment of its income tax liability for the succeeding taxable quarter/year.
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> 8. The filing of the instant petition for review with this Honorable Court was premature since respondent was not given an ample opportunity to examine its claim for refund;
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> 9. Assuming but without admitting that petitioner is entitled to tax refund, it is incumbent upon the latter to show that it complied with the provisions of **Sections 204** in relation to **Section 230 (now 229)** of the Tax Code. Otherwise, its failure to prove the same is fatal to its claim for refund.
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> 10. Claims for refund are construed strictly against the claimant for the same partake the nature of exemption from taxation (***Commissioner of Internal Revenue v. Ledesma*, 31 SCRA 95**) and as such, they are looked upon with disfavor (***Western Minolco Corp. v. Commissioner of Internal Revenue*, 124 SCRA 121**).[8]

On May 15, 2008, the CTA in Division rendered its decision in favor of the respondent, disposing thusly:

> **WHEREFORE**, the instant "Petition for Review" is hereby **GRANTED.** Accordingly, respondent is hereby **ORDERED TO REFUND** or **TO ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the modified amount of **SIXTEEN MILLION THREE HUNDRED SIXTY-SIX THOUSAND FOUR HUNDRED TWELVE AND 59/100 (₱16,366,412.59)**, representing petitioner's excess and unutilized creditable withholding taxes for calendar years 2002 and 2003.
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> **SO ORDERED**.[9]

The CTA in Division found that the respondent had signified in its ITRs for the same years its intent to have its excess creditable tax withheld for calendar years 2002 and 2003 be refunded; that the respondent's administrative and judicial claims for refund had been timely filed within the

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8 Id. at 34.
9 Id. at 35.

two-year prescriptive period under Section 204 (C) in relation to Section 229 of the NIRC; that the fact of withholding had been established by the respondent because it had submitted its certificate of creditable tax withheld at source showing that the aggregate amount of ₱17,168,749.60 constituted the CWT withheld by the respondent on its services to Republic Cement Corporation, Mirant (Philippines) Industrial Power Corporation and Solid Development Corporation for taxable years 2002 and 2003; and that the income from which the CWT had been withheld was duly declared as part of the respondent's income in its annual ITRs for 2002 and 2003.

The petitioner then filed a motion for reconsideration, but the CTA in Division denied the motion on September 5, 2008.

The petitioner brought a petition for review before the CTA *En Banc* raising two issues, namely:

> I.
> THE SECOND DIVISION OF THIS HONORABLE COURT ERRED IN HOLDING THAT RESPONDENT IS ENTITLED TO ITS CLAIMED REFUND OF EXCESS AND UNUTILIZED CREDITABLE WITHHOLDING TAXES FOR CALENDAR YEARS 2002 AND 2003, SINCE THERE WAS A VIOLATION ON THE PART OF THE RESPONDENT TO FULLY COMPLY WITH THE REQUIREMENTS UNDER SECTION 76 OF THE 1997 TAX CODE.
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> II.
> THE SECOND DIVISION OF THIS HONORABLE COURT ERRED IN NOT APPLYING THE RULE THAT TAX REFUNDS BEING IN THE NATURE OF TAX EXEMPTION ARE CONSTRUED STRICTISSIMI JURIS AGAINST THE PERSON OR ENTITY CLAIMING THE EXEMPTION.[10]

On April 15, 2009, however, the CTA *En Banc* rendered its assailed judgment, disposing thus:

> **WHEREFORE**, the instant petition is hereby **DISMISSED**. Accordingly, the assailed Decision and Resolution are hereby **AFFIRMED**.
>
> **SO ORDERED**.[11]

The CTA *En Banc* held that the defenses raised by the petitioner were general and standard arguments to oppose any claim for refund by a taxpayer; that the trial proper was conducted in the CTA in Division, during which the respondent presented evidence of its entitlement to the refund and

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[10] Id. at 78.
[11] Id. at 44.

in negation of the defenses of the petitioner; and that the petitioner raised the issue on the non-presentment of the respondent's quarterly returns for 2002 and 2003 only in the petition for review, which was not allowed, stating thusly:

