

## SECOND DIVISION

[ G.R. No. 212699, March 13, 2019 ]

**COMMISSIONER OF INTERNAL REVENUE, PETITIONER, V.  
PHILIPPINE NATIONAL BANK, RESPONDENT.**

### D E C I S I O N

**J. REYES, JR., J.:**

This petition for review on *certiorari*<sup>[1]</sup> under Rule 45 of the Rules of Court assails the Amended Decision<sup>[2]</sup> dated February 4, 2014 of the Court of Tax Appeals (CTA) *En Banc* in CTA EB Case No. 859, which ordered petitioner Commissioner of Internal Revenue (CIR) to refund respondent Philippine National Bank's (PNB's) excess and unutilized creditable withholding taxes (CWT) for the taxable year 2005, or to issue a tax credit certificate therefor in favor of PNB. The CTA's Resolution<sup>[3]</sup> dated May 27, 2014, which denied the CIR's motion for reconsideration is likewise impugned herein.

#### **Factual Antecedents**

On April 17, 2006, PNB electronically filed its Annual Income Tax Return (ITR) for taxable year 2005. The following day, it manually filed the same with the required attachments thereto.<sup>[4]</sup>

Through letters with attachments dated February 12, 2007, June 22, 2007, and March 10, 2008, which were received by the CIR on February 22, 2007, June 25, 2007, and March 13, 2008, respectively, PNB filed its claim for refund or issuance of tax credit certificate of its excess CWT in the amount of P74,598,430.47.<sup>[5]</sup>

Due to the CIR's inaction to the said claim, PNB filed a petition for review for its claim on April 11, 2008 before the CTA.<sup>[6]</sup>

On September 30, 2011, the CTA Third Division rendered a Decision,<sup>[7]</sup> finding PNB's evidence to be insufficient to support its claim for refund or the issuance of a tax credit certificate. Specifically, the CTA Third Division pointed out that the presentation of PNB's Annual ITR for 2006 is not enough to prove that it did not carry over the claimed excess or unutilized CWT to the subsequent quarters of 2006, ruling that the presentation of the succeeding Quarterly ITRs is vital to its claim for refund. It disposed, thus:

**WHEREFORE**, the Petition for Review is hereby **DENIED**.

**SO ORDERED.**<sup>[8]</sup>

PNB filed a motion for reconsideration but the same was denied in a Resolution<sup>[9]</sup> dated December 29, 2011.

PNB then appealed to the CTA *En Banc*, raising the sole issue of whether or not the presentation of the 2006 Quarterly ITRs is indispensable to PNB's claim for refund of its excess or unutilized CWT for 2005.

By a vote of 4-4-1 in its June 5, 2013 Decision,<sup>[10]</sup> the CTA denied the appeal, thus:

**WHEREFORE**, premises considered, the Petition for Review is hereby **DENIED**. The Decision and Resolution of the former Third Division of this Court in CTA Case No. 7760 dated September 30, 2011 and December 29, 2011, respectively, are hereby **AFFIRMED**. No pronouncement as to costs.

**SO ORDERED.**<sup>[11]</sup>

Undaunted, PNB filed a Motion for Reconsideration<sup>[12]</sup> dated June 28, 2013.

On February 4, 2014, the CTA *En Banc* rendered the assailed Amended Decision,<sup>[13]</sup> granting PNB's motion for reconsideration. The CTA *En Banc* ruled that there is nothing in our tax laws that requires the presentation of the Quarterly ITRs for succeeding years to establish entitlement to the refund of excess or unutilized CWT.<sup>[14]</sup>

Further, this time, the CTA *En Banc* recognized that the Supreme Court had, in several occasions, already passed upon this issue. It cited the cases of *Philam Asset Management, Inc. v. Commissioner of Internal Revenue*,<sup>[15]</sup> *State Land Investment Corporation v. Commissioner of Internal Revenue*,<sup>[16]</sup> and *Commissioner of Internal Revenue v. PERF Realty Corporation*,<sup>[17]</sup> wherein this Court ruled that the presentation of ITRs for the succeeding taxable years is not an essential requisite in proving a claim for refund of excess or unutilized CWT.<sup>[18]</sup> The Court elucidated that the presentation or non-presentation of the said document is not fatal to the refund claim as it is the duty of the CIR to verify whether or not the taxpayer carried over its excess CWT to the succeeding year.<sup>[19]</sup>

The CTA *En Banc* also found that PNB complied with all the requisites for the filing of such claim. *First*, there is no dispute that PNB filed its claim within the two-year prescriptive period. *Second*, that the income related to the P74,026,451.67 CWT formed part of PNB's taxable income for the years 1999 to 2006 were evidenced by the documents presented by PNB, which were evaluated by the Independent Certified Public Accountant (ICPA), to wit: original accounting tickets or input sheets; original deeds of absolute/conditional sale; general ledgers for the years 1999 to 2006; audited financial statements; and ITRs for the years 1999 to 2006. *Third*, PNB presented Certificates of Creditable Tax Withheld at Source duly issued to it by various withholding agents for the year 2005, which were examined by the Court-commissioned ICPA, SGV & Co., through its partner, Ms. Mary Ann C. Capuchino, to establish the fact of withholding. The ICPA noted, however, that out of the P74,598,430.47 CWT claimed for refund, only the amount of P74,026,451.67 was properly supported by original Certificates of Creditable Tax Withheld at Source issued in the name of PNB and dated within the calendar year 2005.<sup>[20]</sup>

