Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

En Banc

COMMISSIONER OF INTERNAL REVENUE, Petitioner, - versus - **UNIVATION MOTOR PHILIPPINES, INC. (Formerly: NISSAN MOTOR PHILIPPINES, INC.),** Respondent.	**CTA EB No. 1333** (CTA Case No. 8637) Present: DEL ROSARIO, *PJ,* CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN, *and* MANAHAN, *J.J.* Promulgated: DEC 22 2016 10:35 a.m.

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DECISION

CASANOVA, *J.*:

This is an appeal, by way of Petition for Review, filed by petitioner, Commissioner of Internal Revenue, seeking the nullification of the Decision dated March 10, 2015 (the "Assailed Decision")[1] and Resolution dated June 30, 2015 (the "Assailed Resolution")[2], both rendered by the Court of Tax Appeals (CTA) First Division in CTA Case No. 8637 entitled Univation Motor Philippines, Inc. (Formerly: Nissan Motor Philippines, Inc.) vs. Commissioner of Internal Revenue.

The facts of the case, as narrated in the Assailed Decision, are as follow:

"Petitioner Univation Motor Philippines, Inc., a corporation duly created and organized under Philippine

[1] Division Docket, pp. 732-745
[2] Ibid, pp. 784-786

laws, with principal office at Nissan Technopark, Bo. Pulong Sta. Cruz, Sta. Rosa, Laguna 4026, is engaged in the business of manufacturing motor vehicles.

Respondent is the head of the Bureau of Internal Revenue (BIR), holding office at the BIR National Office, Diliman, Quezon City. She is authorized, among others, to refund or credit taxes pursuant to Section 204 of the National Internal Revenue Code of 1997, as amended.

Petitioner filed its Quarterly Income Tax Returns (Quarterly ITR) for 2010 through the BIR's Electronic Filing and Payment System (EFPS), to wit:

Return	**Date of Filing**
First Quarterly ITR	27 May 2010
Amended First Quarterly ITR	28 May 2010
Second Quarterly ITR	25 August 2010
Third Quarterly ITR	23 November 2010

On April 15, 2011, petitioner filed its Annual Income Tax Return for taxable year 2010 (2010 Annual ITR).

On July 1, 2011, petitioner filed through the EFPS its Amended Annual Income Tax Return for taxable year 2010 (2010 Amended Annual ITR), which was manually received by the BIR on 8 July 2011 showing a total gross income of P117,084,174.00 and an overpayment of income taxes amounting to P26,103,898.52, broken down as follows:

2010

Aggregate Income Tax Due	**₱2,341,683.48**
Less:	
Prior Year's Excess Credits:	₱15,576,837.00
Creditable Tax Withheld for 2010	₱12,868,745.00
Total Tax Credits	**(₱28,445,582.00)**
Total Overpayment	**(26,103,898.52)**

As indicated under Item 33 of its 2010 Annual ITR and 2010 Amended Annual ITR, petitioner opted to claim its overpayment of income tax through the issuance of a tax credit certificate.

Since petitioner's administrative claim has not yet been acted upon by the BIR, in order to preserve its right and to toll the running of the prescriptive period for its judicial claim, petitioner filed the subject Petition for Review before this Court on April 12, 2013.

In her Answer posted on July 1, 2013, respondent raised the following special and affirmative defenses: (a) the present claim for tax refund is tainted with procedural infirmity due to petitioner's failure to submit complete documents in support of its administrative claim for refund; (b) petitioner miserably failed to exhaust administrative remedies before elevating the case to this Court; and, (c) claims for refund are construed strictly against the taxpayer and in favor of the government.

On September 10, 2013, petitioner filed an Omnibus Motion to commission Ms. Ma. Milagros F. Padernal as Independent Certified Public Accountant (ICPA). Ms. Ma. Milagros F. Padernal was commissioned as ICPA on October 11, 2013.

After the pre-trial conference on October 11, 2013, the parties filed their Joint Stipulation of Facts and Issue on November 7, 2013. On December 11, 2013, the parties submitted their Supplemental Joint Stipulation of Facts and Issues.

The Court in a Resolution dated January 2, 2014 approved the aforementioned Joint Stipulation of Facts and Issue and the Supplemental Joint Stipulation of Facts and Issues, and terminated the pre-trial conference. The Court issued the corresponding Pre-Trial Order on March 3, 2014.

During trial, petitioner presented and formally offered its testimonial and documentary evidence. Petitioner's pieces of evidence were admitted in the Resolutions dated May 22, 2014 and August 11, 2014. Respondent's counsel, on the other hand, manifested during the hearing held on May 27, 2014 that she will no longer present any evidence.

The case was submitted for decision on January 5, 2015 after noting the filing of petitioner's Memorandum on October 1, 2014 and respondent's Memorandum filed on October 28, 2014.

Meanwhile, on September 5, 2014, petitioner's Board of Directors unanimously approved the change of petitioner's corporate name from *"Nissan Motor Philippines, Inc."* to *"Univation Motor Philippines, Inc."*. On January 30, 2015, petitioner filed a motion requesting that the necessary substitution of petitioner's corporate name be made with respect to all existing records of the case. In a Resolution dated February 12, 2015, the Court granted petitioner's motion.

On March 10, 2015, the CTA First Division rendered the Assailed Decision which partially granted respondent's Petition for Review.

On April 1, 2015, petitioner filed a Motion for Partial Reconsideration (Re: Decision Promulgated 10 March 2015)[3] which was subsequently denied in the Assailed Resolution promulgated on June 30, 2015.

Petitioner, hence, filed the instant Petition for Review[4] with the Court *En Banc* on August 3, 2015.

In compliance with this Court's Resolution[5] dated September 2, 2015, respondent filed its Comment (Re: Petition for Review dated July 21, 2015)[6] on October 2, 2015.

The Court, thereafter, in a Resolution[7] dated November 11, 2015, resolved to give due course to petitioner's Petition for Review after considering the arguments raised therein and respondent's Comment thereon. The Court further required the parties to file their memoranda within a period of thirty (30) days from notice. After the filing of the required pleading or the lapse of the period granted, the Petition for Review shall be deemed submitted for resolution.

On December 17, 2015, petitioner filed a Manifestation[8] stating that, in lieu of filing a Memorandum, he is adopting his Petition for Review dated July 21, 2015 as his Memorandum.

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[3] Ibid, pp. 746-760
[4] *En Banc Rollo*, pp. 7-26
[5] Ibid, pp. 48-49
[6] Id., pp. 56-70
[7] Id. pp. 72-73
[8] Id., p. 74-77

On January 11, 2016, respondent filed its Memorandum, and, the case was deemed submitted for decision per Resolution[9] promulgated on January 21, 2016.

Hence, this Decision.

The lone issue submitted to this Court for consideration is whether or not respondent is entitled to a tax credit certificate in the amount of Php12,729,617.90 for its excess and/or unutilized creditable withholding tax for taxable year ending December 31, 2010.

After a careful and thorough consideration of the records of the case, the Court *En Banc* finds no merit in the Petition for Review.

In the Assailed Decision, the CTA-First Division granted respondent's Petition for Review and ordered herein petitioner to issue a tax credit certificate in the amount of ₱12,729,617.90, representing respondent's unutilized or excess creditable withholding taxes for taxable year ending December 31, 2010.

Now comes petitioner before this Court, *via* the instant Petition for Review, giving the same grounds and arguments previously stated and discussed in his Memorandum (For Respondent)[10] dated October 23, 2014 and Motion for Partial Reconsideration (Re: Decision Promulgated 10 March 2015)[11] dated March 30, 2015, both filed in the CTA-First Division.

To support his Petition for Review, petitioner reiterates the following arguments, viz:

> 1. The instant claim for tax refund is tainted with procedural infirmity due to respondent's failure to submit complete documents in support of its administrative claim for refund.
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> 2. Respondent miserably failed to exhaust administrative remedies before elevating the case to the Honorable Court.

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[9] Id., p. 105
[10] Division Docket, pp. 674-687
[11] Ibid, pp. 746-760

3. Assuming the administrative claim for refund was properly filed and prosecuted, respondent still failed to prove its entitlement in the judicial proceedings.

4. Claims for refund are construed strictly against the taxpayer and in favor of the Government.

5. Portion of the income payments related to the creditable withholding taxes did not form part of the gross income of respondent in its 2010 Annual Income Tax Return.

Anent petitioner's arguments under one to four above, We find that the same had already been considered and exhaustively discussed in the Assailed Decision and reiterated in the Assailed Resolution. We, thus, quote with approval the pertinent portions of the Assailed Resolution resolving the said issues, to wit:

> "The National Internal Revenue Code (NIRC) of 1997, as amended, and the relevant Revenue Regulations issued by respondent do not provide for a list of documents required to be submitted for claims of unutilized creditable withholding taxes. Respondent cannot demand what type of supporting documents should be submitted. In *Commissioner of Internal Revenue vs. First Express Pawnshop Company, Inc.*, the Supreme Court ruled that the submission of 'relevant supporting documents' should be determined by the taxpayer and not the Bureau of Internal Revenue (BIR), thus:
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> > The term 'relevant supporting documents' should be understood as those documents necessary to support the legal basis in disputing a tax assessment as determined by the taxpayer. The BIR can only inform the taxpayer to submit additional documents. The BIR cannot demand what type of supporting documents should be submitted. Otherwise, a taxpayer will be at the mercy of the BIR, which may require the production of documents that a taxpayer cannot submit.'
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> From the above jurisprudence, it has been held time and again that the submission of supporting documents depends on the discretion of the taxpayer. It is

> respondent's duty to inform or send a notice to the taxpayer if she finds that the relevant supporting documents submitted by petitioner are insufficient. A careful perusal of the records shows that respondent did not inform petitioner to submit additional documents in support of its administrative claim for refund.
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> Respondent cannot take refuge in the argument that petitioner failed to exhaust administrative remedies prior to bringing its claim for refund before the Court. It was on March 12, 2012 when petitioner filed its administrative claim for refund. The subject petition was filed due to respondent's inaction on April 12, 2013. Petitioner cannot wait indefinitely as the two-year prescriptive period in claiming a refund for its 2010 unutilized or excess Creditable Withholding Tax was about to expire. More importantly, during trial, petitioner was able to substantiate its claim for refund."

We now tackle petitioner's contention that "portion of the income payments related to the creditable withholding taxes did not form part of the gross income of respondent in its 2010 Annual Income Tax Return".

Petitioner posits that: since respondent's claim for refund pertains to CWTs for CY 2010, all the related income payments should have been declared and formed part of the gross taxable income for the year 2010 and reflected and included in the Annual ITR for the year 2010; that, in the instant case, the portion of respondent's income payments related to CWTs for CY 2010 did not form part of the Annual ITR for the year 2010; that, instead, the income payments were allegedly declared in the Annual ITRs for the years 2006, 2008 and 2009.

Petitioner, thus, concludes that if these taxes were withheld for CY 2010, it is certain that the related income payments were also earned during CY 2010, which should have been recorded in the General Ledger for the year 2010 and included in the Annual ITR for the same year.

Petitioner further argues that respondent may have mistakenly included the CWTs pertaining to income payments for the years 2006, 2008 and 2009 to form part of its 2010 judicial claim for refund or credit.

If respondent opted to carry over its CWTs for years 2006, 2008 and 2009 to the succeeding taxable years, it will no longer be qualified to claim for a refund or tax credit once the option to carry over has already been made; that, even assuming that respondent opted to file a claim for refund for its CWT for years 2006, 2008 and 2009, the CWTs which were traced back to the previous years may have already been the proper subject of refunds for the same years.

In its Comment, respondent, on the other hand, submits that it was able to satisfactorily prove that income payments from which the CWTs were withheld were in its returns covering the years 2006, 2008 and 2009 and 2010; that there is nothing objectionable in this case considering that respondent still complied with the third requisite, that is, that the income upon which the taxes were withheld was included in the returns of the respondent.

We find petitioner's arguments untenable.

The Independent Certified Public Accountant (ICPA), in her report dated November 11, 2013, sufficiently explained why the income payments from which the CWTs, amounting to ₱12,729,617.90, were withheld were declared in its returns covering the years 2006, 2008, 2009 and 2010, to wit:

> "In the normal course of business, the Petitioner's sales of goods and services to its dealers/payors are collected promptly or within the agreed credit terms ranging from 30 to 120 days. The dealers/payors issue the certificates of creditable taxes withheld (BIR Form No. 2307) upon payment of their accounts to the Petitioner. However, in 2008 and 2009, some dealers were unable to dispose their inventories, causing the delay in the settlement of their accounts under the normal credit terms granted by the Petitioner. As a result, the dealers requested that their credit terms be extended, which the Petitioner approved. Consequently, certain sales to these dealers in 2008 and 2009 were collected in 2010. x x x.
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> x x x x x x x x x
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> c. The Meralco refund recorded as Other Income by the Petitioner represents amounts received from Meralco in connection with the Meralco Phase IVB of the Refund approved by the Energy Regulatory Commission (ERC) in

the latter's order dated July 11, 2005, which is referred to as ERC Case No. 2001-243. The gross refund amount (GRA) is computed based on the total historical kilowatt (kWh) from February 1994 or the Petitioner's first billing date, whichever is more recent up to May 2003 multiplied by 16.7 centavos, in accordance with the Resolution of the Supreme Court in GR Nos. 141314 and 141369, dated November 15, 2002.

i. Refund with terminated service contracts – Under the refund scheme, there are two available options for refund as advised by ERC, namely, (a) issuance of Post-Dated Checks (PDCs) payable to the Petitioner starting October 2005 to December 2010 and (b) one-time refund check which provides the issuance of one refund check under the Petitioner's name which will be dated June 1, 2008. The Petitioner opted to avail of the PDC refund scheme for the GRA of ₱6,067,110. Meralco issued 21 PDCs payable to the Petitioner, which mature at the end of every calendar quarter. **During 2006, the Petitioner recorded the GRA as other income as evidenced by Debit Memo No. 00520 dated December 31, 2006 (Exhibit No. P-32-29). PDCs received in 2010 amounted to ₱785,835.20 (Exhibit P-33-1-20 to P-33-1-23), net of 32% withholding tax of ₱369,804.80 or a total GRA of ₱1,155,640.**" (Emphasis supplied)

Clearly, the delay in collection of certain income payments of respondent caused the timing difference between the actual reporting of the income by respondent and the actual withholding of the corresponding creditable income tax by respondent's customers.

It should be noted that respondent presented, among others, Certificates of Creditable Tax Withheld at Source (BIR Form No. 2307), detailed general ledgers, and Summary of Sales of Goods and Services Traced to General Ledgers and Invoices or Debit Memos for the CYs 2010, 2009 and 2008 and that of Other Income for the CYs 2010 and 2006 (summary schedules).

The Court finds these documents sufficient to prove that the income payments related to the claimed CWTs were, indeed, included in respondent's returns. To reiterate, the Court in Division was able to trace the income payments related to the substantiated CWTs of ₱12,729,617.90 to respondent's GLs for the years 2010, 2009, 2008 and

2006, and noted that the same were reported in respondent's Annual ITRs for the years 2010, 2009, 2008 and 2006.[12]

Moreover, perusal of the Certificates shows that the creditable income taxes reported therein were withheld by respondent's customers-payors for CY **2010**, as clearly indicated in the box "For the period". In the natural order of things, no payor would withhold tax twice, or more, on the same income payment. Thus, it cannot be gainsaid that respondent may have mistakenly included the CWTs pertaining to income payments for the years 2006, 2008, and 2009 to form part of its 2010 judicial claim for refund or tax credit.

Foregoing considered, the Court *En Banc* finds no cogent reason to deviate from the assailed Decision and Resolution.

WHEREFORE, the Petition for Review of petitioner-Commissioner of Internal Revenue, is hereby **DENIED** for lack of merit.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

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[12] Decision, CTA Case No. 8637, Docket, p. 36.

(On Leave)
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

(On Leave)
CATHERINE T. MANAHAN
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice