



Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

WINEBRENNER & IÑIGO
INSURANCE BROKERS, INC.,
Petitioner,

G.R. No. 206526

Present:

- versus -

CARPIO, J., *Chairperson*,
VELASCO, JR.,*
DEL CASTILLO,
MENDOZA, and
LEONEN, JJ.

COMMISSIONER OF
INTERNAL REVENUE,
Respondent.

Promulgated:

JAN 28 2015

X ----- X

DECISION

MENDOZA, J.:

In this petition for review under Rule 45 of the Rules of Court and Rule 16 of the Revised Rules of the Court of Tax Appeals, Winebrenner & Iñigo Insurance Brokers, Inc. (*petitioner*) seeks the review of the March 22, 2013 Decision¹ of the Court of Tax Appeals En Banc (*CTA-En Banc*). In the said decision, the *CTA-En Banc* affirmed the denial of petitioner's judicial claim for refund or issuance of tax credit certificate for excess and unutilized creditable withholding tax (*CWT*) for the 1st to 4th quarter of calendar year (*CY*) 2003 amounting to ₱4,073,954.00. In denying the refund, the *CTA-En Banc* held that petitioner failed to prove that the excess *CWT* for *CY* 2003 was not carried over to the succeeding quarters of the subject taxable year. Under the 1997 National Internal Revenue Code (*NIRC*), a taxpayer must

* Designated Acting member in lieu of Associate Justice Arturo D. Brion, per Special Order No. 1910, dated January 12, 2015.

¹ *Rollo*, pp. 36-49. Penned by Associate Justice Erlinda P. Uy, with Associate Justices Lovell R. Bautista, Caesar A. Casanova, Cielito N. Mindaro-Grulla and Amelita R. Cotangco-Manalastas, concurring and with Associate Justices Juanito C. Castañeda and Esperanza R. Fabon-Victorino, dissenting.

not have exercised the option to carry over the excess CWT for a particular taxable year in order to qualify for refund.

The Factual Antecedents

On April 15, 2004, petitioner filed its Annual Income Tax Return for CY 2003.

About two years thereafter or on April 7, 2006, petitioner applied for the administrative tax credit/refund claiming entitlement to the refund of its excess or unutilized CWT for CY 2003, by filing BIR Form No. 1914 with the Revenue District Office No. 50 of the Bureau of Internal Revenue (*BIR*).

There being no action taken on the said claim, a petition for review was filed by petitioner before the CTA on April 11, 2006. The case was docketed as CTA Case No. 7440 and was raffled to the Special First Division (*CTA Division*).

On April 13, 2010, CTA Division partially granted petitioner's claim for refund of excess and unutilized CWT for CY 2003 in the reduced amount of ₱2,737,903.34 in its April 13, 2010 Decision² (*original decision*). The dispositive portion of the decision reads:

In view of the foregoing, the Petition for Review is hereby PARTIALLY GRANTED. Accordingly, respondent is hereby ORDERED to REFUND or ISSUE A TAX CREDIT CERTIFICATE in favor of the petitioner in the reduced amount of ₱2,737,903.34 representing its excess/unutilized creditable withholding taxes for the year 2003.

SO ORDERED.³

Petitioner filed a Motion for Partial Reconsideration with Leave to Submit Supplemental Evidence. It prayed that an amended decision be issued granting the entirety of its claim for refund, or in the alternative, that it be allowed to submit and offer relevant documents as supplemental evidence.

² Id. at 56-69. Penned by Associate Justice Caesar A. Casanova, with then Presiding Justice Ernesto D. Acosta and Associate Justice Lovell R. Bautista, concurring.

³ Id. at 68.

Respondent Commissioner of Internal Revenue (*CIR*) also moved for reconsideration, praying for the denial of the entire amount of refund because petitioner failed to present the quarterly Income Tax Returns (*ITRs*) for CY 2004. To the CIR, the presentation of the 2004 quarterly ITRs was indispensable in proving petitioner's entitlement to the claimed amount because it would prove that no carry-over of unutilized and excess CWT for the four (4) quarters of CY 2003 to the succeeding four (4) quarters of CY 2004 was made. In the absence of said ITRs, no refund could be granted. In the CIR's view, this was in accordance with the irrevocability rule under Section 76 of the NIRC which reads:

SEC. 76. *Final Adjustment Return.* – Every corporation liable to tax under Section 27 shall file an 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 credits; 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.

