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From the foregoing, it is clear that the trial court failed to acquire jurisdiction over the respondents either by valid service of summons or by their voluntary appearance. Necessarily, the proceedings before the RTC in Civil Case No. 71732 are void with respect to the respondents. Thus, the CA did not err when it nullified the 9 August 2010 and 10 February 2010 Orders, and the 15 September 2010 Decision of the RTC.

WHEREFORE, the present petition is **DENIED** for lack of merit. The 17 May 2012 Decision and the 6 September 2012 Resolution of the Court of Appeals in CA-G.R. SP No. 116221 are **AFFIRMED.**

SO ORDERED.

Velasco, Jr. (*Chairperson*), *Bersamin, Leonen,* and *Gesmundo, JJ.,* concur.

THIRD DIVISION

[G.R. Nos. 206079-80. January 17, 2018]

PHILIPPINE AIRLINES, INC. (PAL), *petitioner, vs.* **COMMISSIONER OF INTERNAL REVENUE,** *respondent.*

[G.R. No. 206309. January 17, 2018]

COMMISSIONER OF INTERNAL REVENUE, *petitioner, vs.* **PHILIPPINE AIRLINES, INC. (PAL),** *respondent.*

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SYLLABUS

1. TAXATION; REPUBLIC ACT NO. 1125, AS AMENDED; COURT OF TAX APPEALS; HAS EXCLUSIVE APPELLATE JURISDICTION OVER TAX REFUND CLAIMS THAT WERE NOT ACTED UPON BY THE COMMISSIONER OF BUREAU OF INTERNAL REVENUE; ITS REVIEW COVERS FACTUAL FINDINGS AND MAY CONSIDER NEW AND ADDITIONAL EVIDENCE TO PROVE CLAIMS FOR TAX REFUND; CASE AT BAR.— Republic Act No. 9282, amending Republic Act No. 1125, is the governing law on the jurisdiction of the Court of Tax Appeals. Section 7 provides that the Court of Tax Appeals has exclusive appellate jurisdiction over tax refund claims in case the Commissioner fails to act on them. x x x This means that while the Commissioner has the right to hear a refund claim first, if he or she fails to act on it, it will be treated as a denial of the refund, and the Court of Tax Appeals is the only entity that may review this ruling. The power of the Court of Tax Appeals to exercise its appellate jurisdiction does not preclude it from considering evidence that was not presented in the administrative claim in the Bureau of Internal Revenue. Republic Act No. 1125 states that the Court of Tax Appeals is a court of record. x x x In the case at bar, the Commissioner failed to act on PAL's administrative claim. If she had acted on the refund claim, she could have directed PAL to submit the necessary documents to prove its case. Furthermore, considering that the refund claim will be litigated anew in the Court of Tax Appeals, the latter may consider all pieces of evidence formally offered by PAL, whether or not they were submitted in the administrative level.

2. REMEDIAL LAW; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; ONLY QUESTIONS OF LAW MAY BE RAISED THEREIN; QUESTION OF LAW DISTINGUISHED FROM QUESTION OF FACT; CASE AT BAR.— This Court maintains the factual findings of the Court of Tax Appeals Special First Division and En Banc. [I]n bringing forth the issue of remittance, the parties are raising a question of fact which is not within the scope of review on *certiorari* under a Rule 45 Petition. An appeal under Rule 45 must raise only questions of

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law. There is a question of law when it seeks to determine whether or not the legal conclusions of the lower courts from a given set of facts are correct, i.e. what is the law, given a particular set of circumstances? On the other hand, there is a question of fact when the issue involves the truth or falsity of the parties' allegations. The test in determining if an issue is a question of law or fact is whether or not there is a need to evaluate evidence to resolve the issue. If there is a need to review the evidence or witnesses, it is a question of fact. If there is no need, it is a question of law. As stated, this Court will no longer entertain questions of fact in appeals under Rule 45. The factual findings of the lower courts are accorded respect and are beyond this Court's review.

3. TAXATION; PRESIDENTIAL DECREE NO. 1590 (PAL'S CHARTER); PAL IS EXEMPT FROM TAX ON INTEREST INCOME EARNED FROM BANK DEPOSITS; ANY EXCESS PAYMENT OVER TAXES SHALL BE REFUNDED OR CREDITED AGAINST ITS LIABILITY FOR THE SUCCEEDING TAXABLE YEAR. – x x x [T]his Court rules that PAL is entitled to its claim for refund for taxes withheld by Chinabank, PBCom, and Standard Chartered. ***Remittance need not be proven.*** PAL needs only to prove that taxes were withheld from its interest income. x x x PAL is uncontestedly exempt from paying the income tax on interest earned. x x x Presidential Decree No. 1590 and PAL's tax exemptions subsist. Necessarily, PAL remains exempt from tax on interest income earned from bank deposits. Moreover, Presidential Decree No. 1590 provides that any excess payment over taxes due from PAL's shall either be refunded or credited against its tax liability for the succeeding taxable year. x x x Thus, PAL is entitled to a tax refund or tax credit if excess payments are made on top of the taxes due from it. Considering that PAL is not liable to pay the tax on interest income from bank deposits, any payments made for that purpose are in excess of what is due from it. Thus, if PAL erroneously paid for this tax, it is entitled to a refund.

4. ID.; BUREAU OF INTERNAL REVENUE; REVENUE REGULATIONS 09-28; INCOME SUBJECT TO FINAL WITHHOLDING TAX SHALL BE REMITTED TO THE BIR BY THE WITHHOLDING AGENT; ANY DEFICIENCY IN THE AMOUNT OF THE TAX

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WITHHELD IS THE LIABILITY OF THE WITHHOLDING AGENT; CASE AT BAR.— When a particular income is subject to a final withholding tax, it means that a withholding agent will withhold the tax due from the income earned to remit it to the Bureau of Internal Revenue. Thus, the liability for remitting the tax is on the withholding agent: Under Revenue Regulations No. 02-98, Section 2.57: Section 2.57. *Withholding of Tax at Source (A) Final Withholding Tax.* — Under the final withholding tax system the amount of income tax withheld by the withholding agent is constituted as a full and final payment of the income tax due from the payee on the said income. *The liability for payment of the tax rests primarily on the payor as a withholding agent. Thus, in case of his failure to withhold the tax or in case of under withholding, the deficiency tax shall be collected from the payor/withholding agent. The payee is not required to file an income tax return for the particular income.* Clearly, the withholding agent is the payor liable for the tax, and any deficiency in its amount shall be collected from it. Should the Bureau of Internal Revenue find that the taxes were not properly remitted, its action is against the withholding agent, and not against the taxpayer. x x x In the case at bar, PAL is the income earner and the payee of the final withholding tax, and the Agent Banks are the withholding agents who are the payors responsible for the deduction and remittance of the tax. Given the above provisions, the failure of the Agent Banks to remit the amounts does not affect and should not prejudice PAL. In case of failure of remittance of taxes, the Bureau of Internal Revenue's cause of action is against the Agent Banks. Thus, PAL is not obliged to remit, let alone prove the remittance of, the taxes withheld.

5. ID.; PRESIDENTIAL DECREE NO. 1590 (PAL'S CHARTER); FOR PAL TO CLAIM A TAX REFUND UNDER ITS CHARTER, IT ONLY NEEDS TO PROVE THAT TAXES WERE WITHHELD, NOT NECESSARILY REMITTED; CERTIFICATES OF FINAL TAXES WITHHELD ISSUED BY AGENT BANKS ARE SUFFICIENT EVIDENCE TO ESTABLISH THE WITHHOLDING OF TAXES.— To claim a refund, this Court rules that PAL needs only to prove that taxes were withheld. Taxes withheld by the withholding agent are deemed to be the full and final payment of the income tax due from the income earner or payee. x x x Certificates of Final Taxes Withheld issued by the Agent Banks are sufficient evidence

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> to establish the withholding of the taxes. x x x Considering that these Certificates were presented, the burden of proof shifts to the Commissioner, who needs to establish that they were incomplete, false, or issued irregularly. However, the Commissioner did no such thing. Thus, these Certificates are sufficient evidence to establish the withholding of the taxes. The taxes withheld from PAL are considered its full and final payment of taxes. Necessarily, when taxes were withheld and deducted from its income, PAL is deemed to have paid them. Considering that PAL is exempted from paying the withholding tax, it is rightfully entitled to a refund.

APPEARANCES OF COUNSEL

Office of the Solicitor General for Commissioner of Internal Revenue.

Pal Legal Affairs Department for Philippine Airlines, Inc.

D E C I S I O N

LEONEN, *J.*:

Before this Court are two (2) consolidated Petitions for Review on Certiorari under Rule 45 of the Rules of Court assailing the August 14, 2012 Decision[1] and February 25, 2013 Resolution[2] of the Court of Tax Appeals En Banc in CTA EB Nos. 749 and 757 (CTA Case No. 6877).

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[1] *Rollo* (G.R. No. 206309), pp. 30-45, Decision of the Court of Tax Appeals *En Banc*. The Decision was penned by Associate Justice Erlinda P. Uy and concurred in by Presiding Justice Ernesto D. Acosta and Associate Justices Juanito C. Castañeda, Jr., Lovell R. Bautista, Caesar A. Casanova, Olga Palanca-Enriquez, Esperanza R. Fabon-Victorino, Cielito N. Mindaro-Grulla, and Amelia R. Cotangco-Manalastas of the Court of Tax Appeals, Quezon City.

[2] *Id*. at 48-54, Resolution of the Court of Tax Appeals *En Banc*. The Resolution was penned by Associate Justice Erlinda P. Uy and concurred in by Acting Presiding Justice Juanito C. Castañeda, Jr. and Associate Justices Lovell R. Bautista, Caesar A. Casanova, Esperanza R. Fabon-Victorino,

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These consolidated cases stem from a refund claim by Philippine Airlines, Inc. (PAL) for final taxes withheld on its interest income from its peso and dollar deposits with China Banking Corporation (Chinabank), JP Morgan Chase Bank (JPMorgan), Philippine Bank of Communications (PBCom), and Standard Chartered Bank (Standard Chartered) (collectively, Agent Banks).[3]

G.R. Nos. 206079-80 involves the Petition filed by PAL questioning the denial of its claim for refund of ₱510,233.16 and US$65,877.07, representing the final income tax withheld by Chinabank, PBCom, and Standard Chartered.[4]

Meanwhile, G.R. No. 206309 involves the Petition filed by the Commissioner of Internal Revenue (Commissioner) assailing the grant to PAL of the tax refund of ₱1,237,646.43, representing the final income tax withheld and remitted by JPMorgan.[5]

PAL asserts that it is entitled to a refund of the withheld taxes because it is exempted from paying the tax on interest income under its franchise, Presidential Decree No. 1590.[6] However, the Commissioner refused to grant the claim, arguing that PAL failed to prove the remittance of the withheld taxes to the Bureau of Internal Revenue.[7]

Thus, the issue involves whether or not PAL is required to prove the *remittance* to the Bureau of Internal Revenue of the final withholding tax on its interest from currency bank deposits to be entitled to tax refund.

The Court of Tax Appeals Special First Division ordered the refund to PAL of ₱1,237,646.43 representing the final income

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Cielito N. Mindaro-Grulla, and Amelia R. Cotangco-Manalastas of the Court of Tax Appeals, Quezon City.

[3] *Id*. at 103, Decision of the Court of Tax Appeals Special First Division.

[4] *Rollo* (G.R. Nos. 206079-80), pp. 35-52, Petition for Review on *Certiorari*.

[5] *Rollo* (G.R. No. 206309), pp. 7-27.

[6] *Id*. at 34.

[7] *Id*. at 14.

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tax withheld and remitted by JPMorgan on PAL's interest income. However, it denied the refund of ₱510,223.16 and US$65,877.07, representing the final income tax withheld by Chinabank, PBCom, and Standard Chartered.[8] The Court of Tax Appeals En Banc affirmed the Decision of the Court of Tax Appeals Special First Division.[9]

The facts are as follows:

Sometime in 2002, PAL made US dollar and Philippine peso deposits and placements in the following Philippine banks: Chinabank, JPMorgan, PBCom, and Standard Chartered.[10]

PAL earned interest income from these deposits and the Agent Banks deducted final withholding taxes.[11]

From Chinabank, PAL claimed that it earned interest income net of withholding tax in the amount of US$480,688.76 in its US dollar time deposit for the year 2002.[12] Substantiating this claim was Chinabank's Certification dated October 24, 2003,[13] which stated that withholding taxes were deducted from PAL's interest income in the amount of US$38,974.75. These taxes were remitted to the Bureau of Internal Revenue on different dates from February 11, 2002 to January 10, 2003.[14]

From JPMorgan, PAL alleged that it earned interest income in its peso deposit in the amount of ₱6,188,232.17, from September 2002 to December 2002. JPMorgan deducted withholding tax totalling ₱1,237,646.43.[15]

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[8] *Id*. at 116.

[9] *Id*. at 44.

[10] *Id*. at 32.

[11] *Id*.

[12] *Id*.

[13] Signed by China Banking Corporation's Senior Manager, International Banking Group, Wilfredo A. Quijencio.

[14] *Rollo* (G.R. No. 206309), p. 32.

[15] *Id*. at 32-33.

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From PBCom, PAL maintained that it earned interest income from its various dollar placements for the year 2002, with the following corresponding final taxes withheld:[16]

CERTIFICATE FOR THE PERIOD	INTEREST INCOME	TAX WITHHELD
1st Quarter	US$ 102,648.40	US$ 7,698.63
2nd Quarter	US$ 22,653.20	US$ 1,698.00
3rd Quarter	US$ 40,123.73	US$ 3,009.28
4th Quarter	US$ 107,163.73	US$ 8,037.28
TOTAL	US$ 272,589.06	US$ 20,443.19

PAL's peso deposit account with PBCom also allegedly earned interest income for the year 2002, with the following corresponding final taxes withheld:[17]

CERTIFICATE FOR THE PERIOD	INTEREST INCOME	TAX WITHHELD
2nd Quarter	₱ 541,758.42	₱108,351.67
3rd Quarter	₱ 2,009,357.41	₱401,871.46
TOTAL	₱ 2,551,115.83	₱510,223.13

A letter dated April 10, 2003 from PBCom's Branch Manager, Carmencita L. Tan, stated that the taxes withheld from PAL's interest income had been remitted by PBCom to the Bureau of Internal Revenue.[18]

From Standard Chartered, PAL stated that it earned interest income in its dollar time deposit account from May 2002 to December 2002, amounting to US$86,107.55. The amount of US$6,458.14 was deducted and allegedly remitted to the Bureau of Internal Revenue as final withholding tax.[19]

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[16] *Id*. at 33.

[17] *Id*.

[18] *Id*.

[19] *Id*.

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Claiming that it was exempt from final withholding taxes under its franchise, Presidential Decree No. 1590, PAL filed with the Commissioner on November 3, 2003 a written request for a tax refund[20] of the withheld amounts of ₱1,747,869.59 and US$65,877.07.[21]

The Commissioner failed to act on the request. Thus, on February 24, 2004, PAL elevated the case to the Court of Tax Appeals in Division.[22]

In her Answer, the Commissioner contended that PAL's claim was subject to administrative routinary investigation or examination by the Bureau of Internal Revenue. She also alleged that PAL's claim was not properly documented, and that it must show that it complied with the prescriptive period for filing refunds under Sections 204(C) and 229 of the National Internal Revenue Code. It likewise asserted that claims for refund are of the same nature as a tax exemption, and thus, are strictly construed against the claimant.[23]

PAL presented evidence to support its claim. The Commissioner then submitted the case for decision based on the pleadings.[24]

In its November 9, 2010 Decision,[25] the Court of Tax Appeals Special First Division partially granted PAL's Petition and ordered the Commissioner to refund PAL ₱1,237,646.43, representing the final income tax withheld and remitted by JPMorgan. It denied the remaining claim for refund of

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[20] Through PAL's Assistant Vice President for Financial Planning and Analysis, Ma. Stella L. Diaz.

[21] *Rollo* (G.R. No. 206309), p. 34.

[22] *Id*.

[23] *Id*.

[24] *Id*. at 34-35.

[25] *Id*. at 103-117. The Decision was penned by Associate Justice Lovell R. Bautista and concurred in by Presiding Justice Ernesto D. Acosta and Associate Justice Caesar A. Casanova of the Special First Division, Court of Tax Appeals, Quezon City.

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₱510,223.16 and US$65,877.07 representing the final income tax withheld by Chinabank, PBCom, and Standard Chartered.[26]

The Court of Tax Appeals Special First Division found that PAL was exempted from final withholding tax on interest on bank deposits.[27] However, it ruled that PAL failed to adequately substantiate its claim because it did not prove that the Agent Banks, with the exception of JPMorgan, remitted the withheld amounts to the Bureau of Internal Revenue.[28] PAL only presented documents[29] which showed the total amount of final taxes withheld for all branches of the banks.[30] As such, the amount of tax withheld from and to be refunded to PAL could not be ascertained with particularity.[31] It ruled that the Certificates of Final Tax Withheld at Source are not sufficient to prove remittance.[32] Thus:

> WHEREFORE, premises considered, the instant Petition for Review is hereby PARTIALLY GRANTED. Accordingly, respondent is hereby ORDERED TO REFUND in favor of petitioner the reduced amount of ₱1,237,646.43, representing the 20% final income tax withheld and remitted by JP Morgan Chase bank on petitioner's interest income; while the remaining claim of ₱510,223.16 and US$65,877.07, representing the final income tax withheld by China Banking Corporation, Philippine Bank of Communication[s], and Standard Chartered Bank are hereby DENIED due to insufficiency of evidence.
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> SO ORDERED.[33]

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[26] *Rollo* (G.R. No. 206309), p. 35; *rollo* (G.R. Nos. 206079-80), pp. 360-379.

[27] *Rollo* (G.R. No. 206309), p. 108.

[28] *Id*. at 112.

[29] Certificates of Final Tax Withheld at Source (BIR Form No. 2036), Summary of Monthly Final Income Taxes Withheld, and Monthly Remittance Return of Final Income Taxes (BIR Form No. 1602).

[30] *Rollo* (G.R. No. 206309), pp. 112-113.

[31] *Id*. at 113.

[32] *Id*. at 113-114.

[33] *Rollo* (G.R. Nos. 206079-80), p. 378.

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The Court of Tax Appeals Special First Division denied the separate motions for reconsideration filed by the parties. Thus, both parties filed separate appeals before the Court of Tax Appeals En Banc, which consolidated the cases.[34]

In its August 14, 2012 Decision, the Court of Tax Appeals En Banc denied the petitions and affirmed the decision of the Court of Tax Appeals Special First Division.[35] The Court of Tax Appeals En Banc sustained that PAL needed to prove the remittance of the withheld taxes because although remittance is the responsibility of the banks as withholding agents, remittance was put in issue in this case. Thus, the Court of Tax Appeals Special First Division correctly made a ruling on it.[36]

It found that PAL was able to establish the remittance of the taxes withheld by JPMorgan because the monthly remittance returns were identified by PAL's witness and were formally offered in the Court of Tax Appeals Special First Division without objections to their admissibility. It ruled that the monthly remittance returns may be considered even if they were only presented in the Court of Tax Appeals Special First Division as it is a court of record and is required to conduct a formal trial.[37]

It sustained that PAL failed to prove the remittance by Chinabank, PBCom, and Standard Chartered because it did not show that the amounts remitted by these Agent Banks pertained to the taxes withheld from PAL's interest income.[38]

Thus:

WHEREFORE, all the foregoing considered, the Commissioner's Petition for Review in CTA EB No. 749 and PAL's Petition for Review

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[34] *Rollo* (G.R. No. 206309), p. 36.

[35] *Id*. at 44.

[36] *Id*. at 41.

[37] *Id*. at 39-40.

[38] *Id*. at 41-43.

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in CTA EB No. 757 are hereby **DENIED** for lack of merit. The assailed Decision dated November 9, 2010 and Resolution dated March 17, 2011 are hereby **AFFIRMED**.

SO ORDERED.[39] (Emphasis in the original)

The Court of Tax Appeals En Banc denied the motions for reconsideration.[40]

Hence, the present Petitions via Rule 45 have been filed.[41]

In G.R. Nos. 206079-80, PAL questions the denial of its refund claim for the taxes withheld by Chinabank, PBCom, and Standard Chartered. PAL argues that it adequately established the withholding and remittance of final taxes through the Certificates of Final Taxes Withheld issued to it by these Agent Banks.[42] It contends that these Certificates are *prima facie* evidence of actual remittance, and if they are uncontroverted, as in this case, they are sufficient proof of remittance.[43] It holds that the rule pertaining to Creditable Taxes Withheld in *CIR v. Asian Transmission Corporation*[44] and other Court of Tax Appeals En Banc cases[45] should apply to Final Taxes Withheld, as these are of the same nature.[46]

PAL also insists that it is unequivocally exempt from final withholding taxes,[47] and consequently, for as long as it duly

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[39] *Id.* at 44.

[40] *Id.* at 53.

[41] *Rollo* (G.R. Nos. 206079-80), pp. 35-52; *Rollo* (G.R. No. 206309), pp. 7-27.

[42] *Rollo* (G.R. Nos. 206079-80), p. 42.

[43] *Id.* at 43 and 46.

[44] *CIR v. Asian Transmission Corporation*, 655 Phil. 186 (2011) [Per *J.* Mendoza, Second Division].

[45] *Rollo* (G.R. Nos. 206079-80), pp. 44-45 citing *Winebrenner & Inigo Insurance Brokers v. CIR*, CTA EB Case No. 285, October 1, 2007; *PAL v. CIR*, CTA EB Case No. 665, January 5, 2012; *Sonoma v. CIR*, CTA Case No. 7911, August 16, 2012.

[46] *Rollo* (G.R. Nos. 206079-80), pp. 44-45.

[47] *Id.* at 47, citing *Commissioner of Internal Revenue v. Philippine Airlines*, 535 Phil. 95 (2006) [Per *C.J.* Panganiban, First Division].

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establishes that taxes were withheld from its income, it must be refunded.[48] It maintains that proof of actual remittance is not necessary. [49]

PAL further claims that it need not establish the remittance of income taxes to the Bureau of Internal Revenue because this function is vested with the Agent Banks as the payors and withholding agents of the Commissioner.[50]

In G.R. No. 206309, the Commissioner questions the grant of refund to PAL for the final income taxes withheld by JPMorgan. She argues that PAL is not entitled to the refund as it failed to present its documentary evidence before the Bureau of Internal Revenue when it filed its administrative claim.[51]

In its June 10, 2013 Resolution, the two (2) cases were consolidated.[52]

The parties thereafter filed their respective Comments,[53] Replies,[54] and Memoranda.[55]

PAL argues that it is entitled to its claim for tax refund or tax credit and insists that it has adequately established that the final taxes on interest income withheld by the banks were remitted to the Bureau of Internal Revenue.[56] It contends that the Certificates of Final Taxes Withheld issued by the Agent Banks

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[48] *Rollo* (G.R. Nos. 206079-80), p. 47.

[49] *Id*.

[50] *Id.*, citing *CIR v. PNB*, CTA EB Case No. 285, October 1, 2007.

[51] *Rollo* (G.R. No. 206309), pp. 16-19.

[52] *Rollo* (G.R. Nos. 206079-80), p. 574.

[53] *Rollo* (G.R. Nos. 206079-80), pp. 575-585, PAL's Comment with Opposition; *rollo* (G.R. No. 206309), pp. 250-264, CIR's Comment.

[54] *Rollo* (G.R. Nos. 206079-80), pp. 595-302, PAL's Reply; *Rollo* (G.R. No. 206309), pp. 291-300, CIR's Reply.

[55] *Rollo* (G.R. Nos. 206079-80), pp. 275-347, PAL's Memorandum; *Rollo* (G.R. No. 206309), pp. 309-331, CIR's Memorandum.

[56] *Rollo* (G.R. No. 206309), p. 314.

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are *prima facie* evidence of actual remittance.[57] As *prima facie* evidence, they are sufficient proof of the fact that PAL is establishing, if they are unexplained or uncontradicted.[58]

As such, PAL avers that the Commissioner had the burden to prove that the Agent Banks failed to remit the withheld taxes.[59] Nonetheless, the Commissioner simply submitted the case for decision based on the pleadings. It did not contradict or dispute the Certificates of Final Taxes Withheld.[60]

PAL further posits that the failure of the Agent Banks to remit the withheld taxes should not prejudice PAL, because they are the withholding agents accountable for proving remittance. PAL has no control or responsibility over the remittance of the taxes withheld.[61]

Moreover, PAL holds that there is no need for proof of actual remittance to be entitled to claim for refund,[62] and that this Court's rulings on creditable taxes withheld should also apply to final taxes withheld at source, as they are of the same nature.[63] Since PAL has shown that it is unequivocally exempt from paying final withholding taxes, its taxes were erroneously paid and must be refunded.[64]

PAL further asserts that the Court of Tax Appeals is a court of record, required to conduct a trial *de novo*. Thus, it should not be barred from considering new evidence not submitted in the administrative claim for refund.[65]

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[57] *Id*. at 316.

[58] *Id*. at 318.

[59] *Id*. at 315.

[60] *Id*. at 319.

[61] *Id*. at 316.

[62] *Id*. at 316 and 319.

[63] *Id*. at 317.

[64] *Id*. at 320.

[65] *Id*. at 321.

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Assuming PAL is limited by the documents it submitted in the administrative level, the Commissioner had the burden to prove that PAL did not submit complete supporting documents. However, it neither showed what documents PAL presented nor established that PAL submitted incomplete supporting documents.[66]

PAL further submits that assuming it failed to present the remittance returns on final income tax withheld, the Commissioner could have retrieved these files from the records, as these are monthly returns filed with the Bureau of Internal Revenue.[67] As the Chief of the Bureau of Internal Revenue, the Commissioner has access to all tax returns including those of final income tax withheld at source, and thus, is in bad faith in not checking the records to determine whether or not the withheld taxes were remitted.[68] PAL maintains that the Commissioner's denial of the withholding of the taxes is not a specific denial, and thus, should be deemed as an admission of this fact.[69]

Finally, PAL holds that the denial of its refund because of its failure to submit monthly remittance returns is contrary to substantial justice, equity, and fair play.[70]

On the other hand, the Commissioner argues in her Memorandum[71] that PAL needed to prove, but did not prove, that the withheld taxes were remitted to the Bureau of Internal Revenue.[72]

She points out that PAL only showed the withheld amounts remitted by branches of Chinabank, PBCom, and Standard

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[66] *Id*. at 324-325.

[67] *Id*. at 326.

[68] *Id*. at 326 and 319.

[69] *Id*. at 327.

[70] *Id*.

[71] *Id*. at 342-355.

[72] *Id*. at 347.

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Chartered, but there is no indication that the remitted amounts are the taxes withheld from PAL's interest income. She argues that PAL must first prove that the money remitted to the Bureau of Internal Revenue is attributable to it because tax refunds are strictly construed against the taxpayer.[73]

She further insists that PAL's claim must fail for insufficiency of evidence because it failed to present several of its documentary evidence before the Bureau of Internal Revenue during the administrative level.[74] She argues that even if the evidence was presented in the Court of Tax Appeals, it should not be considered because trial *de novo* in the Court of Tax Appeals must be limited to the evidence shown in the administrative claim for refund.[75] The Court of Tax Appeals' judicial review is allegedly limited to whether the Commissioner rightfully ruled on the claim on the basis of the evidence presented in the administrative claim, and the ruling may only be set aside where there is gross abuse of discretion, fraud, or error of law.[76] Thus, she claims that the Court of Tax Appeals erred in considering the new evidence presented to it.[77] In allowing the presentation of new evidence, the Court of Tax Appeals did not conduct a judicial review. Rather, it adopted an entirely new proceeding.[78]

This Court resolves the following issues:

First, whether or not evidence not presented in the administrative claim for refund in the Bureau of Internal Revenue can be presented in the Court of Tax Appeals;

Second, whether or not Philippine Airlines, Inc. was able to prove remittance of its final taxes withheld to the Bureau of Internal Revenue; and

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[73] *Id*. at 348-349.

[74] *Id*. at 349.

[75] *Id*. at 351.

[76] *Id*. at 350.

[77] *Id*.

[78] *Id*. at 351-352.

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Finally, whether or not proof of remittance is necessary for Philippine Airlines, Inc. to claim a refund under its charter, Presidential Decree No. 1590.

This Court sustains the factual findings of the Court of Tax Appeals that Philippine Airlines, Inc. failed to prove remittance of the withheld taxes.

Nonetheless, this Court grants the Petition of Philippine Airlines, Inc.

I

The Commissioner contends that PAL failed to present several of its documentary evidence before the Bureau of Internal Revenue during the administrative level.[79] Thus, she claims that the new evidence that petitioner presented in the Court of Tax Appeals should not have been considered because trial *de novo* in the Court of Tax Appeals must be limited to the evidence shown in the administrative claim.[80]

This Court rules that the Court of Tax Appeals is not limited by the evidence presented in the administrative claim in the Bureau of Internal Revenue. The claimant may present new and additional evidence to the Court of Tax Appeals to support its case for tax refund.

Section 4 of the National Internal Revenue Code[81] states that the Commissioner has the power to decide on tax refunds, but his or her decision is subject to the exclusive appellate jurisdiction of the Court of Tax Appeals:

> Section 4. *Power of the Commissioner to Interpret Tax Laws and to Decide Tax Cases.* — The power to interpret the provisions of this Code and other tax laws shall be under the exclusive and original jurisdiction of the Commissioner, subject to review by the Secretary of Finance.

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[79] *Id.* at 349.

[80] *Id.* at 348 and 351.

[81] TAX CODE, Title I, Sec. 4, as amended by Rep. Act No. 8424 (1997), Tax Reform Act of 1997.

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The power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other matters arising under this Code or other laws or portions thereof administered by the Bureau of Internal Revenue is vested in the commissioner, subject to the exclusive appellate jurisdiction of the Court of Tax Appeals.

Republic Act No. 9282,[82] amending Republic Act No. 1125,[83] is the governing law on the jurisdiction of the Court of Tax Appeals. Section 7 provides that the Court of Tax Appeals has exclusive appellate jurisdiction over tax refund claims in case the Commissioner fails to act on them:

Section 7. *Jurisdiction.* — The CTA shall exercise:

(a) Exclusive appellate jurisdiction to review by appeal, as herein provided:

(1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, *refunds of internal revenue taxes*, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue or other laws administered by the Bureau of Internal Revenue;

(2) Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, *refunds of internal revenue taxes*, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code provides a specific period of action, in which case the inaction shall be deemed a denial;

(3) Decisions, orders or resolutions of the Regional Trial Courts in local tax cases originally decided or resolved by them in the exercise of their original or appellate jurisdiction[.] (Emphasis supplied)

This means that while the Commissioner has the right to hear a refund claim first, if he or she fails to act on it, it will

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[82] Rep. Act No. 9282 (2004).

[83] Rep. Act No. 1125 (1954).

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be treated as a denial of the refund, and the Court of Tax Appeals is the only entity that may review this ruling.

The power of the Court of Tax Appeals to exercise its appellate jurisdiction does not preclude it from considering evidence that was not presented in the administrative claim in the Bureau of Internal Revenue. Republic Act No. 1125 states that the Court of Tax Appeals is a court of record:

> Section 8. *Court of record*; *seal*; *proceedings*. — The Court of Tax Appeals shall be a court of record and shall have a seal which shall be judicially noticed. It shall prescribe the form of its writs and other processes. It shall have the power to promulgate rules and regulations for the conduct of the business of the Court, and as may be needful for the uniformity of decisions within its jurisdiction as conferred by law, but such proceedings shall not be governed strictly by technical rules of evidence.[84]

As such, parties are expected to litigate and prove every aspect of their case anew and formally offer all their evidence.[85] No value is given to documentary evidence submitted in the Bureau of Internal Revenue unless it is formally offered in the Court of Tax Appeals.[86] Thus, the review of the Court of Tax Appeals is not limited to whether or not the Commissioner committed gross abuse of discretion, fraud, or error of law, as contended by the Commissioner.[87] As evidence is considered and evaluated again, the scope of the Court of Tax Appeals' review covers factual findings.

In *Commissioner of Internal Revenue v. Philippine National Bank*:[88]

> Finally, petitioner's allegation that the submission of the certificates of withholding taxes before the Court of Tax Appeals was late is

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[84] Rep. Act No. 1125 (1954), Sec. 8.

[85] *Commissioner of Internal Revenue v. Manila Mining Corp.*, 505 Phil. 650, 664 (2005) [Per *J.* Carpio Morales, Third Division].

[86] *Id*.

[87] *Rollo* (G.R. No. 206309), p. 350.

[88] 744 Phil. 299 (2014) [Per *J.* Leonen, Second Division].

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untenable. The samples of the withholding tax certificates attached to respondent's comment bore the receiving stamp of the Bureau of Internal Revenue's Large Taxpayers Document Processing and Quality Assurance Division. As observed by the Court of Tax Appeals En Banc, "*[t]he Commissioner* is in no position to assail the authenticity of the CWT certificates due to PNB's alleged failure to submit the same before the administrative level since *he could have easily directed the claimant to furnish copies of these documents, if the refund applied for casts him any doubt." Indeed, petitioner's inaction prompted respondent to elevate its claim for refund to the tax court.*

More importantly, *the Court of Tax Appeals is not precluded from accepting respondent's evidence assuming these were not presented at the administrative level. Cases filed in the Court of Tax Appeals are litigated de novo. Thus, respondent "should prove every minute aspect of its case by presenting, formally offering and submitting . . . to the Court of Tax Appeals [all evidence] . . . required for the successful prosecution of [its] administrative claim."* [89] (Emphasis supplied, citations omitted)

In the case at bar, the Commissioner failed to act on PAL's administrative claim.[90] If she had acted on the refund claim, she could have directed PAL to submit the necessary documents to prove its case.

Furthermore, considering that the refund claim will be litigated anew in the Court of Tax Appeals, the latter may consider all pieces of evidence formally offered by PAL, whether or not they were submitted in the administrative level.

Thus, the Commissioner's contention must fail.

II

Both PAL and the Commissioner are contesting whether or not PAL has proven the Agent Banks' remittance of the withheld taxes on its interest income.[91]

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[89] *Id*. at 311-312.

[90] *Rollo* (G.R. No. 206309), p. 34.

[91] *Id*. at 314 and 347.

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The Court of Tax Appeals Special First Division and En Banc ruled that PAL was able to prove JPMorgan's remittance of the withheld taxes but that it failed to prove those of Chinabank, PBCom, and Standard Chartered.[92]

This Court maintains the factual findings of the Court of Tax Appeals Special First Division and En Banc.

Firstly, in bringing forth the issue of remittance, the parties are raising a question of fact which is not within the scope of review on certiorari under a Rule 45 Petition.[93] An appeal under Rule 45 must raise only questions of law.[94]

> The Rules of Court states that a review of appeals filed before this Court is "not a matter of right, but of sound judicial discretion." The Rules of Court further requires that only questions of law should be raised in petitions filed under Rule 45 since factual questions are not the proper subject of an appeal by *certiorari.* It is not this Court's function to once again analyze or weigh evidence that has already been considered in the lower courts.[95] (Citations omitted)

There is a question of law when it seeks to determine whether or not the legal conclusions of the lower courts from a given set of facts are correct, i.e. what is the law, given a particular set of circumstances? On the other hand, there is a question of fact when the issue involves the truth or falsity of the parties' allegations. The test in determining if an issue is a question of law or fact is whether or not there is a need to evaluate evidence to resolve the issue. If there is a need to review the evidence

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[92] *Id*. at 39 and 113.

[93] *City Government of Valenzuela v. Agustines*, G.R. No. 209369 (Notice), January 28, 2015 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/resolutions/2015/01/209369.pdf> 3 [Per *J.* Leonen, Second Division].

[94] See *Fangonil-Herrera v. Fangonil*, 558 Phil. 235, 254 (2007) [Per *J.* Chico-Nazario, Third Division].

[95] *Spouses Miano v. Manila Electric Co*., G.R. No. 205035, November 16, 2016 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/november2016/205035.pdf> 4 [Per *J.* Leonen, Second Division].

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or witnesses, it is a question of fact. If there is no need, it is a question of law. [96]

As stated, this Court will no longer entertain questions of fact in appeals under Rule 45. The factual findings of the lower courts are accorded respect and are beyond this Court's review.[97] However, the rule admits of exceptions, especially if it is shown that the factual findings are not supported by evidence, or the judgment is based on a misapprehension of facts:

> [T]he general rule for petitions filed under Rule 45 admits exceptions. *Medina v. Mayor Asistio, Jr.* lists down the recognized exceptions:
>
> > (1) When the conclusion is a finding grounded entirely on speculation, surmises or conjectures; (2) When the inference made is manifestly mistaken, absurd or impossible; (3) Where there is a grave abuse of discretion; (4) When the judgment is based on a misapprehension of facts; (5) When the findings of fact are conflicting; (6) When the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee; (7) The findings of the Court of Appeals are contrary to those of the trial court; (8) When the findings of fact are conclusions without citation of specific evidence on which they are based; (9) When the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondents; and (10) The finding of fact of the Court of Appeals is premised on the supposed absence of evidence and is contradicted by the evidence on record.
>
> These exceptions similarly apply in petitions for review filed before this Court involving civil, labor, tax, or criminal cases.[98] (Citations omitted)

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[96] *Id*.

[97] See *Fangonil-Herrera v. Fangonil*, 558 Phil. 235, 254 (2007) [Per *J.* Chico-Nazario, Third Division].

[98] *Spouses Miano v. Manila Electric Co.*, G.R. No. 205035, November 16, 2016 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/november2016/205035.pdf> 4-5 [Per *J.* Leonen, Second Division].

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A party filing the petition, however, has the burden of showing convincing evidence that the appeal falls under one of the exceptions. A mere assertion is not sufficient.[99]

Moreover, this Court has consistently held that the findings of fact of the Court of Tax Appeals, as a highly specialized court, are accorded respect and are deemed final and conclusive.[100]

In *Philippine Refining Company v. Court of Appeals*:[101]

> The Court of Tax Appeals is a highly specialized body specifically created for the purpose of reviewing tax cases . . .
>
> Because of this recognized expertise, the findings of the CTA will not ordinarily be reviewed absent a showing of gross error or abuse on its part. The findings of fact of the CTA are binding on this Court and in the absence of strong reasons for this Court to delve into facts, only questions of law are open for determination . . . [102] (Citation omitted)

In *Commissioner of Internal Revenue v. Tours Specialists, Inc., and the Court of Tax Appeals*:[103]

> The well-settled doctrine is that the findings of facts of the Court of Tax Appeals are binding on this Court and absent strong reasons for this Court to delve into facts, only questions of law are open for determination . . . In the recent case of *Sy Po v. Court of Appeals* . . . we ruled that the factual findings of the Court of Tax Appeals are binding upon this court and can only be disturbed on appeal if not supported by substantial evidence.[104]

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[99] *Id*.

[100] *Philippine Refining Company v. Court of Appeals*, 326 Phil. 680, 689 (1996) [Per *J*. Regalado, Second Division].

[101] 326 Phil. 680 (1996) [Per *J*. Regalado, Second Division].

[102] *Id*. at 689.

[103] 262 Phil. 437 (1990) [Per *J*. Gutierrez, Jr., *En Banc*]

[104] *Id*. at 442, citing *Nilsen v. Commissioner of Customs*, 178 Phil. 26-32 (1979) [Per *J*. Fernando, Second Division]; *Balbas v. Domingo*, 128

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In the case at bar, both the Court of Tax Appeals Special First Division and En Banc ruled that PAL failed to sufficiently prove that Chinabank, PBCom, and Standard Chartered had remitted the withheld taxes.[105] It found that the presented documents[106] only showed the total amount of final taxes withheld for all branches of these Agent Banks.[107] It did not show that the amounts remitted by these Agent Banks pertained to the taxes withheld from PAL's interest income.[108]

However, it found that PAL was able to prove the remittance of the taxes withheld by JPMorgan because the monthly remittance returns were identified by PAL's witness and were formally offered in the Court of Tax Appeals Special First Division without objections to their admissibility.[109]

The Court of Tax Appeals Special First Division stated:

> To prove that petitioner earned interest income on its bank deposits and that they were remitted to the BIR, petitioner offered in evidence the following certifications and Certificates of Final Tax Withheld at Source (BIR Form No. 2306) from various banks:

BANK	**PERIOD COVERED**	**AMOUNT OF TAX WITHHELD**	
		PESO	**US DOLLAR**
China Banking Corp. (Exhibit "C")	January 2002 – December 2002		38,974.75
JP Morgan Chase Bank (Exhibit "D")	September 2002 – December 2002	1,237,646.43	

Phil. 467-473 (1967) [Per *J.* Fernando, *En Banc*]; *Raymundo v. De Joya*, 189 Phil. 378-382 (1980) [Per *C.J.* Fernando, Second Division].

[105] *Rollo* (G.R. No. 206309), pp. 42 and 112.

[106] Certificates of Final Tax Withheld (BIR Form No. 2036), Summary of Monthly Final Income Taxes Withheld, Monthly Remittance Return of Final Income Taxes (BIR Form No. 1602).

[107] *Rollo* (G.R. No. 206309), p. 113.

[108] *Id*. at 41-43.

[109] *Id*. at 39-40.

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Phil. Bank of Communication[s] (Exhibit "E")	January 2002 – March 2002		7,698.63
Phil. Bank of Communication[s] (Exhibit "F")	April 2002 – June 2002	108,351.68	1,698.99
Phil. Bank of Communication[s] (Exhibit "G")	July 2002– September 2002	401,871.48	3,009.28
Phil. Bank of Communication[s] (Exhibit[s] "H" and "I")	October 2002 – December 2002		8,037.28
Standard Chartered [Bank] (Exhibit "J")	May 2002 – December 2002		6,458.14
TOTAL		₱1,747,869.59	$65,877.07

A careful scrutiny of the evidence presented reveals that only documents pertaining to the amount of taxes withheld and actually remitted to the BIR by depositary bank JP Morgan Chase, in the amount of ₱1,237,646.43, represents petitioner's valid claim . . .

. . . . . .

This Court cannot give credence to the other certifications and Certificates of Final Tax Withheld at Source issued by the various depositary banks because proof on the fact of remittance was not aptly complied with; thus, the amount of taxes to be refunded cannot be ascertained.

The amount of final withholding taxes as reflected on the Summary of Monthly Final Income Taxes Withheld on Philippine Savings Deposit and Foreign Currency Deposit and the Monthly Remittance Return of Final Income Taxes (BIR Form No. 1602) provided by withholding agents China Banking Corporation, Philippine Bank of Communication, and Standard Chartered Bank were based on the total amount of final withholding taxes per branch of each depositary banks; while the total amount appearing on the documents of Monthly Remittance Return of Final Income Taxes (BIR Form No. 1602) was based on the total amount of final withholding taxes for all branches of the depositary banks.

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> Therefore, the amount of final income tax withheld from petitioner cannot be ascertained with particularity from the total amount of final withholding taxes that were remitted to the BIR by China Banking Corporation, Philippine Bank of Communication[s], and Standard Chartered Bank.[110]

These findings were affirmed by the Court of Tax Appeals En Banc:

> Without doubt, there were amounts of withheld taxes which have been remitted by [Chinabank] to the BIR. However, from the supposed Stage 1 up to the last Stage of the paper trail, We fail to see, in the evidence pointed out by PAL, the inclusion of the final income taxes withheld from its interest income in the total amounts remitted by [Chinabank] to the BIR. In other words, there is no indication that the specific withheld amounts which have been remitted to the BIR by [Chinabank] referred to the taxes withheld on PAL's interest income. In fact, PAL's documentary evidence are merely to the effect that certain amounts have been remitted to the BIR by [Chinabank], and such amounts may be broken down as to which [Chinabank] branch offices the same are attributable.
>
> The same holds true as regards the taxes withheld by [PBCom] and [Standard Chartered]. The documentary evidence of PAL relating to the supposed remittances of the said depositary banks are also wanting of any sign that portion of the remitted taxes pertain to the withheld taxes from PAL's interest income. Simply put, We cannot perceive, from such evidence, that pertinent items of the withheld taxes are attributable to PAL.[111]

In questioning these findings of the Court of Tax Appeals regarding the remittance of the taxes, the parties are raising questions of fact. To determine whether or not the taxes have been remitted to the Bureau of Internal Revenue requires an evaluation of the documents and other evidence presented by the parties. Thus, it is incumbent upon them to prove that the above-stated exceptions are present in this case.

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[110] *Id*. at 111-113.

[111] *Id*. at 43.

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However, the parties failed to show that this case falls into any of the exceptions mentioned.[112]

The Court of Tax Appeals Special First Division and En Banc based their findings after an examination of all pieces of evidence presented by PAL. Both parties failed to show that the Court of Tax Appeals committed any gross error or abuse in making this factual determination. There is likewise no showing that the findings are conflicting or based on speculation, conjecture, or misapprehension or mistake of facts. There is no sign of any grave abuse of discretion.

Thus, this Court finds no reason to disturb the Court of Tax Appeals' factual findings.

III

Nonetheless, this Court rules that PAL is entitled to its claim for refund for taxes withheld by Chinabank, PBCom, and Standard Chartered.

Remittance need not be proven. PAL needs only to prove that taxes were withheld from its interest income.

III.A

First, PAL is uncontestedly exempt from paying the income tax on interest earned.

Under its franchise, Presidential Decree No. 1590,[113] petitioner may either pay a franchise tax or the basic corporate income tax, and is exempt from paying any other tax, including taxes on interest earned from deposits:

> Section 13. In consideration of the franchise and rights hereby granted, the grantee shall pay to the Philippine Government during the life of this franchise whichever of subsections (a) and (b) hereunder will result in a lower tax:

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[112] See *Fangonil-Herrera v. Fangonil*, 558 Phil. 235, 254 (2007) [Per *J.* Chico-Nazario, Third Division].

[113] Pres. Decree No. 1590 (1978), Grant of New Franchise to Philippine Airlines, Inc. To Operate, *etc*. Air Transport Services.

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> (a) The basic corporate income tax based on the grantee's annual net taxable income computed in accordance with the provisions of the National Internal Revenue Code; or
>
> (b) A franchise tax of two per cent (2%) of the gross revenues derived by the grantee from all sources, without distinction as to transport or nontransport operations; *provided*, that with respect to international air-transport service, only the gross passenger, mail, and freight revenues from its outgoing flights shall be subject to this tax.
>
> *The tax paid by the grantee under either of the above alternatives shall be in lieu of all other taxes, duties, royalties, registration, license, and other fees and charges of any kind, nature, or description, imposed, levied, established, assessed, or collected by any municipal, city, provincial, or national authority or government agency, now or in the future, including but not limited to* the following:
>
> . . . . . .
>
> The grantee, shall, however, pay the tax on its real property in conformity with existing law. (Emphasis supplied)

In *Commissioner of Internal Revenue v. Philippine Airlines, Inc.*,[114] this Court ruled that Section 13 of Presidential Decree No. 1590 is clear and unequivocal in exempting PAL from all taxes other than the basic corporate income tax or the 2% franchise tax:

> While the Court recognizes the general rule that the grant of tax exemptions is strictly construed against the taxpayer and in favor of the taxing power, Section 13 of the franchise of respondent leaves no room for interpretation. Its franchise exempts it from paying any tax other than the option it chooses: either the "basic corporate income tax" or the two percent gross revenue tax.[115] (Citation omitted)

More recently, PAL's tax privileges were outlined and confirmed in *Commissioner of Internal Revenue v. Philippine Airlines, Inc.*[116]

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[114] 535 Phil. 95 (2006) [Per *C. J.* Panganiban, First Division].

[115] *Id.* at 109.

[116] G.R. Nos. 215705-07, February 22, 2017 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2017/february2017/215705-07.pdf> [Per *J.* Peralta, Second Division].

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when Republic Act No. 9334 took effect, amending Section 131 of the National Internal Revenue Code.[117] Republic Act No. 9334 increased the rates of excise tax imposed on alcohol and tobacco products, and *removed the exemption from taxes*, duties and charges, including excise taxes, on importations of cigars, cigarettes, distilled spirits, wines and fermented liquor

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[117] Rep. Act No. 9334 (2004), amending Rep. Act No. 8424 (1997), Title II, Ch. 4, Sec. 131 reads in part: Section 131. *Payment of Excise Taxes on Imported Articles. —*

(A) Persons Liable. — Excise taxes on imported articles shall be paid by the owner or importer to the Customs Officers, conformably with the regulations of the Department of Finance and before the release of such articles from the customs house, or by the person who is found in possession of articles which are exempt from excise taxes other than those legally entitled to exemption.

In the case of tax-free articles brought or imported into the Philippines by persons, entities, or agencies exempt from tax which are subsequently sold, transferred or exchanged in the Philippines to non-exempt persons or entities, the purchasers or recipients shall be considered the importers thereof, and shall be liable for the duty and internal revenue tax due on such importation.

The provision of any special or general law to the contrary notwithstanding, the importation of cigars and cigarettes, distilled spirits, fermented liquors and wines into the Philippines, even if destined for tax and duty-free shops, shall be subject to all applicable taxes, duties, charges, including excise taxes due thereon. This shall apply to cigars and cigarettes, distilled spirits, fermented liquors and wines brought directly into the duly chartered or legislated freeports of the Subic Special Economic and Freeport Zone, created under Republic Act No. 7227; the Cagayan Special Economic Zone and Freeport, created under Republic Act No. 7922; and the Zamboanga City Special Economic Zone, created under Republic Act No. 7903, and such other freeports as may hereafter be established or created by law: Provided, further, That importations of cigars and cigarettes, distilled spirits, fermented liquors and wines made directly by a government-owned and operated duty-free shop, like the Duty-Free Philippines (DFP), shall be exempted from all applicable duties only: Provided, still further, That such articles directly imported by a government-owned and operated duty-free shop, like the Duty-Free Philippines, shall be labeled 'duty-free' and 'not for resale': *Provided, finally,* That the removal and transfer of tax and duty-free goods, products, machinery, equipment and other similar articles other than cigars and cigarettes, distilled spirits, fermented liquors and wines, from one freeport to another freeport, shall not be deemed an introduction into the Philippine customs territory. (Emphasis supplied)

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into the Philippines.[118] This Court ruled that PAL's tax exemptions remain:

> In the fairly recent case of *Commissioner of Internal Revenue and Commissioner of Customs v. Philippine Airlines, Inc.*, the core issue raised was whether or not PAL's importations of alcohol and tobacco products for its commissary supplies are subject to excise tax. This Court, ruling in favor of PAL, held that:
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> . . . . . .
>
> That the Legislature chose not to amend or repeal [PD] 1590 even after PAL was privatized reveals the intent of the Legislature to let PAL continue to enjoy, as a private corporation, the very same rights and privileges under the terms and conditions stated in said charter. . . .
>
> To be sure, the manner to effectively repeal or at least modify any specific provision of PAL's franchise under PD 1590, as decreed in the aforequoted Sec. 24, has not been demonstrated. . . .
>
> . . . . . .
>
> Any lingering doubt, however, as to the continued entitlement of PAL under Sec. 13 of its franchise to excise tax exemption on otherwise taxable items contemplated therein, e.g., aviation gas, wine, liquor or cigarettes, should once and for all be put to rest by the fairly recent pronouncement in *Philippine Airlines, Inc. v. Commissioner of Internal Revenue*. In that case, the Court, on the premise that the "propriety of a tax refund is hinged on the kind of exemption which forms its basis," declared in no uncertain terms that PAL has "sufficiently prove[d]" its entitlement to a tax refund of the excise taxes and that PAL's payment of either the franchise tax or basic corporate income tax in the amount fixed thereat shall be in lieu of all other taxes or duties, and inclusive of all taxes on all importations of commissary and catering supplies, subject to the condition of their availability and eventual use. . . .

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[118] *Commissioner of Internal Revenue v. Philippine Airlines, Inc.,* G.R. Nos. 215705-07, February 22, 2017 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2017/february2017/215705-07.pdf> [Per *J.* Peralta, Second Division].

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In the more recent consolidated cases of Republic of the Philippines v. Philippine Airlines, Inc. *(PAL)* and *Commissioner of Internal Revenue v. Philippine Airlines, Inc. (PAL)*, this Court, echoing the ruling in the abovecited case of CIR v. PAL, held that:

> In other words, the franchise of PAL remains the governing law on its exemption from taxes. Its payment of either basic corporate income tax or franchise tax — whichever is lower — shall be in lieu of all other taxes, duties, royalties, registrations, licenses, and other fees and charges, except only real property tax. The phrase "in lieu of all other taxes" includes but is not limited to taxes, duties, charges, royalties, or fees due on all importations by the grantee of the commissary and catering supplies, provided that such articles or supplies or materials are imported for the use of the grantee in its transport and nontransport operations and other activities incidental thereto and are not locally available in reasonable quantity, quality, or price.[119] (Citations omitted)

PAL's tax liability was also modified on July 1, 2005, when Republic Act No. 9337[120] further amended the National Internal Revenue Code. Section 22 of Republic Act No. 9337 abolished the franchise tax and subjected PAL to corporate income tax and to value-added tax. Nonetheless, it maintained PAL's exemption from "any taxes, duties, royalties, registration, license, and other fees and charges, as may be provided by their respective franchise agreement."[121]

> Section 22. Franchises of Domestic Airlines. — The provisions of *P.D. No. 1590 on the franchise tax of Philippine Airlines, Inc.*, R.A. No. 7151 on the franchise tax of Cebu Air, Inc., R.A. No. 7583 on the franchise tax of Aboitiz Air Transport Corporation, R.A. No. 7909 on the franchise tax of Pacific Airways Corporation, R.A. No. 8339 on the franchise tax of Air Philippines, or any other franchise agreement or law pertaining to a domestic airline to the contrary notwithstanding:
>
> (A) The franchise tax is abolished;

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[119] *Id.* at 8-10.

[120] Rep. Act No. 9337 (2005), VAT Reform Act.

[121] Rep. Act No. 9337, Sec. 22.

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(B) The franchisee shall be liable to the corporate income tax;

(C) The franchisee shall register for value-added tax under Section 236, and to account under Title IV of the National Internal Revenue Code of 1997, as amended, for value-added tax on its sale of goods, property or services and its lease of property; and

(D) The franchisee shall otherwise remain exempt from any taxes, duties, royalties, registration, license, and other fees and charges, as may be provided by their respective franchise agreement.

Again, in *Commissioner of Internal Revenue v. Philippine Airlines, Inc.*,[122] this Court maintained that despite these amendments to the National Internal Revenue Code, PAL remains exempt from all other taxes, duties, royalties, registrations, licenses, and other fees and charges, provided it pays the corporate income tax as granted in its franchise agreement. It further emphasized that no explicit repeals were made on Presidential Decree No. 1590.[123]

Thus, Presidential Decree No. 1590 and PAL's tax exemptions subsist. Necessarily, PAL remains exempt from tax on interest income earned from bank deposits.

Moreover, Presidential Decree No. 1590 provides that any excess payment over taxes due from PAL's shall either be refunded or credited against its tax liability for the succeeding taxable year, thus:

Section 14. The grantee shall pay either the franchise tax or the basic corporate income tax on quarterly basis to the Commissioner of Internal Revenue . . .

. . . . . .

Any excess of the total quarterly payments over the actual annual franchise of income tax due as shown in the final or adjustment franchise or income-tax return *shall either be refunded to the grantee*

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[122] G.R. Nos. 215705-07, February 22, 2017 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2017/february2017/215705-07.pdf> [Per *J.* Peralta, Second Division].

[123] *Id*.

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or credited against the grantee's quarterly franchise or income-tax liability for the succeeding taxable year or years at the option of the grantee.

The term "gross revenues" is herein defined as the total gross income earned by the grantee from; (a) transport, nontransport, and other services; (b) earnings realized from investments in money-market placements, bank deposits, investments in shares of stock and other securities, and other investments; (c) total gains net of total losses realized from the disposition of assets and foreign-exchange transactions; and (d) gross income from other sources.[124] (Emphasis supplied)

Thus, PAL is entitled to a tax refund or tax credit if excess payments are made on top of the taxes due from it.

Considering that PAL is not liable to pay the tax on interest income from bank deposits, any payments made for that purpose are in excess of what is due from it. Thus, if PAL erroneously paid for this tax, it is entitled to a refund.

III.B

PAL is likewise entitled to a refund because it is not responsible for the remittance of tax to the Bureau of Internal Revenue. The taxes on interest income from bank deposits are in the nature of a withholding tax. Thus, the party liable for remitting the amounts withheld is the withholding agent of the Bureau of Internal Revenue.

Interest income from bank deposits is taxed under the National Internal Revenue Code:

Section 27. *Rates of Income Tax on Domestic Corporations*.

. . . . . .

(D) *Rates of Tax on Certain Passive Incomes*. —

(1) *Interest from Deposits and Yield or any other Monetary Benefit from Deposit Substitutes and from Trust Funds and Similar Arrangements, and Royalties*. — A final tax at the rate of twenty

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[124] Pres. Decree No. 1590 (1978), Sec. 14.

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percent (20%) is hereby imposed upon the amount of *interest on currency bank deposit* and yield or any other monetary benefit from deposit substitutes and from trust funds and similar arrangements received by domestic corporations, and royalties, derived from sources within the Philippines: *Provided, however*, That *interest income derived by a domestic corporation from a depository bank under the expanded foreign currency deposit system* shall be subject to a final income tax at the rate of seven and one-half percent (7 ½%) of such interest income.[125] (Emphasis supplied)

The tax due on this income is a final withholding tax:

Section 57. *Withholding of Tax at Source.* —

(A) *Withholding of Final Tax on Certain Incomes.* — Subject to rules and regulations the Secretary of Finance may promulgate, upon the recommendation of the Commissioner, requiring the filing of income tax return by certain income payees, the tax imposed or prescribed by Sections . . . 27(D)(1), . . . of this Code on specified items of income shall be withheld by payor-corporation and/or person and paid in the same manner and subject to the same conditions as provided in Section 58 of this Code.[126]

Final withholding taxes imposed on interest income are likewise provided for under Revenue Regulations No. 02-98, Section 2.57.1(G):[127]

(G) *Income Payment to a Domestic Corporation.* — The following items of income shall be subject to a final withholding tax in the hands of a domestic corporation, based on the gross amount thereof and at the rate of tax prescribed therefor:

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[125] TAX CODE, Title II, Ch.4, Sec. 27, as amended by Rep. Act No. 8424 (1997).

[126] TAX CODE, Sec. 57.

[127] BIR Revenue Reg. No. 02-98 (1998), *Implementing Republic Act No. 8424, "An Act Amending The National Internal Revenue Code, as Amended" Relative to the Withholding on Income Subject to the Expanded Withholding Tax and Final Withholding Tax, Withholding of Income Tax on Compensation, Withholding of Creditable Value-Added Tax and Other Percentage Taxes.*

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(1) Interest from any currency bank deposit and yield or any other monetary benefit from deposit substitutes and from trust fund and similar arrangements derived from sources within the Philippines — Twenty Percent (20%).

. . . . . .

(3) Interest income derived from a depository bank under the Expanded Foreign Currency Deposit System, otherwise known as a Foreign Currency Deposit Unit (FCDU) — Seven and one-half percent (7.5%).

When a particular income is subject to a final withholding tax, it means that a withholding agent will withhold the tax due from the income earned to remit it to the Bureau of Internal Revenue. Thus, the liability for remitting the tax is on the withholding agent: [128]

Under Revenue Regulations No. 02-98, Section 2.57:

Section 2.57. *Withholding of Tax at Source*

(A) *Final Withholding Tax.* — Under the final withholding tax system the amount of income tax withheld by the withholding agent is constituted as a full and final payment of the income tax due from the payee on the said income. *The liability for payment of the tax rests primarily on the payor as a withholding agent. Thus, in case of his failure to withhold the tax or in case of under withholding, the deficiency tax shall be collected from the payor/withholding agent. The payee is not required to file an income tax return for the particular income.* (Emphasis supplied)

Clearly, the withholding agent is the payor liable for the tax, and any deficiency in its amount shall be collected from it.[129] Should the Bureau of Internal Revenue find that the taxes were not properly remitted, its action is against the withholding agent, and not against the taxpayer.

The responsibility of the withholding agent is further underscored by Republic Act No. 8424, Section 58:

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[128] BIR Revenue Reg. No. 02-98 (1998), Sec. 2.57.

[129] BIR Revenue Reg. No. 02-98 (1998), Sec. 2.57(A).

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Section 58. *Returns and Payment of Taxes Withheld at Source*.—

. . . . . .

(B) *Statement of Income Payments Made and Taxes Withheld*. — Every withholding agent required to deduct and withhold taxes under Section 57 shall *furnish each recipient, in respect to his or its receipts during the calendar quarter or year, a written statement showing the income or other payments made by the withholding agent during such quarter or year, and the amount of the tax deducted and withheld therefrom, simultaneously upon payment at the request of the payee,* but not later than the twentieth (20th) day following the close of the quarter in the case of corporate payee, or not later than March 1 of the following year in the case of individual payee for creditable withholding taxes. For final withholding taxes, the statement should be given to the payee on or before January 31 of the succeeding year.

(C) *Annual Information Return*. — Every withholding agent required to deduct and withhold taxes under Section 57 shall submit to the Commissioner an *annual information return containing the list of payees and income payments, amount of taxes withheld from each payee and such other pertinent information as may be required by the Commissioner . . .*[130] (Emphasis supplied)

Revenue Regulations 09-28 further provides:

Section 2.57.4. *Time of Withholding*. — The obligation of the payor to deduct and withhold the tax under Section 2.57 of these regulations arises at the time an income is paid or payable, whichever comes first, the term "payable" refers to the date the obligation become due, demandable or legally enforceable.[131]

. . . . . .

Section 2.58. *Returns and Payment of Taxes Withheld at Source*.

. . . . . .

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[130] TAX CODE, Title II, Ch. 4, Sec. 58, as amended by Rep. Act No. 8424 (1997).

[131] BIR Revenue Reg. No. 02-98 (1998), Sec. 2.57.4.

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(B) *Withholding tax statement for taxes withheld* — Every payor required to deduct and withhold taxes under these regulations shall furnish each payee, whether individual or corporate, with a *withholding tax statement, using the prescribed form (BIR Form 2307) showing the income payments made and the amount of taxes withheld therefrom,* for every month of the quarter within twenty (20) days following the close of the taxable quarter employed by the payee in filing his/its quarterly income tax return. Upon request of the payee, however, the payor must furnish such statement to the payee simultaneously with the income payment. For final withholding taxes, the statement should be given to the payee on or before January 31 of the succeeding year.

(C) *Annual information return for income tax withheld at source.* — The payor is required to file with the Commissioner, Revenue Regional Director, Revenue District Officer, Collection Agent in the city or municipality where the payor has his legal residence or principal place of business, where the government office is located in the case of a government agency, on or before January 31 of the following year in which payments were made, an Annual Information Return of Income Tax Withheld at Source (Form No. 1604), showing among others the following information:

(1) Name, address and taxpayer's identification number (TIN); and

(2) Nature of income payments, gross amount and amount of tax withheld from each payee and such other information as may be required by the Commissioner.[132] (Emphasis supplied)

These provisions state that the withholding agent must file the annual information return and furnish the payee written statements of the payments it made and of the amounts it deducted and withheld. They confirm that the remittance of the tax is not the responsibility of the payee, but that of the payor, the withholding agent.

Moreover, in *Commissioner of Internal Revenue v. Philippine National Bank*:[133]

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[132] BIR Revenue Reg. No. 02-98 (1998), Sec. 2.58.

[133] 744 Phil. 299 (2014) [Per *J.* Leonen, Second Division].

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Petitioner's posture that respondent is required to establish actual remittance to the Bureau of Internal Revenue deserves scant consideration. Proof of actual remittance is not a condition to claim for a refund of unutilized tax credits. Under Sections 57 and 58 of the 1997 National Internal Revenue Code, as amended, it is the payor-withholding agent, and not the payee-refund claimant such as respondent, who is vested with the responsibility of withholding and remitting income taxes.

This court's ruling in *Commissioner of Internal Revenue v. Asian Transmission Corporation*, citing the Court of Tax Appeals' explanation, is instructive:

> . . . proof of actual remittance by the respondent is not needed in order to prove withholding and remittance of taxes to petitioner. Section 2.58.3 (B) of Revenue Regulation No. 2-98 clearly provides that proof of remittance is the responsibility of the withholding agent and not of the taxpayer-refund claimant. It should be borne in mind by the petitioner that *payors of withholding taxes are by themselves constituted as withholding agents of the BIR. The taxes they withhold are held in trust for the government. In the event that the withholding agents commit fraud against the government by not remitting the taxes so withheld, such act should not prejudice herein respondent who has been duly withheld taxes by the withholding agents acting under government authority.* Moreover, pursuant to Sections 57 and 58 of the NIRC of 1997, as amended, the withholding of income tax and the remittance thereof to the BIR is the *responsibility of the payor* and not the payee. Therefore, respondent . . . has no control over the remittance of the taxes withheld from its income by the withholding agent or payor who is the agent of the petitioner. The Certificates of Creditable Tax Withheld at Source issued by the withholding agents of the government are *prima facie* proof of actual payment by herein respondent-payee to the government itself through said agents.[134] (Emphasis supplied, citations omitted)

In the case at bar, PAL is the income earner and the payee of the final withholding tax, and the Agent Banks are the withholding agents who are the payors responsible for the deduction and remittance of the tax.

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[134] *Id.* at 310-311.

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Given the above provisions, the failure of the Agent Banks to remit the amounts does not affect and should not prejudice PAL. In case of failure of remittance of taxes, the Bureau of Internal Revenue's cause of action is against the Agent Banks.

Thus, PAL is not obliged to remit, let alone prove the remittance of, the taxes withheld.

III.C

To claim a refund, this Court rules that PAL needs only to prove that taxes were withheld.

Taxes withheld by the withholding agent are deemed to be the full and final payment of the income tax due from the income earner or payee.[135]

Section 2.57. *Withholding of Tax at Source*

(A) *Final Withholding Tax. — Under the final withholding tax system the amount of income tax withheld by the withholding agent is* ***constituted as a full and final payment of the income tax due from the payee on the said income. The liability for payment of the tax rests primarily on the payor as a withholding agent****. Thus, in case of his failure to withhold the tax or in case of under withholding, the deficiency tax shall be collected from the payor/withholding agent. The payee is not required to file an income tax return for the particular income.*

The finality of the withholding tax is limited only to the payee's income tax liability on the particular income. It does not extend to the payee's other tax liability on said income, such as when the said income is further subject to a percentage tax. For example, if a bank receives income subject to final withholding tax, the same shall be subject to a percentage tax.[136] (Emphasis supplied)

Certificates of Final Taxes Withheld issued by the Agent Banks are sufficient evidence to establish the withholding of the taxes.[137]

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[135] BIR Revenue Reg. No. 02-98 (1998), Sec. 2.57.

[136] BIR Revenue Reg. No. 02-98 (1998), Sec. 2.57(A).

[137] *Commissioner of Internal Revenue v. Philippine National Bank*, 744 Phil. 299, 309 (2014) [Per *J.* Leonen, Second Division].

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In *Commissioner of Internal Revenue v. Philippine National Bank*:[138]

> The certificate of creditable tax withheld at source is the competent proof to establish the fact that taxes are withheld. It is not necessary for the person who executed and prepared the certificate of creditable tax withheld at source to be presented and to testify personally to prove the authenticity of the certificates.

In *Banco Filipino Savings and Mortgage Bank v. Court of Appeals*, this court declared that a certificate is complete in the relevant details that would aid the courts in the evaluation of any claim for refund of excess creditable withholding taxes:

> In fine, the document which may be accepted as evidence of the third condition, that is, the fact of withholding, must emanate from the payor itself, and not merely from the payee, and must indicate the name of the payor, the income payment basis of the tax withheld, the amount of the tax withheld and the nature of the tax paid.
>
> At the time material to this case, the requisite information regarding withholding taxes from the sale of acquired assets can be found in BIR Form No. 1743.1. As described in Section 6 of Revenue Regulations No. 6-85, BIR Form No. 1743.1 is a written statement issued by the payor as withholding agent showing the *income or other payments made by the said withholding agent during a quarter or year and the amount of the tax deducted and withheld therefrom. It readily identifies the payor, the income payment and the tax withheld.* It is complete in the relevant details which would aid the courts in the evaluation of any claim for refund of creditable withholding taxes.[139] (Emphasis supplied, citations omitted)

In the case at bar, the Court of Tax Appeals Special First Division noted that PAL offered in evidence the following Certificates of Final Tax Withheld at Source from the Agent Banks to prove the earned interest income on its bank deposits and the taxes withheld:[140]

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[138] 744 Phil. 299 (2014) [Per *J.* Leonen, Second Division].

[139] *Id.* at 309-310.

[140] *Rollo* (G.R. No. 206309), pp. 111-113.

BANK	PERIOD COVERED	AMOUNT OF TAX WITHHELD	
		PESO	US DOLLAR
China Banking Corp. (Exhibit "C")	January 2002 – December 2002		38,974.75
JP Morgan Chase Bank (Exhibit "D")	September 2002 – December 2002	1,237,646.43	
Phil. Bank of Communication[s] (Exhibit "E")	January 2002 – March 2002		7,698.63
Phil. Bank of Communication[s] (Exhibit "F")	April 2002 – June 2002	108,351.68	1,698.99
Phil. Bank of Communication[s] (Exhibit "G")	July 2002– September 2002	401,871.48	3,009.28
Phil. Bank of Communication[s] (Exhibit[s] "H" and "I")	October 2002 – December 2002		8,037.28
Standard Chartered [Bank] (Exhibit "J")	May 2002 – December 2002		6,458.14
TOTAL		₱1,747,869.59	$65,877.07

PAL also presented bank-issued Certificates of Final Tax Withheld at Source showing that the amounts it is seeking to refund were withheld.

For JPMorgan, PAL presented a Certificate of Income Tax Withheld for the Year 2002, which stated that its interest earned was ₱6,188,232.17 and that JPMorgan's withheld taxes were ₱1,237,646.43. This Certificate was signed by JPMorgan's Vice President and Operations Manager, Mamerto R. Natividad.[141]

For Chinabank, PAL presented a Bank Certification dated October 24, 2003, signed by Wilfredo A. Quijencio, Chinabank's International Banking Group Senior Manager.[142] It showed that Chinabank withheld final taxes amounting to US$38,974.75

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[141] *Id*. at 63-64.

[142] *Id*. at 62.

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from PAL's interest income from its dollar time deposit with Chinabank for the year 2002:

This is to certify the amount[s] of tax withheld from US DOLLAR Time Deposit account of PHILIPPINE AIRLINES the year 2002 are as follows:

PRINCIPAL AMOUNT	PERIOD COVERED	MATURITY VALUE	INTEREST INCOME (NET)	WITH-HOLDING TAX DEDUCTED	DATE REMITTED TO BIR
USD17,098,253.14	01/01/02 to 04/02/02	USD17,315,721.55	USD111,150.52	USD9,012.20	02/11/02, 03/11/02, 04/10/02, 05/10/02
USD17,315,721.55	04/02/02 to 09/30/02	USD17,617,709.54	USD301,987.99	USD24,485.51	05/10/02, 06/10/02, 07/10/02, 08/10/02, 09/10/02, 10/10/02
USD17,617,709.54	09/30/02 to 12/16/02	USD17,669,993.76	USD52,284.22	USD4,239.26	10/10/02, 11/11/02, 12/10/02, 01/10/03
USD10,669,993.76	12/16/02 to 12/31/02	USD10,807,210.62	USD11,309.08	USD916.95	01/10/03
USD7,000,000.00	12/23/02 to 12/31/02	USD7,086,558.17	USD3,956.95	USD320.83	01/10/03

This is to certify further that the said withholding tax deducted was duly remitted in accordance with existing rules and regulations of the Bureau of Internal Revenue.

This certification is being issued upon the request of the above client for whatever purpose/s it may serve.[143]

For PBCom, PAL presented Certificates of Income Tax Withheld for the four (4) quarters of Year 2002, all of which were signed by PBCom's Assistant Vice President, Carmencita L. Tan.[144]

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[143] *Id*.

[144] *Id*. at 65-72.

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These Certificates stated the amounts of interest income PAL earned and the taxes withheld from its US dollar time deposits:[145]

CERTIFICATE FOR THE PERIOD	INTEREST INCOME	TAX WITHHELD
1st Quarter[146]	US$102,648.40	US$7,698.63
2nd Quarter[147]	US$ 22,653.20	US$1,698.99
3rd Quarter[148]	US$ 40,123.73	US$3,009.28
4th Quarter[149]	US$107,163.73	US$8,037.28
TOTAL[150]	US$ 272,589.06	US$ 20,443.19

These Certificates also showed the amounts of interest income PAL earned and the taxes withheld from its peso deposit accounts:[151]

CERTIFICATE FOR THE PERIOD	INTEREST INCOME	TAX WITHHELD
2nd Quarter[152]	₱541,758.42	₱108,351.67
3rd Quarter[153]	₱2,009,357.41	₱401,871.46
TOTAL	₱2,551,115.83	₱510,223.13

Moreover, PBCom's letter [154] dated April 10, 2003 stated:

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145 *Id*.

146 *Id*. at 65-66.

147 *Id*. at 67-68.

148 *Id*. at 69-70.

149 *Id*. at 71-72.

150 *Id*. at 73.

151 *Id*. at 67-70.

152 *Rollo* (G.R. Nos. 206079-80), p. 14.

153 *Id*.

154 *Rollo* (G.R. No. 206309), p. 73.

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Dear Sir,

This is to certify that Philippine Airlines had various dollar & [peso savings accounts] placement[s] with our branch for the year 2002. The taxes withheld of which had been remitted to the BIR [are] as follows:

PSA	**MAY**	**JUNE**	**JULY**	**AUGUST**	**SEPTEMBER**
Principal Amount	186,000,000.03	192,490,557.00	244,661,600.04	104,420,160.01	104,842,017.46
Interest Paid	325,500.00	216,258.42	1,259,246.32	527,321.80	222,789.29
With-holding Tax	65,100.00	43,251.67	251,849.25	105,464.35	44,557.86
	1ST. QRTR.	**2ND QRTR.**	**3RD QRTR.**	**4TH QRTR.**	
Dollar Time Deposit					
Interest Paid	102,648.40	22,653.20	40,123.73	107,163.73	
With-holding Tax	7,698.63	1,698.99	3,009.28	8,037.28	

This certification is hereby issued for whatever legal purpose it may serve.

Very truly yours,
(SGD)
Ms. Carmencita L. Tan, AVP
Branch Manager[155]

For Standard Chartered, PAL presented a letter dated September 19, 2003, signed by Standard Chartered's Treasury Operations Officer, Bienvenido Nieto, listing PAL's interest income and withholding tax for its US dollar time deposit account from May 2002 to December 2002.[156]

This letter stated:

We confirm the above interest income and the 7.5% withholding tax for your Time Deposit Account and remitted to the Bureau of Internal Revenue.[157]

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[155] *Id*.

[156] *Id*. at 74-76.

[157] *Id*. at 76.

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These bank-issued Certificates of Income Tax Withheld and BIR Forms were neither disputed nor alleged to be false or fraudulent. There was not even any denial from the Commissioner or the Agent Banks that the amounts were not *withheld* as final taxes from PAL's interest income from its money deposits.

Moreover, these Certificates of Final Tax Withheld, complete in relevant details, were declared under the penalty of perjury. As such, they may be taken at face value.[158]

Section 267 of the National Internal Revenue Code, as amended, provides:

> Section 267. *Declaration under Penalties of Perjury.*— Any declaration, return and other statements required under this Code, shall, in lieu of an oath, contain a written statement that they are made under the penalties of perjury. Any person who willfully files a declaration, return or statement containing information which is not true and correct as to every material matter shall, upon conviction, be subject to the penalties prescribed for perjury under the Revised Penal Code.[159]

Considering that these Certificates were presented, the burden of proof shifts to the Commissioner, who needs to establish that they were incomplete, false, or issued irregularly.[160]

However, the Commissioner did no such thing.

Thus, these Certificates are sufficient evidence to establish the withholding of the taxes.

The taxes withheld from PAL are considered its full and final payment of taxes. Necessarily, when taxes were withheld and deducted from its income, PAL is deemed to have paid them.

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[158] *Commissioner of Internal Revenue v. Philippine National Bank*, 744 Phil. 299, 310 (2014) [Per *J.* Leonen, Second Division].

[159] TAX CODE, Title X, Ch. 1, Sec. 267, as amended by Rep. Act No. 8424 (1997).

[160] *Commissioner of Internal Revenue v. Philippine National Bank*, 744 Phil. 299, 310 (2014) [Per *J.* Leonen, Second Division].

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Considering that PAL is exempted from paying the withholding tax, it is rightfully entitled to a refund.

III.D

This Court notes that the case of *Commissioner of Internal Revenue v. Philippine National Bank*[161] involves a refund of creditable withholding tax and not of final withholding tax. However, its ruling that proof of remittance is not necessary to claim a tax refund applies to final withholding taxes. The same principles used to rationalize the ruling apply to final withholding taxes: (i) the payor-withholding agent is responsible for the withholding and remitting of the income taxes; (ii) the payee-refund claimant has no control over the remittance of the taxes withheld from its income; (iii) the Certificates of Final Tax Withheld at Source issued by the withholding agents of the government are *prima facie* proof of actual payment by payee-refund claimant to the government itself and are declared under perjury.[162]

Thus, this Court sees no reason why it should not rule the same way.

III.E

Lastly, while tax exemptions are strictly construed against the taxpayer, the government should not misuse technicalities to keep money it is not entitled to.

Substantial justice, equity and fair play are on the side of petitioner. Technicalities and legalisms, however exalted, should not be misused by the government to keep money not belonging to it, thereby enriching itself at the expense of its law-abiding citizens. Under the principle of *solutio indebiti* provided in Art. 2154, Civil Code, the BIR received something "when there [was] no right to demand it," and thus, it has the obligation to return it. Heavily militating against respondent Commissioner is the ancient principle that no one, not even the state, shall enrich oneself at the expense of another. Indeed, simple justice requires the speedy refund of the wrongly held taxes.[163] (Citations omitted)

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[161] 744 Phil. 299 (2014) [Per *J.* Leonen, Second Division].

[162] *Id.* at 310-311.

[163] *State Land Investment Corp. v. Commissioner of Internal Revenue*, 566 Phil. 113, 122 (2008) [Per *J.* Sandoval-Gutierez, First Division].

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Considering that PAL presented sufficient proof that: (i) it is exempted from paying withholding taxes; (ii) amounts were withheld and deducted from its accounts; (iii) and the Commissioner did not contest the withholding of these amounts and only raises that they were not proven to be remitted, this Court finds that PAL sufficiently proved that it is entitled to its claim for refund.

Finally, both the Commissioner and the Court of Tax Appeals should have appreciated the unreasonable difficulty that it would have put the taxpayer—in this case PAL—to claim a statutory exemption granted to it. In requiring that it prove actual remittance, the court *a quo* and the Commissioner effectively put the burden on the payee to prove that both government and the banks complied with their legal obligation. It would have been near impossible for the taxpayer to demand to see the records of the payor bank or the ledgers of the government. The legislative policy was to provide incentives to the taxpayer by unburdening it of taxes. By administrative and judicial interpretation, such policy would have been unreasonably reversed. This is not this Court's view of equity. Clearly, the taxpayer in this case is entitled to relief.

WHEREFORE, premises considered, the Petition of Philippine Airlines, Inc. in **G.R. Nos. 206079-80** is **GRANTED**. The Petition of the Commissioner of Internal Revenue in **G.R. No. 206309** is **DENIED.** The August 14, 2012 Decision and February 25, 2013 Resolution of the Court of Tax Appeals En Banc in CTA CASE No. 6877 are **PARTIALLY REVERSED**. Philippine Airlines, Inc. is entitled to its claim for refund of ₱510,223.16 and US$65,877.07, representing the final income taxes withheld by China Banking Corporation, Philippine Bank of Communications, and Standard Chartered Bank.

SO ORDERED.

Velasco, Jr. (*Chairperson*), *Bersamin, Martires,* and *Gesmundo, JJ.,* concur.