> This cannot be allowed. Petitioner had the opportunity to raise this issue either during the trial or at the latest, in his Motion for Reconsideration of the assailed Decision of the Court in Division but he cited only the following grounds in his motion: x x x
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> x x x x
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> In its assailed Resolution, the Court in Division reiterated its finding that respondent had complied with the substantiation requirements for its entitlement to refund. It also ruled that the alleged under-declaration of respondent cannot be determined by the Court since it is the duty of the BIR to investigate and confirm the truthfulness of each and every item in the ITR. It finally declared that respondent, by presenting copies of CWT certificates of unutilized CWT, sufficiently complied with the requirements of the fact of withholding.
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> Thus, petitioner's averment that Section 76 of the NIRC speaks of quarterly income tax payments which consequently requires the offer in evidence of quarterly income tax returns is raised for the first time on appeal with the Court *En Banc*. It is a well-settled rule that points of law, theories, issues and arguments not adequately brought to the attention of the lower court need not be considered by the reviewing court as they cannot be raised for the first time on appeal. x x x
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> x x x x
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> In the present case, petitioner could have simply exercised his power to examine and verify respondent's claim for refund by presenting the latter's quarterly income tax returns. The BIR ought to have on file the originals or copies of respondent's quarterly income tax returns for the subject years, on the basis of which it could rebut respondent's claim that it did not carry-over its unutilized and excess creditable withholding taxes for taxable years 2002 and 2003 to the succeeding taxable quarters of taxable years 2003 and 2004. Petitioner's failure to present these vital documents before the Court in Division to support his contention against the grant of a tax refund to respondent, is fatal.
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> At any rate, Section 76 of the 1997 NIRC speaks only of the filing of the Final Adjusted Return and as held by the Supreme Court, the Annual ITR or "(t)he Final Adjustment Return is the most reliable firsthand evidence of corporate acts pertaining to income taxes. In it are found the itemization and summary of additions to and deductions from income taxes due. These entries are not without rhyme or reason. They are required, because they facilitate the tax administration process." And in this case, respondent offered in evidence its Annual ITRs for calendar years 2002, 2003, and 2004.[12]

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[12] Id. at 38-41.

As to whether the respondent proved its entitlement to the refund, the CTA *En Banc* declared:

> However, petitioner's entitlement to refund is still subject to the satisfaction of the requirements laid down by the NIRC of 1997, as amended, namely:
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> 1. That the claim for refund was filed within the two-year reglamentary period pursuant to Section 230 of the Tax Code, as amended;
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> 2. That the fact of withholding is established by a copy of the statement duly issued by the payor to the payee showing the amount paid and the amount withheld therefrom; and
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> 3. That the income upon which the taxes were withheld is included as part of the gross income declared in the income tax return of the recipient.
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> *Petitioner complied with the first requisite*. The subject claim involves calendar years 2002 and 2003. Petitioner filed its Annual Income Tax Returns on April 15, 2003 and April 15, 2004. Counting from these dates, petitioner had until April 15, 2005 and April 15, 2006 within which to file its administrative and judicial claims for refund. Petitioner filed with the BIR its administrative claim for refund on March 22, 2005. The instant petition was filed on April 15, 2005. Hence, both the administrative and judicial claims for refund were timely filed within the two-year prescriptive period.
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> Anent the second requirement, the Supreme Court enunciated in the case of **Banco Filipino Savings and Mortgage Bank v. Court of Appeals, Court of Tax Appeals and Commissioner of Internal Revenue** that the fact of withholding is established by a copy of the statement duly issued by the payor to the payee through the Certificates of Creditable Taxes Withheld at Source. In the present case, petitioner submitted to this Court as part of its documentary evidence ten (10) Certificates of Creditable Taxes Withheld at Source. x x x
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> x x x x
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> The aggregate amount of P17,168,749.60 constitutes the creditable withholding taxes withheld from the Certificates of Creditable Tax Withheld at Source on its services to Republic Cement Corporation, Mirant (Philippines) Industrial Power Corporation and Solid Development Corporation for taxable years 2002 and 2003.
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> Regarding the third requisite, *the income from which the creditable taxes were withheld were duly declared as part of petitioner's income in its Annual Income Tax Returns for 2002 and 2003.*[13] x x x

Aggrieved, the petitioner has brought this appeal.

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[13] Id. at 42-43.

Issue

The issue is whether or not the respondent proved its entitlement to the refund.

The petitioner asserts the necessity of submission of the quarterly return of the respondent to prove its entitlement to the refund pursuant to Sec. 76 of the NIRC because such quarterly returns would establish the correctness of the total amount of payments made and the taxes due as reported on the adjusted return at the end of the year. The petitioner insists that the amount claimed for refund was not carried over to the succeeding year; that the submission of the quarterly return would prevent the possibility of a claimant carrying over the excess credit and then claiming a refund for it; that the final adjustment return was not sufficient to establish the respondent's claim for refund because it only reflected the sum of the payments made and the taxes due for the year; that the quarterly return was necessary to prove that the sum, as stated in the adjusted return, was correct; and that should the respondent chose to carry over the previous year's excess credit, the quarterly returns would prove that the carrying-over was properly done during the succeeding year.

In its comment/opposition, the respondent, while admitting having the burden of proving the factual basis for its claim for refund, contends that it discharged its burden. It counters that with the presentation of its annual ITRs for the years 2002, 2003 and 2004, it already properly established that its excess creditable withholding taxes for taxable years 2002 and 2003 were not carried over to succeeding taxable periods.

In its reply, the petitioner states that the issue on the respondent's failure to present its quarterly income tax returns for taxable years 2002 and 2003, even if not raised by the petitioner at the trial, could be raised before the CTA *En Banc*, because it was interposed as a defense in the answer; and that every issue raised in an answer may be raised on appeal even if it was not taken up in the court of original jurisdiction.

Ruling

The petition is without merit.

Section 76 of the NIRC outlines the mechanisms and remedies that a corporate taxpayer may opt to exercise, *viz*:

> Section 76. *Final Adjusted Return*.- Every corporation liable to tax under Section 27 shall file a final adjustment return covering the total

> taxable income for the preceding calendar of 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:
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> (A) Pay the balance of the tax still due; or
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> (**B) Carry over the excess credit; or**
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> **(C) Be credited or refunded with the excess amount paid, as the case may be.**
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> 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 years 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)

The two options are alternative and not cumulative in nature, that is, the choice of one precludes the other. The logic behind the rule, according to *Philam Asset Management, Inc. v. Commissioner of Internal Revenue*,[14] is to ease tax administration, particularly the self-assessment and collection aspects. In *Philam Asset Management, Inc*., the Court expounds on the two alternative options of a corporate taxpayer on how the choice of one option precludes the other, *viz*:

> 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.
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> 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.
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> **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**.
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> **One cannot get a tax refund and a tax credit at the same time for the same excess income taxes paid**. x x x (emphasis supplied)

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[14] G.R. No. 156637 & G.R. No. 162004, December 14, 2005, 477 SCRA 761, 772.

In *Commissioner of Internal Revenue v. Bank of the Philippine Islands*,[15] the Court, citing the pronouncement in *Philam Asset Management, Inc.*, points out that Section 76 of the NIRC of 1997 is clear and unequivocal in providing that the carry-over option, once actually or constructively chosen by a corporate taxpayer, becomes *irrevocable*. The Court explains:

> Hence, the controlling factor for the operation of the *irrevocability rule* is that the taxpayer chose an option; and once it had already done so, it could no longer make another one. Consequently, after the taxpayer opts to carry-over its excess tax credit to the following taxable period, the question of whether or not it actually gets to apply said tax credit is irrelevant. Section 76 of the NIRC of 1997 is explicit in stating that once the option to carry over has been made, "no application for tax refund or issuance of a tax credit certificate shall be allowed therefor."
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> The last sentence of Section 76 of the NIRC of 1997 reads: "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 tax refund or issuance of a tax credit certificate shall be allowed therefor." The phrase "for that taxable period" merely identifies the excess income tax, subject of the option, by referring to the taxable period when it was acquired by the taxpayer. In the present case, the excess income tax credit, which BPI opted to carry over, was acquired by the said bank during the taxable year 1998. The option of BPI to carry over its 1998 excess income tax credit is irrevocable; it cannot later on opt to apply for a refund of the very same 1998 excess income tax credit.
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> The Court of Appeals mistakenly understood the phrase "for that taxable period" as a prescriptive period for the *irrevocability rule*. This would mean that since the tax credit in this case was acquired in 1998, and BPI opted to carry it over to 1999, then the irrevocability of the option to carry over expired by the end of 1999, leaving BPI free to again take another option as regards its 1998 excess income tax credit. This construal effectively renders nugatory the *irrevocability rule*. The evident intent of the legislature, in adding the last sentence to Section 76 of the NIRC of 1997, is to keep the taxpayer from flip-flopping on its options, and avoid confusion and complication as regards said taxpayer's excess tax credit. The interpretation of the Court of Appeals only delays the flip-flopping to the end of each succeeding taxable period.
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> The Court similarly disagrees in the declaration of the Court of Appeals that to deny the claim for refund of BPI, because of the *irrevocability rule*, would be tantamount to unjust enrichment on the part of the government. The Court addressed the very same argument in *Philam*, where it elucidated that there would be no unjust enrichment in the event of denial of the claim for refund under such circumstances, because there would be no forfeiture of any amount in favor of the government. **The amount being claimed as a refund would remain in the account of the taxpayer until utilized in succeeding taxable years, as provided in Section 76 of the NIRC of 1997. It is worthy to note**

[15] G.R. No. 178490, July 7, 2009, 592 SCRA 219.