On July 27, 2011, the CTA-Division *reversed* itself. In an Amended Decision,⁴ it denied the entire claim of petitioner. It reasoned out that petitioner should have presented as evidence its first, second and third quarterly ITRs for the year 2004 to prove that the unutilized CWT being claimed had not been carried over to the succeeding quarters. Thus:

⁴ Id. at 71-85. Penned by Associate Justice Caesar A. Casanova, with Presiding Justice Ernesto D. Acosta, concurring.

WHEREFORE, in view of the foregoing, petitioner's Motion for Partial Reconsideration is hereby **DENIED** while respondent's Motion for Reconsideration is hereby **GRANTED**. Accordingly, the Decision dated April 13, 2010 granting petitioner's claim in the reduced amount of ₱2,737,903.34 is hereby **REVERSED AND SET ASIDE**. Consequently, the instant Petition for Review is hereby **DENIED** due to insufficiency of evidence.

SO ORDERED.⁵

Aggrieved, petitioner elevated the case to the CTA *En Banc* praying for the reversal of the Amended Decision of the CTA Division.

In its March 22, 2013 Decision,⁶ the CTA-*En Banc* affirmed the Amended Decision of the CTA-Division. It stated that before a cash refund or an issuance of tax credit certificate for unutilized excess tax credits could be granted, it was essential for petitioner to establish and prove, by presenting the quarterly ITRs of the succeeding years, that the excess CWT was not carried over to the succeeding taxable quarters considering that the option to carry over in the succeeding taxable quarters could not be modified in the final adjustment returns (*FAR*). Because petitioner did not present the first, second and third quarterly ITRs for CY 2004, despite having offered and submitted the Annual ITR/*FAR* for the same year, the CTA-*En Banc* stated that the petitioner failed to discharge its burden, hence, no refund could be granted. In justifying its conclusions, the CTA-*En Banc* cited its own case of *Millennium Business Services, Inc. v. Commissioner of Internal Revenue (Millennium)*⁷ wherein it held as follows:

Since the burden of proof is upon the claimant to show that the amount claimed was not utilized or carried over to the succeeding taxable quarters, the presentation of the succeeding quarterly income tax return and final adjustment return is indispensable to prove that it did not carry over or utilized the claimed excess creditable withholding taxes. Absent thereof, there will be no basis for a taxpayer's claim for refund since there will be no evidence that the taxpayer did not carry over or utilize the claimed excess creditable withholding taxes to the succeeding taxable quarters.

⁵ Id. at 84-85.

⁶ Id. at 36-49. Penned by Associate Justice Erlinda P. Uy, with Associate Justices Lovell R. Bautista, Caesar A. Casanova, Cielito N. Mindaro-Grulla and Amelita R. Cotangco-Manalastas, concurring and with Associate Justices Juanito C. Castañeda and Esperanza R. Fabon-Victorino, dissenting.

⁷ CTA EB No. 510, Decision dated September 28, 2010, with Entry of Judgment dated October 28, 2010, https://www.google.com.ph/?gws_rd=ssl#q=CTA+EB+510+; last visited August 29, 2014.

Significantly, a taxpayer may amend its quarterly income tax return or annual income tax return or Final Adjustment Return, which in any case may modify the previous intention to carry-over, apply as tax credit certificate or refund, as the case may be. But the option to carry over in the succeeding taxable quarters under the irrevocability rule cannot be modified in its final adjustment return.

The presentation of the final adjustment return does not shift the burden of proof that the excess creditable withholding tax was not utilized or carried over to the first three (3) taxable quarters. It remains with the taxpayer claimant. It goes without saying that final adjustment returns of the preceding and the succeeding taxable years are not sufficient to prove that the amount claimed was utilized or carried over to the first three (3) taxable quarters.

