REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

En Banc

AYALA CORPORATION, *Petitioner,*	**CTA EB NO. 1442** (CTA Case No. 8629)
-versus-	
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	

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COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	**CTA EB NO. 1443** (CTA Case No. 8629)
	Present:
- versus -	**DEL ROSARIO,** ***PJ,*** **CASTAÑEDA, JR., UY, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN ,** ***and*** **MANAHAN,** ***JJ.***
AYALA CORPORATION, *Respondent.*	**Promulgated:** SEP 27 2018 2:49 p.m.

X--X

RESOLUTION

RINGPIS-LIBAN, *J.*:

For resolution is the "Motion for Reconsideration" timely filed on October 19, 2017 by petitioner Commissioner of Internal Revenue (CIR), asking the Court *En Banc* to reconsider its Decision dated September 18, 2016 on the ground that the Court erred in ruling that petitioner is entitled to the refund of unutilized excess creditable withholding tax (CWT) for CY 2010 and 2011 in the reduced amount of ₱97,182,746.48 despite no evidence of actual remittance to the BIR.

In his motion, the CIR argues that Revenue Regulations (RR) No. 2-2006 requires actual remittance. Since, RR 2-2006 is a valid regulation and remains in full force and effect, proof of actual remittance of the taxes withheld to the BIR is indispensable in a claim for refund of excess CWTs.

On February 2, 2018, the Court issued a Resolution ordering Ayala Corporation to file its Comment to the CIR's motion within fifteen (15) days from notice.

On March 22, 2018, Ayala Corporation filed a "Motion to Admit Attached Comment/Opposition" attaching thereto its "Comment/Opposition".

On April 24, 2018, the Court issued a Resolution granting Ayala Corporation's motion and admitted the attached "Comment/Opposition" into the record. The CIR's "Motion for Reconsideration" was likewise submitted for resolution.

Ayala Corporation opposed the CIR's motion on the following grounds: 1) the Amended Decision of the CTA Second Division has long become final and executory following the doctrine pronounced in the *Asiatrust* case[1]; and 2) the CIR's arguments on the factual findings of CTA En Banc have no legal and factual basis.

As regards the CIR's argument that RR 2-2006 requires actual remittance, he cites Section 2 thereof, as follows:

> **"Section 2. MANDATORY SUBMISSION OF SUMMARY ALPHALIST OF WITHHHOLDING AGENTS OF INCOME PAYMENTS SUBJECTED TO CREDITABLE WITHHOLDINGS TAXES (SAWT) BY THE PAYEE/INCOME RECIPIENT AND OF MONTHLY ALPHALIST OF PAYEES (MAP) SUBJECTED TO WITHHOLDING TAX BY THE WITHHOLDING AGENT/CINCOME PAYOR AS ATTACHMENT TO THEIR FILED RETURNS.**
>
> **A. Summary Alphalist of Withholding Agents of Income payments Subjected to Withholding Tax (SAWT) and Monthly Alphalist of Payees (MAP) defined**

> **Summary Alphalist of Withholding Agents/Payors of Income Payments subjected to Creditable Withholding Tax at Source (SAWT) Annex "A"** is a consolidated alphalist of withholding agents from whom income was earned or received and subjected to withholding tax to be submitted **by the payee-recipient of income** as attachment to its duly filed return for a given period which Summary List contains a summary of income/gross sales/gross receipts and claimed tax credits taken from all Certificate of Creditable Withholding Tax at Source (BIR Form No. 2307) issued by the payors of income payment.
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> **Monthly Alphalist of Payees (MAP) Annex "B"** is a consolidated alphalist of income earners from whom taxes have been withheld **by the payor of income** for a given period and in whose behalf, the taxes were remitted. It contains a summary information on taxes withheld and **remitted** through the monthly remittance returns (BIR Form Nos. 1601-E, 1601-F, 1600) showing, among others, total amounts of income/gross sales/gross receipts and taxes withheld and remitted." *(Emphasis supplied)*

However, Ayala Corporation agrees with the CIR that RR 2-2006 is still in full force and effect in that it requires the mandatory submission of Summary Alphalist of Withholding Agents of Income Payments subjected to Creditable Withholding Taxes (SAWT) by the Payee/Income Recipient to all taxpayers claiming refund. The SAWT shall be attached to the filing of BIR Form No. 1702 Q (Corporate Quarterly Income Tax Return) and BIR Form No. 1702 (Corporate Annual Income Tax Return). It does advocate though that the filing of the Monthly Alphalist of Payees (MAP), together with the required BIR Forms, are required only to all withholding agents and not to payee or income recipient such as itself.

Furthermore, Ayala Corporation advances the argument that it was compliant with RR 2-2006 in that it submitted the SAWT to the BIR when it filed the Quarterly Income Tax (BIR Form 1701Q) for each quarter and its AITR (BIR Form 1702) in CYs 2010 and 2011. More importantly, these documents were already available in the BIR Records and database before it filed its administrative claim for refund and could easily be accessed by the CIR.

We agree with Ayala Corporation. There is also positive testimony on record that the documents were submitted to the BIR by Ms. Maria Susana C. Bables and Ms. Milagros F. Padernal, Ayala Corporation's witnesses. The examine the details of these documents together with each CWT Certificate issued for CYs 2010 and 2011, and to question their validity and due execution when those witnesses were presented which he chose to forego.

It is also to be noted that when *Commissioner of Internal Revenue v. Philippine National Bank*[2] was promulgated by the Supreme Court on September 29, 2014, the said RR 2-2006 was already in existence, and it is despite this existence that the Supreme Court ruled that proof of actual remittance is not a condition to claim for a refund of unutilized tax credits. In that case, the Supreme Court emphasized that under Section 57 and 58 of the NIRC of 1997, as amended, it is the payor-withholding agent, and not the payee-refund claimant who is vested with the responsibility of withholding and remitting income taxes.[3]

Given the foregoing, the CIR has advanced no argument persuasive enough for the Court to reconsider its decision. Hence, the CIR's "Motion for Reconsideration" is **DENIED** for lack of merit.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

I maintain my Dissenting & Concurring Opinion

JUANITO C. CASTAÑEDA, JR.
Associate Justice

(On Leave)
ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

(On Leave)
CIELITO N. MINDARO-GRULLA
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

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2 G.R. No. 180290, September 29, 2014