> **that unlike the option for refund of excess income tax, which prescribes after two years from the filing of the FAR, there is no prescriptive period for the carrying over of the same. Therefore, the excess income tax credit of BPI, which it acquired in 1998 and opted to carry over, may be repeatedly carried over to succeeding taxable years, *i.e.*, to 1999, 2000, 2001, and so on and so forth, until actually applied or credited to a tax liability of BPI.**[16] (emphasis ours)

In the instant case, the respondent opted to be refunded or to be issued a tax credit certificate, not to carry over the excess withholding tax for taxable year 2002 to the following taxable year. The taking of the option was duly noted by the CTA *En Banc*, citing the decision of the CTA in Division, as follows:

> Under Line 30 of the 2002 Annual ITR, petitioner marked "x" the box "To be refunded". In order to prove that petitioner did not carry-over its 2002 excess withholding tax, petitioner presented its 2003 Annual ITR which does not have any entry in Line 27A "Prior Year's Excess Credits." Under Line 31 of the same 2003 Annual ITR, petitioner marked "x" the box "To be refunded" and petitioner presented its 2004 Annual ITR, showing no entry in Line 27A "Prior Year's Excess Credit" to prove that it did not carry-over its 2003 excess withholding tax.[17]

Consequently, the only issue that remains is whether the respondent was entitled to the refund of excess withholding tax.

The requirements for entitlement of a corporate taxpayer for a refund or the issuance of tax credit certificate involving excess withholding taxes are as follows:

1. That the claim for refund was filed within the two-year reglementary period pursuant to Section 229[18] of the NIRC;

2. When it is shown on the ITR that the income payment received is being declared part of the taxpayer's gross income; and

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16 Id. at 231-233.

17 *Rollo*, pp. 41-42.

18 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 excessive or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner of Internal Revenue; 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.

> 3. 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 income tax withheld from that amount.

We do not expound anymore on the first requirement because even the petitioner does not contest that the respondent filed its administrative and judicial claim for refund within the statutory period.

With regard to the second requirement, it is fundamental that the findings of fact by the CTA in Division are not to be disturbed without any showing of grave abuse of discretion considering that the members of the Division are in the best position to analyze the documents presented by the parties.[19] Consequently, we adopt the findings of the CTA in Division, which the CTA *En Banc* cited, as follows.

> The abovementioned declarations are further supported by the testimonies of Ms. Imelda Dela Cruz Tagama, petitioner's Accounting Manager and Mr. Ruben R. Rubio, the Independent Certified Public Accountant (ICPA) duly commissioned by the Court, proving that the total amount of Creditable Withholding Tax per petitioner's Annual ITRs for calendar years ended December 31, 2002 and December 31, 2003 agrees with the total amount of Creditable Withholding Tax presented on petitioner's Schedule of Creditable Withholding Tax Certificates for the calendar years ended December 31, 2002 and December 31, 2003. Moreover, the total amount of gross sales/revenue reported in the Annual ITRs for calendar years 2002 and 2003 is equal to the amounts recorded in the General Ledger Listing of the Creditable Withholding Tax on the Transfer of Real Property and Sale of Electricity, 2002 Reconciliation of Revenue per ITR and per General Ledger. *Hence, the third requirement is satisfied.*[20]

With respect to the third requirement, the respondent proved that it had met the requirement by presenting the 10 certificates of creditable taxes withheld at source. The petitioner did not challenge the respondent's compliance with the requirement.

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, the petitioner should have presented rebuttal evidence to shift the burden of evidence back to the respondent. Indeed, the petitioner ought to have its own copies of the respondent's quarterly returns on file, on the basis of which it could rebut

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19 *Sea-Land Service Inc. v. Court of Appeals*, G.R. No. 122605, April 30, 2001, 357 SCRA 441, 445-446.
20 *Rollo*, p. 43.

the respondent's claim that it did not carry over its unutilized and excess creditable withholding taxes for the immediately succeeding quarters. 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.[21]

WHEREFORE, we **DENY** the petition for review on *certiorari*, and **AFFIRM** the decision promulgated on April 15, 2009.

SO ORDERED.

LUCAS P. BERSAMIN
Associate Justice

WE CONCUR:

See Separate Concurring Opinion

MARIA LOURDES P. A. SERENO
Chief Justice

TERESITA J. LEONARDO-DE CASTRO
Associate Justice

JOSE PORTUGAL PEREZ
Associate Justice

ESTELA M. PERLAS-BERNABE
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

MARIA LOURDES P. A. SERENO
Chief Justice

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[21] Supra note 14, at 775.