The importance of the presentation of the succeeding quarterly income tax return and the annual income tax return of the subsequent taxable year need not be overly emphasized. All corporations subject to income tax, are required to file quarterly income tax returns, on a cumulative basis for the preceding quarters, upon which payment of their income tax has been made. In addition to the quarterly income tax returns, corporations are required to file a final or adjustment return on or before the fifteenth day of April. The quarterly income tax return, like the final adjustment return, is the most reliable firsthand evidence of corporate acts pertaining to income taxes, as it includes the itemization and summary of additions to and deductions from the income tax due. These entries are not without rhyme or reason. They are required, because they facilitate the tax administration process, and guide this Court to the veracity of a petitioner's claim for refund without which petitioner could not prove with certainty that the claimed amount was not utilized or carried over to the succeeding quarters or the option to carry over and apply the excess was effectively chosen despite the intent to claim a refund.

In the same vein, if the government wants to disprove that the excess creditable withholding tax was not utilized or carried over to the succeeding taxable quarters, the presentation of the succeeding quarterly income tax return and the annual income tax return of the subsequent taxable year indicating utilization or carrying over are [sic] indispensable. However, the claimant must first establish its claim for refund, such that it did not utilize or carry over or that it opted to utilize and carry over to the 1st, 2nd, 3rd quarters and final adjustment return of the succeeding taxable year.

Concomitantly, the presentation of the quarterly income tax return and the annual income tax return to prove the fact that excess creditable withholding tax was not utilized or carried over or opted to be utilized and carried over to the 1st, 2nd, 3rd quarters

and final adjustment return of the succeeding taxable quarter is not only for convenience to facilitate the tax administration process but it is part of the requisites to establish the claim for refund. Section 76 of the NIRC of 1997 provides that if the taxpayer claimant carries over and applies the excess quarterly income tax against the income tax due for the taxable quarters of the succeeding taxable years, the same is irrevocable and no application for cash refund or issuance of a tax credit certificate shall be allowed.⁸

Hence, this petition.

Noteworthy is the fact that the CTA-*En Banc* ruling was met with two dissents from Associate Justices Juanito C. Castañeda (*Justice Castañeda*) and Esperanza R. Fabon-Victorino (*Justice Fabon-Victorino*).

In his Dissenting Opinion⁹ which was concurred in by Justice Fabon-Victorino, Justice Castañeda expressed the view that the CTA-*En Banc* should have reinstated the CTA-Division's original decision because in the cases of *Philam Asset Management Inc. v. Commissioner of Internal Revenue (Philam)*;¹⁰ *State Land Investment Corporation v. Commissioner of Internal Revenue (State Land)*;¹¹ *Commissioner of Internal Revenue v. PERF Realty Corporation (PERF Realty)*;¹² and *Commissioner of Internal Revenue v. Mirant (Philippines) Operations, Corporation (Mirant)*,¹³ this Court already ruled that requiring the ITR or the FAR for the succeeding year in a claim for refund had no basis in law and jurisprudence. According to him, the submission of the FAR of the succeeding taxable year was not required under the law to prove the claimant's entitlement to excess or unutilized CWT, and by following logic, the submission of quarterly income tax returns for the subsequent taxable period was likewise unnecessary. He found no justifiable reason not to follow the existing rulings of this Court.

Petitioner's reasoning in this petition echoes the dissenting opinion of Justice Castaneda. It further submits that despite the non-presentation of the quarterly ITRs, it has sufficiently shown that the excess CWT for CY 2003 was not carried over or applied to its income tax liabilities for CY 2004, as shown in the Annual ITR for 2004 it submitted. Thus, petitioner insists that its refund should have been granted. Petitioner further avers, in its Reply,¹⁴

⁸ *Rollo*, p. 45-47. Penned by Associate Justice Cielito N. Mindaro-Grulla, with then Presiding Justice Ernesto D. Acosta, Associate Justices Juanito C. Castañeda, Lovell R. Bautista, Erlinda P. Uy, Caesar A. Casanova, Olga Palanca-Enriquez and Amelia R. Cotangco-Manalastas, concurring.

⁹ *Id.* at 50-54.

¹⁰ 514 Phil. 147 (2005).

¹¹ 566 Phil. 113 (2008).

¹² 579 Phil. 442 (2008).

¹³ G.R. No. 171742, June 15, 2011, 652 SCRA 80.

¹⁴ *Rollo*, no pagination [counted as pp. 121-131].

that even if *Millennium Business* case was applicable, such must be given prospective effect considering that this case was litigated on the basis of the doctrines laid down in *Philam, State Land* and *PERF Realty* cases wherein the submission of quarterly ITRs in a case for tax refund was held by this Court as not mandatory.

In its Comment,¹⁵ the CIR counters that even if the taxpayer signifies the option for either tax refund or carry-over as tax credit, this does not *ipso facto* confer the right to avail of the option immediately. There is a need, according to the CIR, for an investigation to ascertain the correctness of the corporate returns and the amount sought to be credited; and part of which is to look into the quarterly returns so that it may be determined whether or not excess and unutilized CWT was carried over into the succeeding quarters of the next taxable year. Because the pertinent quarterly ITRs were not presented, the CIR submits that the petitioner failed to prove its right to a tax refund.

Issue

The sole issue here is whether the submission and presentation of the quarterly ITRs of the succeeding quarters of a taxable year is indispensable in a claim for refund.

The Court's Ruling

The Court recognizes, as it always has, that the burden of proof to establish entitlement to refund is on the claimant taxpayer.¹⁶ Being in the nature of a claim for exemption,¹⁷ refund is construed in *strictissimi juris* against the entity claiming the refund and in favor of the taxing power.¹⁸ This is the reason why a claimant must positively show compliance with the statutory requirements provided for under the NIRC in order to successfully pursue one's claim. As implemented by the applicable rules and regulations and as interpreted in a vast array of decisions, a taxpayer who seeks a refund of excess and unutilized CWT must:

¹⁵ Id. at 90-106.

¹⁶ *Eastern Telecommunications Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 168856, August 29, 2012, 679 SCRA 305, 316, citing *Philippine Phosphate Fertilizer Corporation v. Commissioner of Internal Revenue*, 500 Phil. 149, 163 (2005).

¹⁷ *Commissioner of Internal Revenue v. Solidbank Corp.*, 462 Phil. 96, 132 (2003); citations omitted.

¹⁸ *Atlas Consolidated Mining and Development Corporation v. Commissioner of Internal Revenue*, 569 Phil. 483, 494 (2008).

- 1) File the claim with the CIR within the two year period from the date of payment of the tax;
- 2) Show on the return that the income received was declared as part of the gross income; and
- 3) Establish the fact of withholding by a copy of a statement duly issued by the payor to the payee showing the amount paid and the amount of tax withheld.¹⁹

The original decision of the CTA-Division made plain that the petitioner complied with the above requisites in so far as the reduced amount of ₱2,737,903.34 was concerned. In the amended decision, however, it was pointed out that because petitioner failed to present the quarterly ITRs of the subsequent year, there was an impossibility of determining compliance with the irrevocability rule under Section 76 of the NIRC as in those documents could be found evidence of whether the excess CWT was applied to its income tax liabilities in the quarters of 2004. The irrevocability rule under Section 76 of the NIRC means that once an option, either for refund or issuance of tax credit certificate or carry-over of CWT has been exercised, the same can no longer be modified for the succeeding taxable years.²⁰ For said reason, the CTA-*En Banc* affirmed the conclusion in the amended decision that because of the said impossibility, the claim for refund was not substantiated.

The CIR agrees with the disposition of the CTA-*En Banc*, stressing that the petitioner failed to carry out the burden of showing that no carry-over was made when it did not present the quarterly ITRs for CY 2004.

Petitioner disagrees, as the dissents did, that the non-submission of quarterly ITRs is fatal to its claim.

Hence, the issue on the indispensability of quarterly ITRs of the succeeding taxable year in a claim for refund.

¹⁹ *Commissioner of Internal Revenue v. Mirant (Philippines) Operations Corporation*, G.R. No. 171742, June 15, 2011, 652 SCRA 80, 95 and *Commissioner of Internal Revenue v. Team (Philippines) Operations Corporation*, G.R. No. 185728, October 16, 2013, 707 SCRA 467, 474, citing *Commissioner of Internal Revenue v. Far East Bank & Trust Company (now Bank of the Philippine Islands)*, G.R. No. 173854, March 15, 2010, 615 SCRA 417, 424, further citing *Banco Filipino Savings and Mortgage Bank v. Court of Appeals*, 548 Phil. 32, 36-37 (2007).

²⁰ *Asiaworld Properties Philippine Corporation v. Commissioner of Internal Revenue*, G.R. No. 171766, July 29, 2010, 626 SCRA 172, 179.

The Court finds for the petitioner.

There is no question that those who claim must not only prove its entitlement to the excess credits, but likewise must prove that no carry-over has been made in cases where refund is sought.

In this case, the fact of having carried over petitioner's 2003 excess credits to succeeding taxable year is in issue. According to the *CTA-En Banc* and the CIR, the only evidence that can sufficiently show that carrying over has been made is to present the quarterly ITRs. Some members of this Court adhere to the same view.

The Court however cannot.

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

In *Philam*, the petitioner therein sought for recognition of its right to the claimed refund of unutilized CWT. The CIR opposed the claim, on the grounds similar to the case at hand, that no proof was provided showing the non-carry over of excess CWT to the subsequent quarters of the subject year. In a categorical manner, the Court ruled that the presentation of the quarterly ITRs was not necessary. Therein, it was written:

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 provisions of the [NIRC] 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.

Second, Section 5 of RR 12-94, amending Section 10(a) of RR 6-85, merely provides that claims for 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.

It has been submitted that *Philam* cannot be cited as a precedent to hold that the presentation of the quarterly income tax return is not indispensable as it appears that *the quarterly returns for the succeeding year were presented* when the petitioner therein filed an administrative claim for the refund of its excess taxes withheld in 1997.

It appears however that there is misunderstanding in the ruling of the Court in *Philam*. That factual distinction does not negate the proposition that subsequent quarterly ITRs are not indispensable. The logic in not requiring quarterly ITRs of the succeeding taxable years to be presented remains true to this day. 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 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. 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.

The implementing rules similarly support this conclusion, particularly Section 2.58.3 of Revenue Regulation No. 2-98 thereof. There, it provides as follows:

SECTION 2.58.3. *Claim for Tax Credit or Refund.*

(A) The amount of creditable tax withheld shall be allowed as a tax credit against the income tax liability of the payee in the quarter of the taxable year in which income was earned or received.

(B) Claims for tax credit or refund of any creditable income tax which was deducted and withheld on income payments shall be given due course only when it is shown that the income payment has been declared as part of the gross income and the fact of withholding is established by a copy of the withholding tax statement duly issued by the payer to the payee showing the amount paid and the amount of tax withheld therefrom.

xxx xxx xxx

Evident from the above is the absence of any categorical pronouncement of requiring the presentation of the succeeding quarterly ITRs in order to prove the fact of non-carrying over. To say the least, the Court rules that as to the means of proving it, It has no power to *unduly* restrict it.

In this case, it confounds the Court why the CTA did not recognize and discuss in detail the sufficiency of the annual ITR for 2004,²¹ which was submitted by the petitioner. The CTA in fact said:

In the present case, while petitioner did offer its Annual ITR/Final Adjustment Return for taxable year 2004, it appears that petitioner miserably failed to submit and offer as part of its evidence the first, second, and third Quarterly ITRs for the year 2004. Consequently, petitioner was not able to prove that it did not exercise its option to carry-over its excess CWT.²²

Petitioner claims that the requirement of proof showing the non-carry over has been established in said document.

Indeed, an annual ITR contains the total taxable income earned for the four (4) quarters of a taxable year, as well as deductions and tax credits previously reported or carried over in the quarterly income tax returns for the subject period. A quick look at the Annual ITR reveals this fact:

Aggregate Income Tax Due
Less Tax Credits/Payments
Prior Year's excess Credits – Taxes withheld
 Tax Payment (s) for the Previous Quarter (s) of the same taxable year
 other than MCIT

²¹ CA records, Vol. 1, pp. 809-810.

²² *Rollo*, p. 45.

xxx	xxx	xxx
Creditable Tax Withheld for the Previous Quarter (s)		
Creditable Tax Withheld Per BIR Form No. 2307 for this Quarter		
xxx	xxx	xxx ²³

It goes without saying that the annual ITR (including any other proof that may be sufficient to the Court) can sufficiently reveal whether carry over has been made in subsequent quarters even if the petitioner has chosen the option of tax credit or refund in the immediately 2003 annual ITR.

Section 76 of the NIRC requires a corporation to file a Final Adjustment Return (or Annual ITR) covering the total taxable income for the preceding calendar or fiscal year. The total taxable income contains the combined income for the four quarters of the taxable year, as well as the deductions and excess tax credits carried over in the quarterly income tax returns for the same period.

If the excess tax credits of the preceding year were deducted, whether in whole or in part, from the estimated income tax liabilities of any of the taxable quarters of the succeeding taxable year, the total amount of the tax credits deducted for the entire taxable year should appear in the Annual ITR under the item "Prior Year's Excess Credits." Otherwise, or if the tax credits were carried over to the succeeding quarters and the corporation did not report it in the annual ITR, there would be a discrepancy in the amounts of combined income and tax credits carried over for all quarters and the corporation would end up shouldering a bigger tax payable. It must be remembered that *taxes computed in the quarterly returns are mere estimates. It is the annual ITR which shows the aggregate amounts of income, deductions, and credits for all quarters of the taxable year. It is the final adjustment return which shows whether a corporation incurred a loss or gained a profit during the taxable quarter.*²⁴ Thus, the presentation of the annual ITR would suffice in proving that prior year's excess credits were not utilized for the taxable year in order to make a final determination of the total tax due.

In this case, petitioner reported an overpayment in the amount of ₱7,194,213.00 in its annual ITR for the year ended December 2003:

<u>Annual ITR 2003</u>	
Income Tax Due	1,259,259.00
Less: Prior Year's Excess Credits (2002 Annual ITR)	(4,379,518.00)
Creditable Tax Withheld for the 4th Quarter	(4,073,954.00)
Tax Payable / (Overpayment)	(7,194,213.00)

²³ See BIR Form No. 1702 Annual Income Tax Return.

²⁴ *BPI-Family Savings Bank, Inc. v. Court of Appeals*, 386 Phil. 719 (2000).

For the overpayment, petitioner chose the option “To be issued a Tax Credit Certificate.” In its Annual ITR for the year ended December 2004, petitioner did not report the Creditable Tax Withheld for the 4th quarter of 2003 in the amount of ₱4,073,954.00 as prior year’s excess credits. As shown in the 2004 ITR:

<u>Annual ITR 2004</u>	
Income Tax Due	1,321,409.00
Less: Prior Year’s Excess Credits	-
Creditable Tax Withheld for the 4th Quarter	(3,689,419.00)
Tax Payable / (Overpayment)	(2,368,010.00)

Verily, the absence of any amount written in the Prior Year excess Credit – Tax Withheld portion of petitioner’s 2004 annual ITR clearly shows that no prior excess credits were carried over in the first four quarters of 2004. And since petitioner was able to sufficiently prove that excess tax credits in 2003 were not carried over to taxable year 2004 by leaving the item “Prior Year’s Excess Credits” as blank in its 2004 annual ITR, then petitioner is entitled to a refund. Unfortunately, the CTA, in denying entirely the claim, merely relied on the absence of the quarterly ITRs despite being able to verify the truthfulness of the declaration that no carry over was indeed effected by simply looking at the 2004 annual ITR.

At this point, worth mentioning is the fact that subsequent cases affirm the proposition as correctly pointed out by petitioner. *State Land, PERF* and *Mirant* reiterated the rule that the presentation of the quarterly ITRs of the subsequent year is not mandatory on the part of the claimant to prove its claims.

There are some who challenges the applicability of *PERF* in the case at bar. It is said that *PERF* is not in point because the Annual ITR for the succeeding year had actually been attached to *PERF*’s motion for reconsideration with the CTA and had formed part of the records of the case.

Clearly, if the Annual ITR has been recognized by this Court in *PERF*, why then would the submitted 2004 Annual ITR in this case be insufficient despite the absence of the quarterly ITRs? Why then would this Court require more than what is enough and deny a claim even if the minimum burden has been overcome? At best, the existence of quarterly ITRs would have the effect of strengthening a proven fact. And as such, may only be considered corroborative evidence, obviously not indispensable in character. *PERF* simply affirms that quarterly ITRs are not indispensable, provided that there is sufficient proof that carrying over excess CWT was not effected.

Stateland and *Mirant* are equally challenged. In all these cases however, the factual distinctions only serve to bolster the proposition that succeeding quarterly ITRs are not indispensable. Implicit from all these cases is the Court's recognition that proving carry-over is an evidentiary matter and that the submission of quarterly ITRs is but a means to prove the fact of one's entitlement to a refund and not a condition *sine qua non* for the success of refund. True, it would have been better, easier and more efficient for the CTA and the CIR to have as basis the quarterly ITRs, but it is not the only way considering further that in this case, the Annual ITR for 2004 is sufficient. Courts are here to painstakingly weigh evidence so that justice and equity in the end will prevail.

It must be emphasized that once the requirements laid down by the NIRC have been met, a claimant should be considered successful in discharging its burden of proving its right to refund. Thereafter, the burden of going forward with the evidence, as distinct from the general burden of proof, shifts to the opposing party,²⁵ that is, the CIR. It is then the turn of the CIR to disprove the claim by presenting contrary evidence which could include the pertinent ITRs easily obtainable from its own files.

All along, the CIR espouses the view that it must be given ample opportunity to investigate the veracity of the claims. Thus, the Court asks: In the process of investigation at the administrative level to determine the right of the petitioner to the claimed amount, did the CIR, with all its resources even attempt to verify the quarterly ITRs it had in its files? Certainly, it did not as the application was met by the inaction of the CIR. And if desirous in its effort to clearly verify petitioner's claim, it should have had the time, resources and the liberty to do so. Yet, nothing was produced during trial to destroy the *prima facie* right of the petitioner by counterchecking the claims with the quarterly ITRs the CIR has on its file. 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.

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. Claims for refund are civil in nature and as such, petitioner, as claimant, though having a heavy burden of showing entitlement, need only prove preponderance of evidence in order to recover excess credit in cold cash. To review, "[P]reponderance of evidence is [defined as] the weight, credit, and value of the aggregate evidence

²⁵ *Jimenez v. National Labor Relations Commission*, 326 Phil. 89, 95 (1996).

on either side and is usually considered to be synonymous with the term ‘greater weight of the evidence’ or ‘greater weight of the credible evidence.’ It is evidence which is more convincing to the court as worthy of belief than that which is offered in opposition thereto.²⁶

The CIR must then be reminded that in *Philam*, the CIR’s “*failure to present* [the quarterly ITRs and AFR] to support its contention against the grant of a tax refund to [a claimant] is certainly fatal.” *PERF* reinforces this with a sweeping statement holding that the verification process is not incumbent on *PERF* [or any claimant for that matter]; [but] is the duty of the CIR to verify whether xxx excess income taxes [have been carried over].

And should there be a possibility that a claimant may have violated the irrevocability rule and thereafter claim twice from its credits, no one is to be blamed but the CIR for not discharging its burden of evidence to destroy a claimant’s right to a refund. At any rate, a claimant who defrauds the government cannot escape liability be it criminal or civil in nature.

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 establishing the propriety of the claim for refund has been sufficiently discharged. Hence, the grant of refund is proper.

The Court does not, and cannot, however, grant the entire claimed amount as it finds no error in the original decision of the CTA Division granting refund to the reduced amount of ₱2,737,903.34. This finding of fact is given respect, if not finality, as the CTA,²⁷ which by the very nature of its functions of dedicating itself exclusively to the consideration of the tax problems has necessarily developed an expertise on the subject.²⁸ It being the case, the Court partly grants this petition to the extent of reinstating the April 23, 2010 original decision of the CTA Division.

²⁶ *Peñalber v. Ramos*, G.R. No. 178645, January 30, 2009, 577 SCRA 509, 526-527, citing *Ong v. Yap*, 492 Phil. 188, 196-197 (2005). Emphasis supplied.

²⁷ *Commissioner of Internal Revenue v. Toledo Power, Inc.*, G.R. No. 183880, January 20, 2014, 714 SCRA 276.

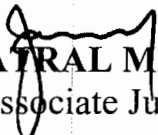
²⁸ *Commissioner of Internal Revenue v. Mirant (Philippines) Operations Corporation*, supra note 19, at 94, citing *Toshiba Information Equipment (Phils.), Inc. v. Commissioner of Internal Revenue*, G.R. No. 157594, March 9, 2010, 614 SCRA 526, 561, further citing *Commissioner of Internal Revenue v. Cebu Toyo Corporation*, 491 Phil. 625, 640 (2005), further citing *Barcelon, Roxas Securities, Inc. (now known as UBP Securities, Inc.) v. Commissioner of Internal Revenue*, 529 Phil. 785, 794-795 (2006).

The Court reminds the CIR that substantial justice, equity and fair play take precedence over technicalities and legalisms. The government must keep in mind that it has no right to keep the money not belonging to it, thereby enriching itself at the expense of the law-abiding citizen²⁹ or entities who have complied with the requirements of the law in order to forward the claim for refund. Under the principle of *solution indebiti* provided in Article 2154 of the Civil Code, the CIR must return anything it has received.³⁰

Finally, even assuming that the Court reverses itself and pronounces the indispensability of presenting the quarterly ITRs to prove entitlement to the claimed refund, petitioner should not be prejudiced for relying on *Philam*. The CTA *En Banc* merely based its pronouncement on a case that does not enjoy the benefit of *stare decisis et non quieta movere* which means "to adhere to precedents, and not to unsettle things which are established."³¹ As between a CTA *En Banc* Decision (*Millennium*) and this Court's Decision (*Philam*), it is elementary that the latter should prevail.

WHEREFORE, the Court partly grants the petition. The March 22, 2013 Decision of the Court of Tax Appeals *En Banc* is **REVERSED**. The April 13, 2010 Decision of the Court of Tax Appeals Special First Division is **REINSTATED**. Respondent Commissioner of Internal Revenue is ordered to **REFUND** to petitioner the amount of ₱2,737,903.34 as excess creditable withholding tax paid for taxable year 2003.

SO ORDERED.


JOSE CATRAL MENDOZA
Associate Justice

²⁹ Supra note 24.


³⁰ *State Land Investment Corporation v. Commissioner of Internal Revenue*, 566 Phil. 113, 122 (2008).

³¹ *Confederation of Sugar Producers Association, Inc. v. Department of Agrarian Reform (DAR)*, 548 Phil. 498, 534 (2007), citing Black's Law Dictionary, Fifth Edition.

WE CONCUR:



ANTONIO T. CARPIO
Associate Justice
Chairperson



PRESBITERO J. VELASCO, JR.
Associate Justice



MARIANO C. DEL CASTILLO
Associate Justice

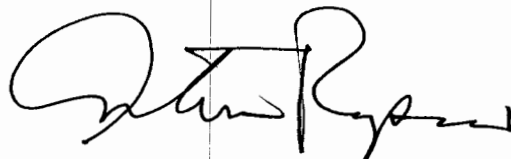
I dissent. See separate opinion



MARVIC M.V.F. LEONEN
Associate Justice

A T T E S T A T I O N

I attest 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.



ANTONIO T. CARPIO
Associate Justice
Chairperson, Second Division

CERTIFICATION

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