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SECOND DIVISION

[G.R. No. 173854. March 15, 2010]

COMMISSIONER OF INTERNAL REVENUE, *petitioner, vs.* **FAR EAST BANK & TRUST COMPANY (NOW BANK OF THE PHILIPPINE ISLANDS),** *respondent.*

SYLLABUS

1. TAXATION; TAX REFUND; REQUISITES.— A taxpayer claiming for a tax credit or refund of creditable withholding tax must comply with the following requisites: 1) The claim must be filed with the CIR within the two-year period from the date of payment of the tax; 2) It must be shown on the return that the income 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.

2. ID.; ID.; ID.; TAXPAYER FAILED TO PROVE THAT THE INCOME RECEIVED WAS INCLUDED IN THE GROSS INCOME AS REFLECTED IN THE RETURN.— To establish the fact of withholding, respondent submitted Certificates of Creditable Tax Withheld at Source and Monthly Remittance Returns of Income Taxes Withheld, which pertain to **rentals and sales of real property**, respectively. However, a perusal of respondent's 1994 Annual Income Tax Return shows that the gross income was derived **solely from sales of services.** In fact, the phrase "NOT APPLICABLE" was printed on the schedules pertaining to rent, sale of real property, and trust income. Thus, based on the entries in the return, the income derived from **rentals and sales of real property** upon which the creditable taxes were withheld **were not included in respondent's gross income as reflected in its return**. Since no income was reported, it follows that no tax was withheld. To reiterate, it is incumbent upon the taxpayer to reflect in his return the income upon which any creditable tax is required to be withheld at the source.

3. ID.; ID.; ID.; TAXPAYER IS REQUIRED TO PRESENT ALL THE CERTIFICATES OF TAX WITHHELD AT SOURCE.— The CA likewise failed to consider in its Decision the absence of several

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Certificates of Creditable Tax Withheld at Source. It immediately granted the refund without first verifying whether the fact of withholding was established by the Certificates of Creditable Tax Withheld at Source as required under Section 10 of Revenue Regulation No. 6-85. As correctly pointed out by the CTA, the certifications *(Exhibit UU)* issued by respondent cannot be considered in the absence of the required Certificates of Creditable Tax Withheld at Source.

4. ID.; ID.; ENTITLEMENT TO A TAX REFUND IS FOR THE TAXPAYER TO PROVE AND NOT FOR THE GOVERNMENT TO DISPROVE; APPLICATION.— [T]he fact that the petitioner failed to present any evidence or to refute the evidence presented by respondent does not *ipso facto* entitle the respondent to a tax refund. It is not the duty of the government to disprove a taxpayer's claim for refund. Rather, the burden of establishing the factual basis of a claim for a refund rests on the taxpayer. And while the petitioner has the power to make an examination of the returns and to assess the correct amount of tax, his failure to exercise such powers does not create a presumption in favor of the correctness of the returns. The taxpayer must still present substantial evidence to prove his claim for refund. As we have said, there is no automatic grant of a tax refund.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.

Benedicto Verzosa Felipe & Burkley Law Offices for respondent.

D E C I S I O N

DEL CASTILLO, *J.*:

Entitlement to a tax refund is for the taxpayer to prove and not for the government to disprove.

This Petition for Review on *Certiorari* assails the January 31, 2006 Decision[1] of the Court of Appeals (CA) in CA-G.R. SP

[1] *Rollo*, pp. 127-139; penned by Associate Justice Edgardo F. Sundiam and concurred in by Associate Justices Martin S. Villarama, Jr. (now a Member of this Court) and Japar B. Dimaampao.

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No. 56773 which reversed and set aside the October 4, 1999 Decision[2] of the Court of Tax Appeals (CTA) in CTA Case No. 5487. Also assailed is the July 19, 2006 Resolution[3] of the CA denying the motion for reconsideration.

The CTA found that respondent Far East Bank & Trust Company failed to prove that the income derived from rentals and sale of real property from which the taxes were withheld were reflected in its 1994 Annual Income Tax Return. The CA found otherwise.

Factual Antecedents

On April 10, 1995, respondent filed with the Bureau of Internal Revenue (BIR) two Corporate Annual Income Tax Returns, one for its Corporate Banking Unit (CBU)[4] and another for its Foreign Currency Deposit Unit (FCDU),[5] for the taxable year ending December 31, 1994. The return for the CBU consolidated the respondent's overall income tax liability for 1994, which reflected a refundable income tax of ₱12,682,864.00, computed as follows:

	FCDU	CBU
Gross Income	₱13,319,068	5,348,080,630
Less: Deductions	1,397,157	5,432,828,719
Net Income	11,921,911	[84,748,089]
Tax Rate	35%	35%
Income Tax Due Thereon	4,172,669	NIL
Consolidated Tax Due for Both CBU and FCDU Operations	₱ 4,172,669	

[2] *Id.* at 142-151; penned by Associate Justice Amancio Q. Saga and concurred in by Presiding Justice Ernesto D. Acosta and Associate Justice Ramon O. De Veyra.

[3] *Id.* at 140-141.

[4] *Id.* at 154-155.

[5] *Id.* at 178.

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Less:

Quarterly Income Tax Payments	
CBU - 1st Quarter	633,085
- 2nd Quarter	11,844,333
FCDU - 1st Quarter	955,280
- 2nd Quarter	1,104,942
Less:	
Creditable Taxes Withheld at Source	2,317,893
Refundable Income Tax	[₱12,682,864][6]

Pursuant to Section 69[7] of the old National Internal Revenue Code (NIRC), the amount of ₱12,682,864.00 was carried over and applied against respondent's income tax liability for the taxable year ending December 31, 1995. On April 15, 1996, respondent filed its 1995 Annual Income Tax Return, which showed a total overpaid income tax in the amount of ₱17,443,133.00, detailed as follows:

	FCDU	CBU
Gross Income	₱16,531,038	7,076,497,628
Less: Deductions	1,327,549	7,086,821,354
Net Income	15,203,539	[10,423,728]
Tax Rate	35%	35%
Income Tax Due Thereon	5,321,239	NIL
Consolidated Tax Due for Both CBU and FCDU Operations	₱ 5,321,239	

[6] *Id.* at 143.

[7] Section 69. Final Adjustment Return. — Every corporation liable to tax under Section 24 shall file a final adjustment return covering the total net 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 net income of that year the corporation shall either:

(a) Pay the excess still due; or

(b) Be refunded the excess amount paid, as the case may be.

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Less:	
Prior year's (1994) excess income tax credit	12,682,864
Additional prior year's excess income tax cred	6,283,484
Creditable Taxes Withheld at Source	3,798,024
Refundable Income Tax	[₱17,443,133][8]

Out of the ₱17,433,133.00 refundable income tax, only ₱13,645,109.00 was sought to be refunded by respondent. As to the remaining ₱3,798,024.00, respondent opted to carry it over to the next taxable year.

On May 17, 1996, respondent filed a claim for refund of the amount of ₱13,645,109.00 with the BIR. Due to the failure of petitioner Commissioner of Internal Revenue (CIR) to act on the claim for refund, respondent was compelled to bring the matter to the CTA on April 8, 1997 *via* a Petition for Review docketed as CTA Case No. 5487.

After the filing of petitioner's Answer, trial ensued.

To prove its entitlement to a refund, respondent presented the following documents:

Exhibits	Nature and Description
A	Corporate Annual Income Tax Return covering income of respondent's CBU for the year ended December 31, 1994 together with attachments
B	Corporate Annual Income Tax Return covering income of respondent's FCDU for the year ended December 31, 1994 together with attachments

In case the corporation is entitled to a refund of the excess estimated quarterly income taxes paid, the refundable amount shown on its final adjustment return may be credited against the estimated quarterly income tax liabilities for the taxable quarters of the succeeding taxable year. *(Now Section 76 of the NIRC of 1997).*

[8] *Rollo*, p. 143.

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C	Corporate Annual Income Tax Return covering income of respondent's CBU for the year ended December 31, 1995 together with attachments
D	Corporate Annual Income Tax Return covering income of respondent's FCDU for the year ended December 31, 1995 together with attachments
N to Z; AA to UU	Certificates of Creditable Withholding Tax and Monthly Remittance Returns of Income Taxes Withheld issued by various withholding agents for the year ended December 31, 1994
VV	Letter claim for refund dated May 8, 1996 filed with the Revenue District Office No. 33 on May 17, 1996[9]

Petitioner, on the other hand, did not present any evidence.

Ruling of the Court of Tax Appeals

On October 4, 1999, the CTA rendered a Decision denying respondent's claim for refund on the ground that respondent failed to show that the income derived from rentals and sale of real property from which the taxes were withheld were reflected in its 1994 Annual Income Tax Return.

On October 20, 1999, respondent filed a Motion for New Trial based on excusable negligence. It prayed that it be allowed to present additional evidence to support its claim for refund.

However, the motion was denied on December 16, 1999 by the CTA. It reasoned, thus:

[Respondent] is reminded that this case was originally submitted for decision as early as September 22, 1998 (p. 497, CTA Records). In view, however, of the Urgent Motion to Admit Memorandum filed on April 27, 1999 by Atty. Louella Martinez, who entered her

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[9] *Id.* at 147-148.

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appearance as collaborating counsel of Atty. Manuel Salvador allegedly due to the latter counsel's absences, this Court set aside its resolution of September 22, 1998 and considered this case submitted for decision as of May 7, 1999. Nonetheless, it took [respondent] another five months after it was represented by a new counsel and after a decision unfavorable to it was rendered before [respondent] realized that an additional material documentary evidence has to be presented by way of a new trial, this time initiated by a third counsel coming from the same law firm. x x x

Furthermore, in ascertaining whether or not the income upon which the taxes were withheld were included in the returns of the [respondent], this Court based its findings on the income tax returns and their supporting schedules prepared and reviewed by the [respondent] itself and which, to Us, are enough to support the conclusion reached.

WHEREFORE, in view of the foregoing, [respondent's] Motion for New Trial is hereby **DENIED** for lack of merit.

SO ORDERED.[10]

Ruling of the Court of Appeals

On appeal, the CA reversed the Decision of the CTA. The CA found that respondent has duly proven that the income derived from rentals and sale of real property upon which the taxes were withheld were included in the return as part of the gross income.

Hence, this present recourse.

Issue

The lone issue presented in this petition is whether respondent has proven its entitlement to the refund.[11]

Our Ruling

We find that the respondent miserably failed to prove its entitlement to the refund. Therefore, we grant the petition filed by the petitioner CIR for being meritorious.

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[10] *Id.* at 152-153.

[11] *Id.* at 111.

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A taxpayer claiming for a tax credit or refund of creditable withholding tax must comply with the following requisites:

1) The claim must be filed with the CIR within the two-year period from the date of payment of the tax;

2) It must be shown on the return that the income 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.[12]

The two-year period requirement is based on Section 229 of the NIRC of 1997 which provides that:

SECTION 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; 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. *(Formerly Section 230 of the old NIRC)*

While the second and third requirements are found under Section 10 of Revenue Regulation No. 6-85, as amended, which reads:

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[12] *Banco Filipino Savings and Mortgage Bank v. Court of Appeals,* G.R. No. 155682, March 27, 2007, 519 SCRA 93, 96.

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Section 10. *Claims for tax credit or refund.* — Claims for tax credit or refund of income tax deducted and withheld on income payments shall be given due course only when it is shown on the return that the income payment received was declared as part of the gross income and the fact of withholding is established by a copy of the statement duly issued by the payer to the payee (BIR Form No. 1743.1) showing the amount paid and the amount of tax withheld therefrom.

Respondent timely filed its claim for refund.

There is no dispute that respondent complied with the first requirement. The filing of respondent's administrative claim for refund on May 17, 1996 and judicial claim for refund on April 8, 1997 were well within the two-year period from the date of the filing of the return on April 10, 1995.[13]

Respondent failed to prove that the income derived from rentals and sale of real property were included in the gross income as reflected in its return.

However, as to the second and third requirements, the tax court and the appellate court arrived at different factual findings.

The CTA ruled that the income derived from rentals and sales of real property were not included in respondent's gross income. It noted that in respondent's 1994 Annual Income Tax Return, the phrase "NOT APPLICABLE" was printed on the space provided for rent, sale of real property and trust income. The CTA also declared that the certifications issued by respondent cannot be considered in the absence of the Certificates of Creditable Tax Withheld at Source. The CTA ruled that:

x x x the Certificates of Creditable Tax Withheld at Source submitted by [respondent] pertain to rentals of real property while the Monthly Remittance Returns of Income Taxes Withheld refer to sales of real

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[13] *Rollo,* p. 149.

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property. But, if we are to look at Schedules 3, 4, and 5 of the Annual Income Tax Return of [respondent] for 1994 (Exhibit "A"), **there was no showing that the Rental Income and Income from Sale of Real Property were included as part of the gross income appearing in Section A of the said return.** In fact, under the said schedules, the phrase "NOT APPLICABLE" was printed by [respondent]. Verily, the **income of [respondent] coming from rent and sale of real property upon which the creditable taxes withheld were based were not duly reflected.** As to the certifications issued by the [respondent] (Exh. UU), **the same cannot be considered in the absence of the requisite Certificates of Creditable Tax Withheld at Source.**

Based on the foregoing, **[respondent] has failed to comply with two essential requirements for a valid claim for refund.** Consequently, the same cannot be given due course.[14] (Emphasis supplied)

On the other hand, the CA found thus:

We disagree with x x x CTA's findings. In the case of *Citibank, N.A. vs. Court of Appeals (280 SCRA 459)*, the Supreme Court held that:

> "**a refund claimant is required to prove the inclusion of the income payments which were the basis of the withholding taxes and the fact of withholding.** However, a detailed proof of the truthfulness of each and every item in the income tax return is not required. x x x
>
> x x x The grant of a refund is founded on the assumption that the tax return is valid; that is, the facts stated therein are true and correct. x x x"

In the case at bench, the BIR examined [respondent] Bank's Corporate Annual Income Tax Returns for the years 1994 and 1995 when they were filed on April 10, 1995 and April 15, 1996, respectively. Presumably, the BIR found no false declaration in them because it did not allege any false declaration thereof in its Answer (to the petition for review) filed before x x x CTA. Nowhere in the Answer, did the BIR dispute the amount of tax refund being claimed by [respondent] Bank as inaccurate or erroneous. In fact, the reason given by the BIR (in its Answer to the petition for review) why the

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[14] *Id.* at 150.

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claimed tax refund should be denied was that "x x x the amount of ₱13,645,109.00 was not illegally or erroneously collected, hence, the petition for review has no basis" [see Record, p. 32]. The amount of ₱17,433,133.00 reflected as refundable income tax in [respondent] Bank's Corporate Annual Income Tax Return for the year 1995 was not disputed by the BIR to be inaccurate because there were certain income not included in the return of the [respondent]. Verily, this leads Us to a conclusion that [respondent] Bank's Corporate Annual Income Tax Returns submitted were accepted as regular and even accurate by the BIR.

Incidentally, under Sec. 16 of the NIRC, the Commissioner of the **BIR is tasked to make an examination of returns and assess the correct amount of tax,** to wit:

> "Sec. 16. Power of the Commissioner to make assessment and prescribe additional requirements for tax administration and enforcement.
>
> (a) After a return is filed as required under the provision of this Code, the Commissioner shall examine it and assess the correct amount of tax. x x x"

which the [petitioner] Commissioner undeniably failed to do. Moreover, noteworthy is the fact that during the hearing of the petition for review before the CTA, [petitioner] Commissioner of the BIR submitted the case for decision "in view of the fact that he has no evidence to present nor records to submit relative to the case"x x x

x x x x x x x x x

Thus, although it is a fact that [respondent] failed to indicate said income payments under the appropriate Schedules 3, 4, and 5 of Section C of its 1994 Annual Income Tax Return (Exhibit "A"), however, **We give credence to [respondent] Bank's assertion that it reported the said income payments as part of its gross income when it included the same as part of the "Other Income," "Trust Income," and "Interest Income"** stated in the Schedule of Income (referred to as an attachment in Section C of Exhibit "A", x x x and in the 1994 audited Financial Statements (FS) supporting [respondent's] 1994 Annual Corporate Income Tax Return. The reason why the phrase "NOT APPLICABLE" was indicated in schedules 3, 4, and 5 of Section C of [respondent's] 1994 Annual Income Tax Return is due to the fact that [respondent] Bank already reported the subject rental income and income from sale of real property in the Schedule of Income under

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the headings "Other Income/Earnings," "Trust Income" and "Interest Income." Therefore, [respondent] Bank still complied with the second requirement that the income upon which the taxes were withheld are included in the return as part of the gross income.

x x x x x x x x x

[Respondent] Bank's various documentary evidence showing that it had satisfied all requirements under the Tax Code *vis-à-vis* **the Bureau of Internal Revenue's failure to adduce any evidence in support of their denial of the claim**, [respondent] Bank should, therefore, be granted the present claim for refund.[15] (Emphasis supplied)

Between the decision of the CTA and the CA, it is the former's that is based on the evidence and in accordance with the applicable law and jurisprudence.

To establish the fact of withholding, respondent submitted Certificates of Creditable Tax Withheld at Source and Monthly Remittance Returns of Income Taxes Withheld, which pertain to **rentals and sales of real property**, respectively. However, a perusal of respondent's 1994 Annual Income Tax Return shows that the gross income was derived **solely from sales of services.** In fact, the phrase "NOT APPLICABLE" was printed on the schedules pertaining to rent, sale of real property, and trust income.[16] Thus, based on the entries in the return, the income derived from **rentals and sales of real property** upon which the creditable taxes were withheld **were not included in respondent's gross income as reflected in its return**. Since no income was reported, it follows that no tax was withheld. To reiterate, it is incumbent upon the taxpayer to reflect in his return the income upon which any creditable tax is required to be withheld at the source.[17]

Respondent's explanation that its income derived from rentals and sales of real properties were included in the gross income

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[15] *Id.* at 136 to 138.

[16] *Id.* at 155.

[17] *Far East Bank and Trust Company v. Court of Appeals,* G.R. No. 129130, December 9, 2005, 477 SCRA 49, 54.

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but were classified as "Other Earnings" in its Schedule of Income[18] attached to the return is not supported by the evidence. There is nothing in the Schedule of Income to show that the income under the heading "Other Earnings" includes income from rentals and sales of real property. No documentary or testimonial evidence was presented by respondent to prove this. In fact, respondent, upon realizing its omission, filed a motion for new trial on the ground of excusable negligence with the CTA. Respondent knew that it had to present additional evidence showing the breakdown of the "Other Earnings" reported in its Schedule of Income attached to the return to prove that the income from rentals and sales of real property were actually included under the heading "Other Earnings."[19] Unfortunately, the CTA was not convinced that there was excusable negligence to justify the granting of a new trial.

Accordingly, the CA erred in ruling that respondent complied with the second requirement.

Respondent failed to present all the Certificates of Creditable Tax Withheld at Source.

The CA likewise failed to consider in its Decision the absence of several Certificates of Creditable Tax Withheld at Source. It immediately granted the refund without first verifying whether the fact of withholding was established by the Certificates of Creditable Tax Withheld at Source as required under Section 10 of Revenue Regulation No. 6-85. As correctly pointed out by the CTA, the certifications *(Exhibit UU)* issued by respondent cannot be considered in the absence of the required Certificates of Creditable Tax Withheld at Source.

The burden is on the taxpayer to prove its entitlement to the refund.

Moreover, the fact that the petitioner failed to present any evidence or to refute the evidence presented by respondent

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[18] *Rollo,* p. 173.

[19] CA *rollo,* pp. 17-18.

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does not *ipso facto* entitle the respondent to a tax refund. It is not the duty of the government to disprove a taxpayer's claim for refund. Rather, the burden of establishing the factual basis of a claim for a refund rests on the taxpayer.[20]

And while the petitioner has the power to make an examination of the returns and to assess the correct amount of tax, his failure to exercise such powers does not create a presumption in favor of the correctness of the returns. The taxpayer must still present substantial evidence to prove his claim for refund. As we have said, there is no automatic grant of a tax refund.[21]

Hence, for failing to prove its entitlement to a tax refund, respondent's claim must be denied. Since tax refunds partake of the nature of tax exemptions, which are construed *strictissimi juris* against the taxpayer, evidence in support of a claim must likewise be *strictissimi* scrutinized and duly proven.[22]

WHEREFORE, the petition is *GRANTED*. The assailed January 31, 2006 Decision of the Court of Appeals in CA-G.R. SP No. 56773 and its July 19, 2006 Resolution are *REVERSED* and *SET ASIDE*. The October 4, 1999 Decision of the Court of Tax Appeals denying respondent's claim for tax refund for failure to prove that the income derived from rentals and sale of real property from which the taxes were withheld were reflected in its 1994 Annual Income Tax Return, is *REINSTATED* and *AFFIRMED*.

SO ORDERED.

Carpio (Chairperson), Brion, Abad, and *Perez, JJ.,* concur.

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[20] *Philippine Long Distance Telephone Company v. Commissioner of Internal Revenue,* G.R. No. 157264, January 31, 2008, 543 SCRA 329, 335.

[21] *Philam Asset Management, Inc. v. Commissioner of Internal Revenue,* G.R. Nos. 156637 and 162004, December 14, 2005, 477 SCRA 761, 775.

[22] *Atlas Consolidated Mining and Development Corporation v. Commissioner of Internal Revenue,* G.R. No. 159490, February 18, 2008, 546 SCRA 150, 163.