REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

SONOMA SERVICES, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 9026

Members:

CASTAÑEDA, JR., *Chairperson,*
CASANOVA, *and*
MANAHAN, *JJ.*

Promulgated:

JUL 06 2017 4:24 pm

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RESOLUTION

CASANOVA, J.:

For resolution is respondent's **Motion for Reconsideration (of the Decision dated 5 April 2017)**, filed on April 21, 2017 by registered mail and received by the Court on May 9, 2017, with petitioner's **Comment (Re: Motion for Reconsideration dated April 21, 2017)**, filed on June 7, 2017.

Respondent moves for the reconsideration of the Court's Decision promulgated on April 5, 2017 (assailed Decision), the dispositive portion of which reads:

> "**WHEREFORE**, premises considered, the instant Petition for Review is **GRANTED.** Accordingly, respondent is **ORDERED** to **REFUND** in favor of petitioner the amount of **₱4,880,190.40** representing its excess and unutilized creditable withholding taxes for the CY ended December 31, 2012.

SO ORDERED."

Respondent seeks the reconsideration of the grant of petitioner's claim for refund, arguing that the proof of actual remittance to the Bureau of Internal Revenue (BIR) of the withheld taxes and testimonial evidence of the payors and withholding agents are required. Respondent avers that the evidence petitioner presented does not constitute conclusive evidence of payment and remittance to the BIR of the withheld taxes on petitioner's income and the best evidence or proof of remittance is the certification from the BIR's Revenue Accounting Division (RAD) as to the fact of remittance of tax withheld. Respondent stresses that the act of withholding is one thing while the act of remittance is another thing. Moreover, respondent asserts that petitioner failed to present the various payors and withholding agents in order to establish the fact of withholding and remittances made. Hence, respondent maintains that petitioner's judicial claim must necessary fail.

In its comment, petitioner submits that the grounds relied upon by respondent, for the reversal of the assailed Decision, are devoid of any legal or factual merit. Petitioner argues that it is well-settled that the presentation of the Certificates of Tax Withheld at Source (BIR Form No. 2307) issued by withholding agents constitute sufficient proof of the existence and validity of a taxpayer's creditable withholding taxes (CWT). Petitioner emphasizes that there is no law, jurisprudence or administrative regulation that requires the submission of a certification from the BIR's RAD as proof of the existence and validity of CWTs. Petitioner avers that this Court has consistently ruled that the Certificates of 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 because the withholding agents-payors are constituted as tax agents of the Commissioner of Internal Revenue who hold the taxes in trust for the government. Moreover, petitioner stresses that in a long line of cases, the Supreme Court has explicitly ruled that proof of actual remittance of CWT to the BIR is not a requirement for proving entitlement to a claim for refund of excess and unutilized CWTs and there is no need to present evidence of the testimony of the person who made entries in the CWT certificate because this certificate covers essential matters to prove the fact of withholding.

The instant motion is bereft of merit.

In *Commissioner of Internal Revenue vs. Philippine National Bank*[1], the Supreme Court held that proof of actual remittance is not a condition to 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, who is vested with the responsibility of withholding and remitting income taxes.

The reason for such ruling was extensively discussed in *Commissioner of Internal Revenue vs. Asian Transmission Corporation*[2], where the Supreme Court, quoting the Court *En Banc's* explanation, held that:

> x x x 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 Sections 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, x x x 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**

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[1] G.R. No. 180290, September 29, 2014.
[2] G.R. No. 179617, January 19, 2011.

> **prove actual remittance by the withholding agent (payor) to the BIR.** (*Emphasis Supplied*)

Moreover, it is not necessary for the person who executed and prepared the certificate of creditable tax withheld at source to be presented and to testify personally to prove the authenticity of the certificates. The certificate of creditable tax withheld at source is the competent proof to establish the fact that taxes are withheld.[3]

In *Commissioner of Internal Revenue vs. Team [Philippines] Operations Corporation [formerly Mirant (Phils) Operations Corporation]*[4], the Supreme Court, adopting the findings of the Court in Division, as affirmed by the Court *En Banc*, explains that the certificate of creditable tax withheld at source were duly signed and prepared under penalties of perjury, the figures appearing therein are presumed to be true and correct. Thus, the testimony of the various agents/payors need not be presented to validate the authenticity of the certificates.

In view of the foregoing, the Court finds no cogent reason to reverse or modify the Court's Decision dated April 5, 2017.

WHEREFORE, premises considered, respondent's **Motion for Reconsideration (of the Decision dated 5 April 2017)** is **DENIED** for lack of merit.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

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[3] *Commissioner of Internal Revenue vs. Philippine National Bank*, G.R. No. 180290, September 29, 2014

[4] G.R. No. 179260, April 2, 2014.