In all, the CTA held that PNB was able to sufficiently prove its claim for refund, albeit for the reduced amount of P74,026,451.67, disposing as follows:

**WHEREFORE**, premises considered, [PNB's] Motion for Reconsideration (of the 05 June 2013 Decision) is hereby **GRANTED**. Accordingly, the Assailed Decision dated June 5, 2013 is hereby **REVERSED** and **SET ASIDE**. [The CIR] is **ORDERED TO REFUND**, or in the alternative, **ISSUE A TAX CREDIT CERTIFICATE** in favor of [PNB] in the amount of **Seventy-Four Million Twenty-Six Thousand Four Hundred Fifty-One Pesos and 67/100 (P74,026,451.67)**, representing excess and unutilized creditable withholding taxes for the taxable year 2005.

**SO ORDERED.**<sup>[21]</sup>

Insisting that the presentation of the Quarterly ITRs for the succeeding taxable year is incumbent upon claimants of CWT refund to prove its entitlement thereto, the CIR filed a motion for reconsideration, which was denied by the CTA *En Banc* in its May 27, 2014 assailed Resolution:<sup>[22]</sup>

**WHEREFORE**, there being no new matters or issues advanced by [the CIR] in [its] Motion which may compel this Court to reverse, modify or amend the Amended Decision, the instant Motion for Reconsideration is hereby **DENIED** for lack of merit.

**SO ORDERED.**<sup>[23]</sup>

Hence, this petition.

In the main, the CIR maintains that the presentation of the Quarterly ITRs for 2006 is indispensable to PNB's refund claim to prove its entitlement thereto. The CIR argues in this wise: under Section 76 of the National Internal Revenue Code (NIRC), the taxpayer has the option to either carry over the excess CWT to the succeeding taxable quarters or to claim for a refund of, or tax credit for such excess amount paid; once the taxpayer opted for the carry over, the same shall be irrevocable and it will not be entitled to a refund anymore; the Quarterly ITRs would establish whether or not such carry over happened; hence, such Quarterly ITRs are indispensable for the refund claim.<sup>[24]</sup>

The CIR further argues that, assuming the presentation of the Quarterly ITRs is not necessary, PNB's claim for refund must still be denied because the Certificates of Creditable Taxes Withheld presented were not properly identified. Specifically, the CIR avers that the authenticity of such document should have been proved by identification of a person who saw the same executed or by evidence of the genuineness of the signature or handwriting of the maker.<sup>[25]</sup>

In fine, the CIR asserts that the PNB failed to discharge its burden to prove entitlement to the claimed refund.

### **The Issue**

Ultimately, the issue here is whether or not the PNB proved its entitlement to the refund. Of crucial importance for the resolution thereof, however, is whether the presentation of the Quarterly ITRs of the succeeding quarters of a taxable year is indispensable for such claim.

### **The Court's Ruling**

The instant petition presents no novel issue. In the more recent case of *Winebrenner & Iñigo Insurance Brokers, Inc. v. Commissioner of Internal Revenue*, [26] consistent with the settled jurisprudence on the matter, the Court specifically ruled that the presentation of the claimant's quarterly returns is not a requirement to prove entitlement to the refund. Notably, said case applies squarely to the instant petition and we find no good reason to deviate from its tenets as it remains to be a good law.

To be sure, this Court is not in disagreement with the CIR in recognizing that the burden of proof to establish entitlement to a refund is on the claimant. This is why in every case for such claims, the Court has always ruled that the claimant should positively show compliance with the statutory requirements provided under the NIRC and the relevant BIR rules and regulations. [27] We, however, cannot subscribe to the CIR's contention that the presentation of the Quarterly ITRs is indispensable to the claimant's case.

The CTA correctly ruled that there is nothing under the NIRC that requires the submission of the Quarterly ITRs of the succeeding taxable year in a claim for refund. Even the BIR's own regulations do not provide for such requirement. Section 76 of the NIRC provides:

SEC. 76. *Final Adjustment Return.* - Every corporation liable to tax under Section 27 shall file a final adjustment return covering the total taxable income for the preceding calendar or fiscal year.

If the sum of the quarterly tax payments made during the said taxable year is not equal to the total tax due on the entire taxable income of that year, the corporation shall either:

- (A) Pay the balance of tax still due; or
- (B) Carry-over the excess credit; or
- (C) Be credited or refunded with the excess amount paid, as the case may be.

In case the corporation is entitled to a tax credit or refund of the excess estimated quarterly income taxes paid, the excess amount shown on its final adjustment return may be carried over and credited against the estimated quarterly income tax liabilities for the taxable quarters of the succeeding taxable years.

Once the option to carry-over and apply the excess quarterly income tax against income tax due for the taxable quarters of the succeeding taxable years has been made, such option shall be considered irrevocable for that taxable period and no application for cash refund or issuance of a tax credit certificate shall be allowed therefor.

Relatively, as implemented by the applicable rules and regulations, and as interpreted in a vast array of decisions, a taxpayer who seeks a refund of excess and unutilized CWT must:

- 1) File the claim with the CIR within the two-year period from the date of payment of the tax;