REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	**CTA EB No. 1163** (CTA Case No. 8458)
	Present:
- versus-	Del Rosario, *PJ*, Castañeda,Jr., Bautista, Uy, Casanova, Fabon-Victorino, Mindaro-Grulla, Cotangco-Manalastas, and Ringpis-Liban, *JJ.*
SONOMA SERVICES, INC., *Respondent.*	Promulgated: APR 21 2015

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DECISION

COTANGCO-MANALASTAS, J.:

Before the Court *En Banc* is a petition for review under Section 4(b), Rule 8 of the Revised Rules of the Court of Tax Appeals. Under appeal is the Decision, dated November 27, 2013, and Resolution, dated April 2, 2014, of the CTA First Division, which ordered the refund or issuance of a tax credit certificate in the amount of P4,045,410.00, representing Sonoma Services, Inc.'s excess and unutilized creditable withholding taxes for calendar year 2009.

The Facts

The facts, as found by the Division, are as follows:

> "Petitioner [now, respondent] is a corporation duly organized and existing under the laws of the Republic of the Philippines, with principal place of business at the 35th Floor, Tower One and Exchange Plaza, Ayala

> Triangle, Ayala Avenue, Makati City. It is a registered taxpayer of Revenue District Officer (RDO) No. 50 of the Bureau of Internal Revenue (BIR) Revenue Region No. 8, with Taxpayer Identification No. 220-868-954-000. Petitioner was incorporated with the primary purpose of carrying on and conducting a general services business with any party, including rendering of management and allied services within the limits allowed by law, including office and clerical support services, maintenance services of any kind, or otherwise to engage in any preservation, maintenance or rapid work upon any and every kind of property, to enter into and execute contracts therefore or relating thereto.
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> Respondent [now, petitioner] is the duly appointed Commissioner of the Bureau of Internal Revenue, vested with authority to carry out all the functions, duties and responsibilities of said office, including, *inter alia*, the power to decide, approve, and grant refunds or tax credits of overpaid or erroneously paid or collected internal revenue taxes. She holds office at the BIR National Office Building, Diliman, Quezon City.
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> On April 15, 2010, petitioner filed its Annual Income Tax Return (ITR) for CY 2009 through the Electronic Filing and Payment System (EFPS) with EFPS Reference No. 121000003720677. In the said ITR, petitioner reported gross revenues in the amount of P44,641,000.00, taxable income of P3,319,677.00, income tax liability of P995,903.10, and income tax credits in the total amount of P6,307,844.60. After deducting petitioner's income tax liability for CY 2009 from its income tax credits for CY 2009, petitioner had a tax overpayment of P5,311,941.50. Petitioner opted to claim a refund by shading the appropriate box in the ITR.
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> On June 24, 2010, petitioner filed its administrative claim for refund of excess and unutilized CWT for CY 2009 amounting to P4,045,410.00 with RDO No. 50.
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> Respondent failed to act on petitioner's administrative claim, prompting petitioner to file the instant claim before this Court on April 11, 2012."[1] (*citations omitted*)

Petitioner CIR filed its Answer before the CTA Division on May 31, 2012.[2] After the parties filed their respective Pre-trial

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[1] *Rollo*, CTA EB Case No. 1163, pp. 20-21.
[2] *Rollo*, pp. 22-23.

Briefs, the CTA Division approved the Joint Stipulation of Facts and Issues in a Resolution, dated July 2, 2012.[3]

Trial ensued, after which, the CTA Division promulgated its Decision, dated November 27, 2013, which granted respondent Sonoma's claim for refund, as follows:

> "WHEREFORE, premises considered, the instant Petition for Review is hereby GRANTED. Accordingly, respondent is hereby ORDERED TO REFUND or TO ISSUE A TAX CREDIT CERTIFICATE in favor of petitioner in the amount of P4,045,410.00, representing petitioner's excess and unutilized creditable withholding taxes for the calendar year 2009."[4]

Petitioner CIR's motion for reconsideration was likewise denied in the CTA Division's Resolution, dated April 2, 2014.[5]

Petitioner CIR filed the instant Petition for Review[6] before the CTA *En Banc* praying for the reversal of the assailed Decision and Resolution of the CTA Division. Respondent Sonoma Services filed its Comment[7] on July 10, 2014.

On January 8, 2015, the case was deemed submitted for decision after respondent Sonoma Services filed its Memorandum on October 15, 2014, whereas petitioner CIR failed to file its memorandum.

Issues

The issues raised by petitioner CIR are:

1. Whether the Honorable First Division of the CTA erred in granting respondent's Petition for Review and ordering the refund of the amount of P4,045,410.00 representing its excess and unutilized creditable withholding taxes for the calendar year 2009.

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[3] *Rollo*, p. 23.
[4] *Rollo*, p. 41.
[5] *Rollo*, pp. 9-13.
[6] *Rollo*, pp. 1-7.
[7] *Rollo*, pp. 47-60.

2. Whether the Honorable First Division of the CTA erred in denying herein petitioner's Motion for Reconsideration.[8]

Ruling of the Court

Petitioner CIR argues that the evidence presented by respondent Sonoma Services, i.e. certificates of creditable tax withheld accomplished by its withholding agents, does not constitute conclusive evidence of payment and remittances to the Bureau of Internal Revenue (BIR) of the withheld taxes on respondent's income. Petitioner CIR is of the position that the best evidence or proof of remittance is the certification from the BIR's Revenue Accounting Division as to the fact of remittance of the tax withheld.[9]

Furthermore, petitioner CIR argues that respondent Sonoma failed to present the various payors and withholding agents to prove the fact of withholding and remittance of the withheld taxes. As such, the testimony of respondent Sonoma's witness is mere hearsay considering that the certificates upon which the witness testified where prepared by other persons.[10]

On the other hand, respondent Sonoma argues that the instant petition is a mere rehash of petitioner CIR's Motion for Reconsideration of the assailed Decision before the CTA Division.[11]Respondent Sonoma reiterates that the presentation of Certificates of Creditable Tax Withheld at Source (BIR Form No. 2307) issued by withholding agents constitute sufficient proof of the existence and validity of a taxpayer's CWT.[12]

After a careful review of petitioner's and respondent's arguments and the records of the case, the Court *En Banc* finds no reason to reverse, nor even modify the Decision and Resolution of the CTA Division. The issues raised by petitioner have been discussed and resolved by the CTA Division. The pertinent portions of the CTA Division's Resolution, dated April 2, 2014, are quoted below:

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[8] *Rollo*, p. 3.
[9] *Rollo*, p. 4.
[10] *Id.*
[11] *Rollo*, p. 48.
[12] *Rollo*, p. 49.

"In the case of *Commissioner of Internal Revenue v. Far East Bank & Trust Company (now Bank of the Philippine Islands)*, the Supreme Court held that a taxpayer must establish the following before a claim of tax credit or refund of creditable withholding tax will be granted:

1) the claim must be filed with the Commissioner of Internal Revenue within the two-year period from the date of payment of the tax;

2) it must be shown on the return of the recipient that the income received was declared as part of the gross income; and

3) 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.

Based on the foregoing, the presentation of a certification from [petitioner]'s Revenue Accounting Division is not required before a taxpayer will be entitled to a claim of tax refund or issuance of a tax credit certificate. Furthermore, [respondent] has no control on the remittance of taxes withheld from its income by the withholding agents or payors; thus, the Certificates of Creditable Tax Withheld at Source issued by the latter are *prima facie* proof of actual payment by [respondent].

In the case *Commissioner of Internal Revenue v. Asian Transmission Corporation*, the Supreme Court reiterated the ruling of this Court *En Banc*, to wit:

> 'xxx 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, xxx 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**. We stress that the pertinent provisions of law and the established jurisprudence evidently demonstrate that there is no need for the claimant, respondent in this case, to prove actual remittance by the withholding agent (payor) to the BIR.' (*emphasis supplied)*
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> With respect to [petitioner]'s contentions that the testimonies of the withholding agents should be presented and that the testimony of [respondent]'s accounting officer is mere hearsay; this Court siting *En Banc* has already ruled in several cases that there is no need to present the testimony of the person who made the entries on the CWT Certificate because this certificate covers essential matters to prove the fact of withholding."[13] (*citations omitted*)

Once again, this Court has consistently ruled that the Certificates of Creditable Tax Withheld at Source (BIR Form No. 2307) issued by withholding agents are *prima facie* proof of actual payment of CWT by the payee-taxpayer to the government, with no further need to present the various payors and withholding agents in order to establish the fact of withholding and remittances made.

WHEREFORE, premises considered, the instant Petition for Review is hereby **DISMISSED** for lack of merit.

SO ORDERED.

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

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[13] *Rollo*, pp. 10-12.

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the above Decision has been reached in consultation with the members of the Court *En Banc* before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice