REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-versus-

SONOMA SERVICES, INC.,
Respondent.

CTA EB No. 2467
(CTA Case No. 9808)

Present:

DEL ROSARIO, *PJ,*
UY,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO, and
CUI-DAVID, *JJ.*

Promulgated:
OCT 17 2022 4:10 pm

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RESOLUTION

DEL ROSARIO, PJ.:

For resolution is petitioner's "**Motion for Reconsideration**" filed on June 13, 2022 *via* registered mail and received by the Court on June 23, 2022, with respondent's "**Comment (Re: Motion for Reconsideration dated June 6, 2022)**" filed on July 18, 2022.

In said Motion for Reconsideration, petitioner prays that the Court: *(i)* grant the Petition for Review; *(ii)* set aside this Court's Decision dated May 24, 2022, and the Court of Tax Appeals (CTA) Third Division's Decision dated October 1, 2020 and Resolution dated March 2, 2021; and, *(iii)* deny respondent's claim for refund of ₱4,993,000.00.

The dispositive portion of the assailed Decision reads:

> "**WHEREFORE**, in light of the foregoing, the Petition for Review filed by petitioner Commissioner of Internal Revenue is **DENIED** for lack of merit. The assailed Decision dated October 1, 2020 and the assailed Resolution dated March 2, 2020 promulgated by the Court in Division are hereby **AFFIRMED**.
>
> **SO ORDERED.**"

In support thereof, petitioner raises the following grounds:

1. The CTA Third Division erred in declaring that respondent has proven the existence of its calendar year (CY) 2015 prior year's excess tax credits without requiring respondent to present the Creditable Withholding Tax (CWT) Certificates from 2006 to 2016 in view of the ruling in *Commissioner of Internal Revenue vs. Zuellig Pharma Corporation*;[1]

2. The CTA Third Division erred in not declaring that respondent's judicial claim for tax refund for CY 2015 was filed out of time; and,

3. The CTA Third Division erred in not holding that respondent failed to comply with the requirements under Revenue Regulations (RR) No. 2-98, as amended by RR No. 2-2006, on the claim for refund of its excess/unutilized creditable income taxes withheld for CY 2015.

Respondent, on the other hand, counter-argues that:

1. It has adequately proven the existence of its prior year's excess tax credits that were carried over to its Annual Income Tax Return (ITR) for CY 2015;

2. Its judicial claim for refund of excess and unutilized CWT for CY 2015 was filed within the two (2)-year prescriptive period provided in Sections 204(C) and 229 of the National internal Revenue Code (NIRC) of 1997, as amended; and,

3. There is no law, jurisprudence, or administrative regulation that requires the submission of Summary Alphalist of Withholding Agents of Income Payments Subjected to Withholding Tax (SAWT) and Monthly Alphalist of Payees (MAP) prescribed under RR No. 2-98, as amended by RR

[1] CTA EB No. 1794, October 1, 2019.

No. 2-2006 as a pre-requisite to the refund of an excess and unutilized CWT.

THE COURT'S RULING

After careful evaluation of the parties' respective arguments, the Court resolves to deny petitioner's "Motion for Reconsideration".

Respondent's administrative and judicial claims for tax refund were timely filed

Anent petitioner's argument that respondent should have filed its administrative and judicial claim for refund, on or before January 10 or 15, 2017, reckoned from the date of payment of taxes, the Court finds the same specious.

The assailed Decision of the CTA Third Division already addressed the same, particularly on pages 9 to 11 thereof. To reiterate, Sections 204(C) and 229 of the NIRC of 1997, as amended, state that both administrative and judicial claims for refund of erroneously or illegally collected taxes should be filed within two (2) years from the date of payment of taxes.

It is well-settled that the two (2)-year prescriptive period for claiming a refund under Section 229 of the NIRC of 1997, as amended, commences to run from the date of filing the final adjusted return or the Annual ITR.[2] This is the only time a taxpayer is informed whether a tax is still due or a refund can be claimed based on the adjusted and audited figures.

In the present case, respondent filed its Annual ITR on April 13, 2016, and an Amended Annual ITR on **April 25, 2016**. Counting from April 25, 2016, respondent had until **April 25, 2018** within which to file its administrative and judicial claims for refund. Records show that respondent timely filed its administrative and judicial claims for refund on **September 7, 2017** and **April 11, 2018**, respectively.

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[2] *ACCRA Investments Corporation vs. Court of Appeals*, G.R. No. 96322, December 20, 1991.

