REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

SONY PHILIPPINES, INCORPORATED	**CTA CASE NO. 10115**
Petitioner,	Members:
- versus -	**DEL ROSARIO,** *P.J., Chairperson,* **MANAHAN,** *and* **REYES-FAJARDO,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: MAR 23 2022 1:18 p.m.

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RESOLUTION

DEL ROSARIO, P.J.:

This resolves respondent's **Motion for Partial Reconsideration (Re: Decision promulgated 16 December 2021)** filed on February 22, 2022, with petitioner's **Opposition (Re: Motion for Partial Reconsideration dated 14 February 2022)** filed on March 10, 2022.

The dispositive portion of the assailed Decision[1] reads:

> "**WHEREFORE,** premises considered, the present Petition for Review is **PARTIALLY GRANTED.** Accordingly, respondent is **ORDERED TO REFUND** in favor of petitioner Sony Philippines, Inc. the amount of **₱39,948,964.75** representing its excess and unutilized creditable withholding taxes for Fiscal Year ending March 31, 2017.
>
> **SO ORDERED.**"

Respondent moves for reconsideration of the assailed Decision based on the ground that the Court erred in ruling that petitioner is entitled to refund in the reduced amount of ₱39,948,964.75 representing alleged excess and unutilized creditable withholding

[1] CTA Docket, Vol. II, pp. 783-808.

taxes (CWT) for fiscal year ending March 31, 2017. He claims that: *(i)* petitioner did not provide supporting documents to show that the income, from which the subject withholding was made, was declared in the Annual Income Tax Return (AITR); *(ii)* petitioner should have presented evidence to prove actual remittance of the taxes withheld to the Bureau of Internal Revenue (BIR); and, *(iii)* petitioner failed to comply with the documentary requirements under Revenue Memorandum Order (RMO) No. 53-98 and Revenue Regulations (RR) No. 2-2006.

In its Opposition, petitioner submits that respondent's Motion for Partial Reconsideration is devoid of any merit based on the following reasons: *(i)* it was able to adduce supporting documents to show that the income, from which withholding was made, was declared in the AITR; *(ii)* respondent is mistaken in claiming that proof of actual remittance of taxes withheld is required for a claim for refund; and, *(iii)* it was able to substantiate its administrative claim and complied with the requirements of RMO No. 53-98 and RR No. 2-2006.

After a careful evaluation of the parties' respective arguments, the Court finds no merit in the motion.

Respondent's argument that petitioner failed to provide supporting documents to show that the income, from which withholding was made, was declared in the AITR is a mere rehash of the same argument raised in respondent's Answer[2] and Memorandum[3] which has already been extensively discussed and resolved in the assailed Decision.

As to respondent's argument that proof of actual remittance to the BIR is necessary, the same is bereft of merit. Proof of actual remittance of taxes withheld is not indispensable in claims for refund or issuance of tax credit certificate (TCC) covering excess and unutilized CWT. Proof of remittance of taxes withheld is the responsibility of the withholding agent and not of the taxpayer-claimant as held in *Commissioner of Internal Revenue vs. Philippine National Bank*[4] citing *Commissioner of Internal Revenue vs. Asian Transmission Corporation*,[5] to wit:

> "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**

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[2] CTA Docket, Vol. I, pp. 113-114.
[3] CTA Docket, Vol. II, pp. 756-757.
[4] G.R. No. 180290, September 29, 2014.
[5] G.R. No. 179617, January 19, 2011.

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 Section 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**." *(Emphasis supplied)*

With regard to respondent's claim that petitioner failed to comply with the documentary requirements under RMO No. 53-98 and RR No. 2-2006 to support its claim for refund, the Court finds the same bereft of merit.

RMO No. 53-98 prescribes the requirements to be submitted by a taxpayer for audit purposes by the BIR. On the other hand, RR No. 2-2006 prescribes the attachment to the tax returns of the Summary of Alphalist of Withholding Agents of Income Payments Subjected to Tax Withheld at Source (SAWT). Compliance with RMO No. 53-98 and RR No. 2-2006 is not required in establishing petitioner's entitlement to the refund or TCC sought.

In *Commissioner of Internal Revenue vs. Manila Mining Corporation*,[6] the Supreme Court emphasized that under Section 8 of Republic Act No. 1125, as amended, the Court of Tax Appeals (CTA) is a court of record and since cases filed before the CTA are litigated *de novo*, party litigants should prove every minute aspect of their cases. Thus, it is the evidence presented before the CTA by the taxpayer-claimant which is vital in proving its claim.

Once the claim for refund reaches the CTA, the taxpayer-claimant is required to establish or prove the following:

(1) The claim must be filed within the two (2)-year period from the date of payment of the tax; and/or the filing of the AITR;

(2) The fact of withholding is established by a copy of a statement duly issued by the payor to the payee showing the amount paid and the amount of tax withheld; and

(3) It must be shown on the return of the recipient that the income received was declared as part of the gross income.[7]

In this case, the evidence presented by petitioner were sufficient to establish its compliance with the afore-said requirements and its partial entitlement to the refund or TCC sought.

WHEREFORE, premises considered, respondent's **Motion for Partial Reconsideration (Re: Decision promulgated 16 December 2021)** is hereby **DENIED** for lack of merit.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

[6] G.R. No. 153204, August 31, 2005.
[7] *Commissioner of Internal Revenue vs. Team (Philippines) Operations Corporation*, G.R. No. 185728, October 16, 2013.

WE CONCUR:

CATHERINE T. MANAHAN
Associate Justice

MARIAN IVY F. REYES-FAJARDO
Associate Justice