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THIRD DIVISION

[G.R. No. 206019. March 18, 2015]

PHILIPPINE NATIONAL BANK, *petitioner, vs.* **COMMISSIONER OF INTERNAL REVENUE,** *respondent.*

SYLLABUS

TAXATION; WITHHOLDING TAXES; CLAIM FOR REFUND OF CREDITABLE WITHHOLDING TAX; WHILE IT MAY BE NECESSARY TO PROVE THAT THE TAXPAYER DID NOT USE THE CLAIMED CREDITABLE WITHHOLDING TAX TO PAY FOR HIS TAX LIABILITIES, THERE IS NO BASIS IN LAW OR JURISPRUDENCE TO SAY THAT BIR FORM NO. 2307 IS THE ONLY EVIDENCE THAT MAY BE ADDUCED TO PROVE SUCH NON-USE; ESTABLISHED IN CASE AT BAR.— Certainly, Gotesco's relentless refusal to transfer registered ownership of the Ever Ortigas Commercial Complex to PNB constitutes proof enough that Gotesco will not do any act inconsistent with its claim of ownership over the foreclosed asset, including claiming the creditable tax imposed on the foreclosure sale as tax credit and utilizing such amount to offset its tax liabilities. To do such would run roughshod over Gotesco's firm stance that PNB's foreclosure on the mortgage was invalid and that it remained the owner of the subject property. Several pieces of evidence likewise point to Gotesco's non-utilization of the claimed creditable withholding tax. x x x All in all, the evidence presented by petitioner sufficiently proved its entitlement to the claimed refund. There is no need for PNB to present Gotesco's BIR Form No. 2307, as insisted by the First Division, because the information contained in the said form may be very well gathered from other documents already presented by PNB. Thus, the presentation of BIR Form No. 2307 would be in the final analysis a superfluity, of little or no value. In claims for excess and unutilized creditable withholding tax, the submission of BIR Forms 2307 is to prove the fact of withholding of the excess creditable withholding tax being claimed for refund. This is clear in the provision of Section 58.3, RR 2-98, as amended, and in various rulings of the Court.

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> In the words of Section 2.58.3, RR 2-98, "That the fact of withholding is established by a copy of a statement duly issued by the payor (withholding agent) to the payee showing the amount paid and the amount of tax withheld therefrom." Hence, the probative value of BIR Form 2307, which is basically a statement showing the amount paid for the subject transaction and the amount of tax withheld therefrom, is to establish only the fact of withholding of the claimed creditable withholding tax. There is nothing in BIR Form No. 2307 which would establish either utilization or non-utilization, as the case may be, of the creditable withholding tax. x x x While perhaps it may be necessary to prove that the taxpayer did not use the claimed creditable withholding tax to pay for his/its tax liabilities, there is no basis in law or jurisprudence to say that BIR Form No. 2307 is the only evidence that may be adduced to prove such non-use.

APPEARANCES OF COUNSEL

Zambrano & Gruba Law Offices for petitioner.
The Solicitor General for respondent.

D E C I S I O N

VELASCO, JR., *J.*:

Nature of the Case

This is an appeal via a Petition for Review on Certiorari under Rule 45 of the Rules of Court seeking to reverse and set aside the Court of Tax Appeals (CTA) *En Banc* September 12, 2012 Decision, as reiterated in a Resolution of February 12, 2013 in CTA EB Case No. 762, affirming the earlier decision of its First Division denying petitioner's claim for the refund of excess creditable withholding tax which it allegedly erroneously paid the Bureau of Internal Revenue (BIR) in the amount of Twelve Million Four Hundred Thousand and Four Pesos and Seventy-One Centavos (₱12,400,004.71).

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The Facts

Gotesco Tyan Ming Development, Inc. (Gotesco), a Filipino corporation engaged in the real estate business,[1] entered on April 7, 1995 into a syndicated loan agreement with petitioner Philippine National Bank (PNB) and three (3) other banks. To secure the loan, Gotesco mortgaged a six-hectare expanse known as the Ever Ortigas Commercial Complex, under a mortgage trust indenture agreement in favor of PNB, through its Trust Banking Group, as trustee.[2]

Gotesco subsequently defaulted on its loan obligations. Thus, PNB foreclosed the mortgaged property through a notarial foreclosure sale on July 30, 1999. On August 4, 1999, a certificate of sale was issued in favor of PNB, subject to Gotesco's right, as debtor and mortgagor, to redeem the property within one (1) year from the date of inscription of the certificate of sale with the Register of Deeds of Pasig City on November 9, 1999.[3]

On October 20, 2000, Gotesco filed a civil case against PNB before the Regional Trial Court of Pasig, Branch 168 (RTC) for the annulment of the foreclosure proceedings, specific performance and damages with prayer for temporary restraining order (TRO) and/or preliminary injunction.[4]

On November 9, 2000, the RTC issued a TRO enjoining PNB from consolidating ownership over the mortgaged property, then on December 21, 2000, a writ of preliminary injunction. PNB's motion for reconsideration was subsequently denied.[5]

PNB went to the Court of Appeals (CA) via a Petition for Certiorari. The CA ruled in favor of PNB and issued an Order reversing and setting aside the writ of preliminary injunction

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[1] Amended Articles of Incorporation of Gotesco Tyan Ming Development, Inc., records, CTA Case No. 7588, pp. 51-61.

[2] *Rollo*, p. 33.

[3] *Id*. at 33.

[4] *Id*. at 34.

[5] *Id*.

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issued by the RTC. Gotesco's Motion for Reconsideration was denied on December 22, 2003.[6] As Gotesco did not challenge the CA ruling, the setting aside of the writ of preliminary injunction became final and executory.

As it prepared for the consolidation of its ownership over the foreclosed property, PNB paid the BIR Eighteen Million Six Hundred Fifteen Thousand Pesos (₱18,615,000) as documentary stamp tax (DST) on October 31, 2003. PNB also withheld and remitted to the BIR withholding taxes equivalent to six percent (6%) of the bid price of One Billion Two Hundred Forty Million Four Hundred Sixty-Nine Pesos and Eighty-Two Centavos (₱1,240,000,469.82) or Seventy-Four Million Four Hundred Thousand and Twenty-Eight Pesos and Forty-Nine Centavos (₱74,400,028.49) on October 31, 2003 and November 11, 2003.[7]

Pending the issuance of the Certificate Authorizing Registration (CAR), the BIR informed PNB that it is imposing interests, penalties and surcharges of Sixty-One Million Six Hundred Seventy-Eight Thousand Four Hundred Ninety Pesos and Twenty-Eight Centavos (Php 61,678,490.28) on captial gains tax and Fifteen Million Four Hundred Ninety-Four Thousand and Sixty-Five Pesos (Php 15,494,065) on DST. To facilitate the release of the CAR, petitioner paid all the surcharges, interests and penalties assessed against it in the total amount of Seventy-Seven Million One Hundred Seventy-Two Thousand Five Hundred Fifty-Five Pesos and Twenty-Eight Centavos (Php 77,172,555.28) on April 5, 2005.[8]

On the claim that what it paid the BIR was not entirely due, PNB lost no time in instituting the necessary actions. Thus, on October 27, 2005, it filed an administrative claim for the refund of excess withholding taxes with the BIR. A day after, or on October 28, 2005, it filed its petition for review before the tax court, docketed thereat as CTA Case No. 7355.[9]

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[6] *Id*.

[7] *Id*.

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

[9] *Id*. at 35.

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In its claim for refund, PNB explained that it inadvertently applied the six percent (6%) creditable withholding tax rate on the sale of real property classified as ordinary asset, when it should have applied the five percent (5%) creditable withholding tax rate on the sale of ordinary asset, as provided in Section 2.57.2(J)(B) of Revenue Regulation (RR) No. 2-98 as amended by RR No. 6-01, considering that Gotesco is primarily engaged in the real estate business. The applicable creditable withholding tax rate of five percent (5%) of the bid price is equivalent to the amount of Sixty-Two Million Twenty-Three Pesos and Forty-Nine Centavos (Php 62,000,023.49). Therefore, PNB claimed that it erroneously withheld and remitted to the BIR excess taxes of Twelve Million Four Hundred Thousand and Four Pesos and Seventy-One Centavos (Php12,400,004.71).[10]

On March 22, 2007, PNB filed another claim for refund claiming erroneous assessment and payment of the surcharges, penalties and interests. Petitioner filed its corresponding Petition for Review on March 30, 2007, docketed as CTA Case No. 7588.[11]

Upon motion of petitioner, CTA Case Nos. 7355 and 7588 were consolidated. The consolidated cases were set for pre-trial conference which CIR failed to attend despite several resetting. On September 21, 2007, CIR was declared to be in default.[12]

CTA Decision

In its July 12, 2010 consolidated Decision,[13] the CTA Special First Division (First Division), in CTA Case No. 7588, ordered the CIR to refund to PNB ₱77,172,555.28 representing its claim for refund of interests, surcharges and penalties on capital gains taxes and documentary stamp taxes for the year 2003.[14]

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[10] *Id*. at 34.

[11] *Id*. at 35.

[12] *Id*. at 35.

[13] *Id*. at 48-65.

[14] *Id*. at 65.

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In CTA Case No. 7355, however, the First Division denied PNB's claim for the refund of excess creditable withholding taxes for insufficiency of evidence. The tax court agreed with PNB that the applicable withholding rate was indeed five percent (5%) and not six percent (6%).[15] Nevertheless, it held that PNB, while able to establish the fact of tax withholding and the remittance thereof to the BIR, failed to present evidence to prove that Gotesco did not utilize the withheld taxes to settle its tax liabilities. The First Division further stated that PNB should have offered as evidence the 2003 Income Tax Return (2003 ITR) of Gotesco to show that the excess withholding tax payments were not used by Gotesco to settle its tax liabilities for 2003. The First Division elucidated:

> With the above proof of payments, this Court finds that the fact of withholding and payment of the withholding tax due were properly established by petitioner. x x x
>
> However, it must be noted that although petitioner duly paid the withholding taxes, there was no evidence presented to this Court showing that GOTESCO utilized the taxes withheld to settle its own tax liability for the year 2003. Being creditable in nature, petitioner should have likewise offered as evidence the 2003 Income Tax Return of GOTESCO to convince the court that indeed the excess withholding tax payments were not used by GOTESCO. The absence of such relevant evidence is fatal to petitioner's action preventing this Court from granting its claim. To allow petitioner its claim may cause jeopardy to the Government if it be required to refund the claim already utilized.[16]

On July 30, 2010, PNB filed a Motion for Reconsideration (MR), attaching therewith, among others, Gotesco's 2003 ITR and the latter's Schedule of Prepaid Tax, which the First Division admitted as part of the records.

On April 5, 2011, the First Division issued a Resolution[17] denying PNB's MR mainly because there were no documents

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[15] *Id*. at 60.

[16] *Id*. at 61-62.

[17] *Id*. at 71-75.

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or schedules to support the figures reported in Gotesco's 2003 ITR to show that no part of the creditable withholding tax sought to be refunded was used, in part, for the settlement of Gotesco's tax liabilities for the same year. It stated that PNB should have likewise presented the Certificate of Creditable Tax Withheld at Source (BIR Form No. 2307) issued to Gotesco in relation to the creditable taxes withheld reported in its 2003 ITR. BIR Form No. 2307, so declared in the Resolution, will confirm whether or not that the amount being claimed by PNB was indeed not utilized by Gotesco to offset its taxes. In denying the MR, the First Division explained:

> Petitioner attached to its Motion, income tax returns of GOTESCO for the taxable year 2003, to prove that the latter did not utilize the taxes withheld by petitioner. The returns were submitted without any attachment regarding its creditable taxes withheld. Except for GOTESCO's Unadjusted Schedule of Prepaid Tax for the taxable year 2003, there were no other documents or schedules presented before this Court to support the figures reported in the tax returns of GOTESCO for the same year under Lines 27 (C), (D) and (G) of the Creditable Taxes Withheld.
>
> We note that the amounts reported by GOTESCO as creditable taxes withheld for the year 2003 were just ₱6,014,433.00 in total, which is less than ₱74,400,028.49, the creditable taxes withheld from it by the petitioner. In fact, it is less than the ₱12,400,004.70 creditable taxes withheld being claimed by petitioner in its present motion. However, this Court deemed that such observation alone, without any supporting document or schedule, is not enough to convince us that no part of the creditable withholding tax sought to be refunded is included in the total tax credits reported by GOTESCO in its tax returns for the taxable year 2003 which was used, in part, for the settlement of its tax liabilities for the same year.
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> To sufficiently prove that GOTESCO did not utilize the creditable taxes withheld, petitioner should have likewise presented BIR Forms No. 2307 issued to GOTESCO in relation to the creditable taxes withheld reported in its 2003 tax returns. Doing so will dispel any doubt as to the composition of GOTESCO's creditable taxes withheld for 2003. This will settle once and for all that the amount being claimed by petitioner was not utilized by GOTESCO, and thus the claim should

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be granted. Until then, this Court will stand by its decision and deny the claim.[18]

In due time, PNB filed an appeal before the CTA *En Banc* by way of a Petition for Review, docketed as CTA EB Case No. 762.[19] PNB argued that its evidence confirms that Gotesco's Six Million Fourteen Thousand and Four Hundred Thirty-Three Pesos (₱6,014,433) worth of tax credits, as reported and claimed in its 2003 ITR, did not form part of the ₱74,400,028.49 equivalent to six percent (6%) creditable tax withheld. To support the foregoing position, PNB highlighted the following:

1. Gotesco continues to recognize the foreclosed property as its own asset in its 2003 audited financial statements. It did not recognize the foreclosure sale and has not claimed the corresponding creditable withholding taxes withheld by petitioner on the foreclosure sale.
2. Gotesco testified that the ₱6,014,4333.00 tax credits claimed in the year 2003 does not include the ₱74,400,028.49 withholding taxes withheld and paid by petitioner in the year 2003.
3. PNB presented BIR Form No. 1606, the withholding tax remittance return filed by PNB as withholding agent, which clearly shows that the amount of ₱74,400,028.49 was withheld and paid upon PNB's foreclosure of Gotesco's asset.[20]

Finally, in its July 12, 2010 Decision, the First Division expressly provided that Gotesco's 2003 ITR was the only evidence it needed to show that the excess withholding taxes paid and remitted to the BIR were not utilized by Gotesco.

On September 12, 2012, the CTA *En Banc*, in the first assailed Decision,[21] denied PNB's Petition for Review and held:

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[18] *Id*. at 74-75.

[19] *Id*. at 31.

[20] *Id*. at 40.

[21] *Id*. at 31-46.

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In this case, petitioner is counting on the Income Tax Returns of GOTESCO for the taxable year 2003 and on a certain Unadjusted Schedule of Prepaid Tax for the same year to support its argument that GOTESCO did not utilize the taxes withheld by petitioner; however, We are not persuaded.

To reiterate, since the claim for refund involves creditable taxes withheld from GOTESCO, it is necessary to prove that these creditable taxes were not utilized by GOTESCO to pay for its liabilities. The income tax returns alone are not enough to fully support petitioner's contention that no part of the creditable withholding tax sought to be refunded by petitioner was utilized by GOTESCO; first, there were no other relevant supporting documents or schedules presented to delineate the figures constituting the creditable taxes withheld that was reported in GOTESCO's 2003 tax returns; and second, this Court cannot give credence to the Unadjusted Schedule of Prepaid Tax for the taxable year 2003 being referred to by petitioner as the same pertains merely to a list of GOTESCO's creditable tax withheld for taxable year 2003 and was not accompanied by any attachment to support its contents; also it is manifest from the records that petitioner failed to have this Schedule of Prepaid Tax offered in evidence, and thus, was not admitted as part of the records of this case.[22]

After the denial of PNB's Motion for Reconsideration on February 12, 2013,[23] the bank filed this instant petition.

Issue

Whether or not PNB is entitled to the refund of creditable withholding taxes erroneously paid to the BIR. Subsumed in this main issue is the evidentiary value under the premises of BIR Form No. 2307.

The Court's Ruling

The petition is impressed with merit. As PNB insists at every turn, it has presented sufficient evidence showing its entitlement to the refund of the excess creditable taxes it erroneously withheld and paid to the BIR.

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[22] *Id*. at 43-44.

[23] *Id*. at 67-69.

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As earlier stated, the CTA predicated its denial action on the postulate that even if PNB's withholding and remittance of taxes were undisputed, it was not able to prove that Gotesco did not utilize the taxes thus withheld to pay for its tax liabilities for the year 2003.

In its Decision, the First Division categorically stated, "[P]etitioner should have likewise offered as evidence the 2003 Income Tax Return of GOTESCO to convince this Court that indeed the excess withholding tax payments were not used by GOTESCO. The absence of such relevant evidence is fatal to petitioner's action preventing this Court from granting its claim."[24]

Thus, apprised on what to do, and following the First Division's advice, PNB presented Gotesco's 2003 ITRs as an attachment to its MR, which was subsequently denied however. In ruling on the MR, the First Division again virtually required PNB to present additional evidence, specifically, Gotesco's Certificates of Creditable Taxes Withheld (BIR Form No. 2307) covering ₱6,014,433 tax credits claimed for year 2003, purportedly to show non-utilization by Gotesco of the ₱74,400,028.49 withholding tax payments.

Although PNB was not able to submit Gotesco's BIR Form No. 2307, the Court is persuaded and so declares that PNB submitted evidence sufficiently showing Gotesco's non-utilization of the taxes withheld subject of the refund.

First, Gotesco's Audited Financial Statements for year 2003,[25] which it subsequently filed with the BIR in 2004, still included the foreclosed Ever Ortigas Commercial Complex, in the Asset account "Property and Equipment." This was explained on page 8, Note 5 of Gotesco's 2003 Audited Financial Statements:

> Commercial complex and improvements pertain to the Ever Pasig Mall. As discussed in Notes 1 and 7, the land and the mall, which were used as collaterals for the Company's bank loans, were foreclosed

[24] *Id*. at 62.

[25] *Id*. at 105-123.

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by the lender banks in 1999. However, the lender banks have not been able to consolidate the ownership and take possession of these properties pending decision of the case by the Court of Appeals. Accordingly, the properties are still carried in the books of the Company. As of April 21, 2004, the Company continues to operate the said mall. Based on the December 11, 2003 report of an independent appraiser, the fair market value of the land, improvements and machinery and equipment would amount to about ₱2.9billion.

Land pertains to the Company's properties in Pasig City where the Ever Pasig Mall is situated.[26]

It is clear that as of year-end 2003, Gotesco had continued to assert ownership over the Ever Ortigas Commercial Complex as evidenced by the following: (a) it persistently challenged the validity of the foreclosure sale which was the transaction subject to the ₱74,400,028.49 creditable withholding tax; and (b) its 2003 Audited Financial Statements declared said complex as one of its properties. Thus, it is reasonable to conclude that since Gotesco vehemently refused to recognize the validity of the foreclosure sale, it stands to reason that it also refused to recognize the payment of the creditable withholding tax that was due on the sale and most especially, claim the same as a tax credit.

Certainly, Gotesco's relentless refusal to transfer registered ownership of the Ever Ortigas Commercial Complex to PNB constitutes proof enough that Gotesco will not do any act inconsistent with its claim of ownership over the foreclosed asset, including claiming the creditable tax imposed on the foreclosure sale as tax credit and utilizing such amount to offset its tax liabilities. To do such would run roughshod over Gotesco's firm stance that PNB's foreclosure on the mortgage was invalid and that it remained the owner of the subject property.

Several pieces of evidence likewise point to Gotesco's non-utilization of the claimed creditable withholding tax. As advised by the First Division, Gotesco presented its 2003 ITR[27] along

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[26] *Id*. at 119.

[27] *Id*. at 136-138.

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with its 2003 Schedule of Prepaid Tax[28] which itemized in detail the withholding taxes claimed by Gotesco for the year 2003 amounting to ₱6,014,433. The aforesaid schedule shows that the creditable withholding taxes Gotesco utilized to pay for its 2003 tax liabilities came from the rental payments of its tenants in the Ever Ortigas Commercial Complex, not from the foreclosure sale.

Further, Gotesco's former accountant, Ma. Analene T. Roxas, stated in her Judicial Affidavit[29] that the tax credits claimed for year 2003 did not include any portion of the amount subject to the claim for refund. First, she explained that Gotesco could not have possibly utilized the amount claimed for refund as it was not even aware that PNB paid the six percent (6%) creditable withholding tax since no documents came to its attention which showed such payment by PNB. As she also explained, had Gotesco claimed the entire or even any portion of ₱74,400,028.49, corresponding to the six percent (6%) tax withheld by PNB, the amount appearing in Items 27D[30] and 27C[31] of Gotesco's 2003 ITR should have reflected the additional amount of ₱74,400,028.49. The pertinent portions of Roxas' Judicial Affidavit read:

Q:	In GOTESCO's 2003 ITRs, both Tentative and amended, the total tax credits/payments amounted to Php 6,014,433.00. Are you familiar with the composition or breakdown of this Php 6,014,433.00?
A:	Yes.
Q:	May we know, for the record, if any part of this Php 6,014,433.00 of GOTESCO's tax credits for year 2003 pertains to the 6% Creditable Tax Withheld by PNB amounting to

[28] *Id*. at 124-126.

[29] *Id*. at 127-132.

[30] Item 27D of ITR – Creditable Tax Withheld Per BIR Form No. 2307 for the Fourth Quarter.

[31] Item 27C of ITR – Creditable Tax Withheld for the First Three Quarters.

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	Php74,400,028.49? To be more specific, does any part of the Php 6,014,433.00 of GOTESCO's tax credits for year 2003 pertain to the Php12,400,004.70 amount subject to the present claim for refund before the Honorable Court of Tax Appeals?
A:	For the record and based on the ITRs of GOTESCO, the amount of Php 6,014,433.00 tax credits for year 2003 did not encompass any portion of the Php74,400,028.49 representing 6% Creditable Tax Withheld, or to be more specific, said Php 6,014,433.00 tax credits of GOTESCO for year 2003 did not include any portion of the Php12,400,004.70 amount subject to the present claim for refund.
Q:	Why is this so, Ms. Analene? In theory, the Php74 million creditable withholding tax should have benefited GOTESCO, right?
A:	In theory, it is only proper for GOTESCO to claim and utilize the Php74 million creditable withholding tax. However, GOTESCO was not aware that PNB paid 6% creditable withholding tax on behalf of GOTESCO. There were no documents that came to GOTESCO's attention which showed such Php74million creditable tax was paid to the BIR on behalf of GOTESCO.
Q:	Considering that you mentioned earlier that you helped prepare GOTESCO's 2003 ITR, do you have documents to support your statement?
A:	Yes. I have with me a document containing GOTESCO's Schedule of Prepaid Tax. However, this Schedule of Prepaid Tax is still unadjusted. The final figure is properly reflected in GOTESCO'S 2003 ITR in the column of Total Tax Credits/ Payments.
Q:	How can this unadjusted Schedule of Prepaid Tax support your statement that GOTESCO did not utilize any portion of the Php74,400,028.49 representing 6% creditable tax withheld by herein Petitioner PNB?
A:	As you can see, based on this Schedule of Prepaid Tax, there is a comprehensive list of GOTESCO tenants and breakdown of their prepaid tax or creditable tax withheld. Although PNB was listed as a tenant of GOTESCO, the

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	withholding tax of PNB for year 2003 (as reflected in GOTESCO's Schedule of Prepaid Tax) only amounted to Php 65,985.44 due to the lease contract between PNB and GOTESCO. This amount is too small if you compare it with the Php74million creditable tax withheld by PNB based on their foreclosure of GOTESCO's Ortigas Mall Complex.
Q:	Are you aware of any other document which would likewise confirm your conclusion that GOTESCO did not utilize any portion of the Php74,400,004.70 subject of the present claim for refund?
A:	Yes. The 2003 Tentative and Amended ITRs of GOTESCO would prove that GOTESCO did not utilize any portion of the Php74,400,028.49 representing 6% creditable tax withheld by herein Petitioner PNB. Had GOTESCO claimed the entire or even any portion of Php74,400,028.49, corresponding to the 6% tax withheld by PNB, the amount appearing in Item 27D-Creditable Tax Withheld per BIR Form 2307 for the Fourth Quarter should not only be Php1,362,965.00, but should have reflected the additional amount of Php74,400,028.49. The same observation can be applied in Item 27C Creditable Tax Withheld for the First Three Quarters, such that the amount reflected should not only be Php4,651,568.00 but Php74,400,028.49 more.[32]

All in all, the evidence presented by petitioner sufficiently proved its entitlement to the claimed refund. There is no need for PNB to present Gotesco's BIR Form No. 2307, as insisted by the First Division, because the information contained in the said form may be very well gathered from other documents already presented by PNB. Thus, the presentation of BIR Form No. 2307 would be in the final analysis a superfluity, of little or no value.

In claims for excess and unutilized creditable withholding tax, the submission of BIR Forms 2307 is to prove the fact of withholding of the excess creditable withholding tax being claimed for refund. This is clear in the provision of Section 58.3, RR

[32] *Rollo*, pp. 130-131.

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2-98, as amended, and in various rulings of the Court.[33] In the words of Section 2.58.3, RR 2-98, "That the fact of withholding is established by a copy of a statement duly issued by the payor (withholding agent) to the payee showing the amount paid and the amount of tax withheld therefrom."

Hence, the probative value of BIR Form 2307, which is basically a statement showing the amount paid for the subject transaction and the amount of tax withheld therefrom, is to establish only the fact of withholding of the claimed creditable withholding tax. There is nothing in BIR Form No. 2307 which would establish either utilization or non-utilization, as the case may be, of the creditable withholding tax.

It must be noted that PNB had already presented the Withholding Tax Remittance Returns (BIR Form No. 1606) relevant to the transaction. The said forms show that the amount of ₱74,400,028.49 was withheld and paid by PNB in the year 2003. It contains, among other data, the name of the payor and the payee, the description of the property subject of the transaction, and the determination of the taxable base, and the tax rate applied. These are the very same key information that would be gathered from BIR Form No. 2307.

While perhaps it may be necessary to prove that the taxpayer did not use the claimed creditable withholding tax to pay for his/its tax liabilities, there is no basis in law or jurisprudence to say that BIR Form No. 2307 is the only evidence that may be adduced to prove such non-use.

In this case, PNB was able to establish, through the evidence it presented, that Gotesco did not in fact use the claimed creditable withholding taxes to settle its tax liabilities, to reiterate: (1) Gotesco's 2003 Audited Financial Statements, which still included the mortgaged property in the asset account "Properties and Equipment," proving that Gotesco did not recognize the foreclosure sale and therefore, the payment by PNB of the

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[33] See *Filinvest Development Corporation v. CIR*, G.R. No. 146941, August 9, 2007, 529 SCRA 605.

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creditable withholding taxes corresponding to the same; (2) Gotesco's 2003 ITRs, which the CTA Special First Division required to show that the excess creditable withholding tax claimed for refund was not used by Gotesco, along with the 2003 Schedule of Prepaid Tax which itemized in detail the withholding taxes claimed by Gotesco for the year 2003 amounting to ₱6,014,433.00; (3) the testimony of Gotesco's former accountant, proving that the amount subject of PNB's claim for refund was not included among the creditable withholding taxes stated in Gotesco's 2003 ITR; and (4) the Withholding Tax Remittance Returns (BIR Form 1606) proving that the amount of ₱74,400,028.49 was withheld and paid by PNB in the year 2003.

Ergo, the evidence on record sufficiently proves that the claimed creditable withholding tax was withheld and remitted to the BIR, that such withholding and remittance was erroneous, and that the claimed creditable withholding tax was not used by Gotesco to settle its tax liabilities.

WHEREFORE, the Court resolves to **GRANT** the petition. The Decision of the Court of Tax Appeals *En Banc* dated September 12, 2012 and its Resolution dated February 12, 2013 in CTA EB Case No. 762 are hereby **REVERSED** and **SET ASIDE,** and a new one entered **DIRECTING** respondent Commissioner of Internal Revenue to refund to petitioner Philippine National Bank, within thirty (30) days from the finality of this Decision, the amount of Twelve Million Four Hundred Thousand and Four Pesos and Seventy-One Centavos (Php 12,400,004.71), representing excess creditable withholding taxes withheld and paid for the year 2003.

SO ORDERED.

Peralta, del Castillo,[*] *Villarama, Jr.,* and *Reyes, JJ.,* concur.

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[*] Additional Member per raffle dated March 16. 2015.