Respondent was able to prove the existence of its CY 2015 prior year's excess tax credits

In its Amended Annual ITR for CY 2015, respondent had a total tax credits of ₱14,054,123.00, broken down as follows:

Prior Year's Excess Credit Other than MCIT	₱	9,061,123.00
CWT from previous quarters		4,783,000.00
CWT for the 4th quarter		210,000.00
Total Tax Credits/Payments	**₱**	**14,054,123.00**

Respondent's regular corporate income tax for the period amounted to ₱445,427.00. The same was paid for using respondent's Prior Year's Excess Credits other than Minimum Corporate Income Tax (MCIT) of ₱9,061,123.00, thus leaving a balance of ₱8,615,696.00 in respondent's prior year's excess credits. Respondent's CWTs in the total amount of ₱4,993,000.00 incurred during the period were not utilized to cover its current income tax liability.

In the assailed Decision, the CTA Third Division found that respondent was able to account for its prior year's excess tax credits amounting to ₱9,061,123.00. Petitioner, in the present Motion, insists that respondent failed to prove the existence of its prior year's excess credits as respondent failed to present its CWT Certificates from 2006 to 2016.

At the outset, the Court notes that this is the first time that petitioner has raised this argument. Section 1, Rule 9 of the Rules of Court, in relation to Section 3, Rule 1 of the Revised Rules of the CTA, provides:

> "SECTION 1. *Defenses and objections not pleaded.* – **Defenses and objections not pleaded** either in a motion to dismiss or **in the answer are deemed waived**. However, when it appears from the pleadings or the evidence on record that the court has no jurisdiction over the subject matter, that there is another action pending between the same parties for the same cause, or that the action is barred by prior judgment or by statute of limitations, the court shall dismiss the claim."

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A perusal of the Answer[3] filed by petitioner shows that petitioner never raised as a defense the failure of petitioner to prove its prior year's excess tax credits by reason of the non-submission of the pertinent CWT Certificates. Such defense is deemed waived and may not be raised by petitioner.

Nevertheless, the Court shall address the issue to disabuse the mind of petitioner.

The Court maintains that respondent has adequately proven the existence of its CY 2015 prior year's excess tax credits, a portion of which was utilized by respondent to pay for its income tax liability for CY 2015.

The Court-commissioned Independent Certified Public Accountant (ICPA) painstakingly traced the sources of respondent's prior year's excess credits amounting to ₱9,061,123.00 and found that the same arose from CYs 2011, 2013 (from the reinstatement of CY 2004 excess credits initially claimed as refund but subsequently denied by this Court in CTA EB Case No. 697 dated April 20, 2012) and 2014, as shown below:

Particulars	Prior Years' Excess Credits	CWT for the Year	Total
2003			
Tax credits/payments	₱ –	₱2,506,600.00	₱2,506,600.00
Less application of excess tax credits against RCIT due	–	(289,502.00)	(289,502.00)
Amount carried over to 2004	₱ –	₱2,217,098.00	₱2,217,098.00
2004			
Tax credits/payments	₱2,217,098.00	₱5,188,970.00	₱7,406,068.00
Less:			
Application of excess tax credits against RCIT due	(550,220.00)	–	(550,220.00)
Amount claimed for refund or issuance of TCC (CTA Case No. 7613)	–	(5,188,970.00)	(5,188,970.00)
Amount carried over to 2005	₱1,666,878.00	₱ –	₱1,666,878.00
2005			
Tax credits/payments	₱1,666,878.00	₱5,070,932.00	₱6,737,810.00
Less:			
Application of excess tax credits against RCIT due	(1,029,302.00)	–	(1,029,302.00)

[3] CTA Docket, Vol. I, pp. 115-118.

Particulars	Prior Years' Excess Credits	CWT for the Year	Total
Amount claimed for refund or issuance of TCC (CTA Case No. 7757)	–	(5,070,932.00)	(5,070,932.00)
Amount carried over to 2006	₱637,576.00	₱ –	₱637,576.00
2006			
Tax credits/payments	₱637,576.00	₱3,991,800.00	₱4,629,376.00
Less:			
Application of excess tax credits against RCIT due	(434,043.00)	–	(434,043.00)
Amount claimed for refund or issuance of TCC (CTA Case No. 7911)	–	(3,991,800.00)	(3,991,800.00)
Amount carried over to 2007	₱203,533.00	₱ –	₱203,533.00
2007			
Tax credits/payments	₱203,533.00	₱3,643,050.00	₱3,846,583.00
Less application of excess tax credits against RCIT due	(203,533.00)	(553,207.00)	(756,740.00)
Amount carried over to 2008	₱ –	₱3,089,843.00	₱3,089,843.00
2008			
Tax credits/payments	₱3,089,843.00	₱3,683,100.00	₱6,772,943.00
Less:			
Application of excess tax credits against RCIT due	(827,408.40)	–	(827,408.40)
Amount claimed for refund or issuance of TCC (CTA Case No. 8266)	–	(3,683,100.00)	(3,683,100.00)
Amount carried over to 2009	₱2,262,434.60	₱ –	₱2,262,434.60
2009			
Tax credits/payments	₱2,262,434.60	₱4,045,410.00	₱6,307,844.60
Less:			
Application of excess tax credits against RCIT due	(995,903.10)	–	(995,903.10)
Amount claimed for refund or issuance of TCC (CTA Case No. 8458)	–	(4,045,410.00)	(4,045,410.00)
Amount carried over to 2010	₱1,266,531.50	₱ –	₱1,266,531.50
2010			
Tax credits/payments	₱1,266,531.50	₱3,911,850.00	₱5,178,381.50
Less:			
Application of excess tax credits against MCIT due	(178,931.38)	–	(178,931.38)
Amount claimed for refund or issuance of TCC (CTA Case No. 8639)	–	(3,911,850.00)	(3,911,850.00)

Particulars	Prior Years' Excess Credits	CWT for the Year	Total
Amount carried over to 2011	₱1,087,600.12	₱ –	₱1,087,600.12
2011			
Tax credits/payments	₱1,087,600.12	₱4,386,654.40	₱5,474,254.52
Less application of excess tax credits against RCIT due	(1,087,600.12)	(392,088.25)	(1,479,688.37)
Amount carried over to 2012	₱ –	₱3,994,566.15	₱3,994,566.15
2012			
Tax credits/payments	₱3,994,566.15	₱4,880,190.40	₱8,874,756.55
Less:			
Application of excess tax credits against RCIT due	(1,479,209.10)	–	(1,479,209.10)
Amount claimed for refund or issuance of TCC (CTA Case No. 9026)	–	(4,880,190.40)	(4,880,190.40)
Amount carried over to 2013	₱2,515,357.05	₱ –	₱2,515,357.05
2013			
Tax credits/payments	₱2,515,357.05	₱4,733,500.00	₱7,248,857.05
Add reinstatement of 2004 CWTs disallowed by the CTA (per decision in CTA EB Case No. 697 dated April 20, 2012)	4,357,499.04	–	4,357,499.04
Less adjustment made by the Petitioner	(380,481.09)	–	(380,481.09)
	6,492,375.00	4,733,500.00	11,225,875.00
Less:			
Application of excess tax credits against RCIT due	(971,659.00)	–	(971,659.00)
Amount claimed for refund or issuance of TCC (CTA Case No. 9249)	–	(4,733,500.00)	(4,733,500.00)
Amount carried over to 2014	₱5,520,716.00	₱ –	₱5,520,716.00
2014			
Tax credits/payments	₱5,520,716.00	₱4,864,750.00	₱10,385,466.00
Less application of excess tax credits against RCIT due	(1,324,343.00)	–	(1,324,343.00)
Amount carried over to 2015	**₱4,196,373.00**	**₱4,864,750.00**	**₱9,061,123.00**
2015			
Tax credits/payments	₱9,061,123.00	₱4,993,000.00	₱14,054,123.00
Less:			
Application of excess tax credits against RCIT due	(445,427.00)	–	(445,427.00)
Amount claimed for refund or issuance of TCC (CTA Case No. 9808)	–	(4,993,000.00)	(4,993,000.00)

Particulars	Prior Years' Excess Credits	CWT for the Year	Total
Amount carried over to 2016	₱8,615,696.00	₱ –	₱8,615,696.00

Moreover, the CTA Third Division's verification of the Annual ITRs presented in relation to the ICPA's summary of movements of excess CWTs revealed that the accumulated prior year's excess credit from CYs 2003 to 2010 had been utilized for the payment of respondent's income tax dues from CYs 2004 to 2011. Thus, the prior year's excess credit of ₱9,061,123.00 were traced from CYs 2011 and 2014 and from the adjustments made in CY 2013, as shown below:

Exhibit	Taxable Year	Income Tax Due (RCIT/MCIT)	Prior Year's Excess Credit	Balance of Prior Year's Excess Credit/(Income Tax Still Due, net of PY Excess Credit)	CWT for the Year	Amount claimed for Refund (CTA)	Excess CWT at the end of the year
		a	b	c = b - e	d	e	f = c + d - e
P-25-1	2003	289,502.00	-	(289,502.00)	2,506,600.00	-	2,217,098.00
P-25-2	2004	550,220.00	2,217,098.00	1,666,878.00	5,188,970.00	5,188,970.00[4]	1,666,878.00
P-25-3	2005	1,029,302.00	1,666,878.00	637,576.00	5,070,932.00	5,070,932.00[5]	637,576.00
P-25-4	2006	434,043.00	637,576.00	203,533.00	3,991,800.00	3,991,800.00[6]	203,533.00
P-25-5	2007	756,740.00	203,533.00	(553,207.00)	3,643,050.00	-	3,089,843.00
P-25-6	2008	827,408.40	3,089,843.00	2,262,434.60	3,683,100.00	3,683,100.00[7]	2,262,434.60
P-25-7	2009	995,903.10	2,262,434.60	1,266,531.50	4,045,410.00	4,045,410.00[8]	1,266,531.50
P-25-8	2010	178,931.38	1,266,531.50	1,087,600.12	3,911,850.00	3,911,850.00[9]	1,087,600.12
P-25-9	2011	1,479,688.37	1,087,600.12	(392,088.25)	4,386,654.40	-	3,994,566.15
P-25-10	2012	1,479,209.10	3,994,566.15	2,515,357.05	4,880,190.40	4,880,190.40[10]	2,515,357.05
P-25-11	2013	971,659.00	2,515,357.05	5,520,716.00[11]	4,733,500.00	4,733,500.00[12]	5,520,716.00
P-25-12	2014	1,324,343.00	5,520,716.00	4,196,373.00	4,864,750.00	-	**9,061,123.00**

Petitioner's claim that respondent failed to present its Certificates of CWT for the latter's prior year's excess tax credits in

[4] CTA Case No. 7613.
[5] CTA Case No. 7757.
[6] CTA Case No. 7911.
[7] CTA Case No. 8266.
[8] CTA Case No. 8458.
[9] CTA Case No. 8639.
[10] CTA Case No. 9026.
[11] Prior year's Excess Credit of ₱2,515,357.05 less adjustment in CY 2013 ₱380,481.62 add reinstated (per CTA EB No. 697) CY 2004 CWTs of ₱4,357,499.04 less income tax due ₱971,658.90; rounding off resulted to immaterial difference of ₱0.43.
[12] CTA Case No. 9249.

CY 2015 has no basis. As found by the CTA Third Division, respondent submitted its Certificate of Taxes Withheld at Source (BIR Form No. 2307) for CY 2004 amounting to ₱5,188,969.74,[13] CY 2011 amounting to ₱4,386,654.40,[14] and CY 2014 amounting to ₱4,864,750.00.[15] The CTA Third Division's finding is further verified upon examination of the exhibits showing the Certificates of Creditable Tax Withheld At Source (BIR Form Nos. 2307). The said examination revealed the following detailed breakdown:

Exhibit	CWT
CY 2004	
P-36-1	₱ 40,909.09
P-36-2	103,636.35
P-36-3	122,727.26
P-36-4	40,909.09
P-36-5	103,636.35
P-36-6	122,727.26
P-36-7	142,459.08
P-36-8	35,772.28
P-36-9	40,909.09
P-36-10	103,636.35
P-36-11	122,727.26
P-36-12	40,909.09
P-36-13	103,636.35
P-36-14	122,727.26
P-36-15	40,909.09
P-36-16	103,636.35
P-36-17	122,727.26
P-36-18	2,136.36
P-36-19	18,181.82
P-36-20	130,186.36
P-36-21	75,000.00
P-36-22	124,550.00
P-36-23	170,754.54
P-36-24	210,920.45
P-36-25	110,386.35
P-36-26	68,181.82
P-36-27	40,909.09
P-36-28	103,636.35
P-36-29	122,727.26
P-36-30	40,909.09
P-36-31	103,636.35
P-36-32	122,727.26
P-36-33	22,727.27
P-36-34	13,636.35

[13] Exhibits "P-35", "P-36", "P-36-1" to "P-36-54".
[14] Exhibits "P-37", "P-38", "P-38-1"to "P-38-20".
[15] Exhibits "P-39","P-40", "P-40-1"to "P-40-24".

P-36-35	13,636.35
P-36-36	13,636.35
P-36-37	45,272.71
P-36-38	12,719.09
P-36-39	121,568.18
P-36-40	76,314.28
P-36-41	155,795.44
P-36-42	68,181.82
P-36-43	292,090.92
P-36-44	93,007.98
P-36-45	320,386.37
P-36-46	93,007.98
P-36-47	418,363.64
P-36-48	133,550.05
P-36-49	29,545.46
P-36-50	11,363.63
P-36-51	113,754.55
P-36-52	28,617.82
P-36-53	104,659.08
P-36-54	47,696.46
Total	**5,188,969.74**
CY 2011	
P-38-1	262,500.00
P-38-2	262,500.00
P-38-3	262,500.00
P-38-4	262,500.00
P-38-5	262,500.00
P-38-6	262,500.00
P-38-7	262,500.00
P-38-8	262,500.00
P-38-9	15,000.00
P-38-10	15,000.00
P-38-11	10,000.00
P-38-12	262,500.00
P-38-13	262,500.00
P-38-14	304,050.00
P-38-15	304,050.00
P-38-16	262,500.00
P-38-17	262,500.00
P-38-18	262,500.00
P-38-19	262,500.00
P-38-20	63,554.40
Total	**4,386,654.40**
CY 2014	
P-40-1	262,500.00
P-40-2	262,500.00
P-40-3	262,500.00
P-40-4	262,500.00

P-40-5	45,000.00
P-40-6	45,000.00
P-40-7	262,500.00
P-40-8	262,500.00
P-40-9	262,500.00
P-40-10	262,500.00
P-40-11	262,500.00
P-40-12	262,500.00
P-40-13	351,750.00
P-40-14	408,000.00
P-40-15	262,500.00
P-40-16	262,500.00
P-40-17	262,500.00
P-40-18	262,500.00
P-40-19	10,000.00
P-40-20	10,000.00
P-40-21	10,000.00
P-40-22	10,000.00
P-40-23	112,500.00
P-40-24	187,500.00
Total	**₱ 4,864,750.00**

In view thereof, respondent has undoubtedly proven the existence of tax credits for CY 2004 amounting to ₱5,188,969.74, CY 2011 amounting to ₱4,386,654.40, and CY 2014 amounting to ₱4,864,750.00. After carefully tracing the movements of the tax credits, the CTA Third Division also found that such tax credits were utilized as follows:

Particulars	CY 2004 Credits	CY 2011 Credits	CY 2014 Credits	Total
Amount of Credits	**₱5,188,970.00**[16]	**₱4,386,654.40**	**₱4,864,750.00**	**₱14,440,374.40**
Refund under CTA Case No. 7613	(5,188,970.00)			(5,188,970.00)
CY 2011 RCIT Balance		(392,088.25)		(392,088.25)
CY 2012 RCIT		(1,479,209.10)		(1,479,209.10)
Denied Refund Reinstated in 2013/(Adjustment to CY 2010 income tax due)	4,357,499.04	(380,481.09)		3,977,017.95
CY 2013 RCIT		(971,659.00)		(971,659.00)
CY 2014 RCIT	(161,126.04)	(1,163,216.96)		(1,324,343.00)
Balance	**₱ 4,196,373.00**	**₱ -**	**₱4,864,750.00**	**₱ 9,061,123.00**

In fine, this Court finds no error committed by the Court in Division when it ruled that respondent has sufficiently proven that the existence of its prior year's excess credits for CY 2015 amounting to

[16] Immaterial difference of ₱0.26.

₱9,061,123.00, a portion of which was utilized to settle respondent's income tax liability for CY 2015 amounting to ₱445,427.00.

Compliance with the requirements under RR No. 2-98, as amended by RR No. 2-2006

As regards petitioner's argument that respondent failed to comply with the requirements under RR No. 2-98, as amended by RR No. 2-2006, anent the submission of SAWTs and MAPs, the Court finds the same as mere reiterations of the arguments pleaded in petitioner's "Motion for Reconsideration" filed *via* registered mail on October 21, 2020 before the CTA Third Division,[17] and "Petition for Review" filed *via* registered mail on May 21, 2021 before this Court.[18] Petitioner's argument was duly considered in the assailed Decision, particularly on pages 8 to 9 thereof. Accordingly, it would be a useless superfluity for this Court to reiterate its pronouncements in the assailed Decision in addressing the same issue.

All told, the Court finds no cogent reason to reverse or modify the assailed Decision.

WHEREFORE, in light of the foregoing, petitioner's "**Motion for Reconsideration**" is **DENIED** for lack of merit.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

WE CONCUR:

ERLINDA P. UY
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

[17] Annex "C", CTA *En Banc Docket*, pp. 46 to 55.
[18] CTA *En Banc Docket*, pp. 1 to 12.

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

(On Leave)
MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice