REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

SM INVESTMENTS CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 9322

Members:

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

Promulgated:

JUN 30 2020 8:48 Am

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RESOLUTION

CASTAÑEDA, JR., J:

For resolution of the Court is respondent's **Motion for Partial Reconsideration (Re: Amended Decision promulgated 18 November 2019)** filed on December 5, 2019, with petitioner's **Comment/Opposition [To Respondent's *Motion for Partial Reconsideration (Re: Amended Decision promulgated 18 November 2019)* dated 04 December 2019]**, filed through registered mail on January 2, 2020.

In the instant motion, respondent asserts that petitioner failed to prove actual remittance of withholding taxes. Respondent also argues that the Court erred in allowing petitioner to recall its witness.

On the other hand, petitioner asserts that it is not responsible for the proof of remittance of creditable taxes withheld and that the Court exercised its sound discretion in allowing the recall of its witness.

After careful consideration of the assertions of both parties, the Court rules in favor of petitioner.

Proof of remittance is the responsibility of the withholding agent

With respect to the proof of remittance of creditable taxes withheld, the Court sees no error when it found that:

> "Section 58(B) of NIRC, as amended, provides that:
>
> '(B) *Statement of Income Payments Made and Taxes Withheld.* - Every withholding agent required to deduct and withhold taxes under Section 57 shall furnish each recipient, in respect to his or its receipts during the calendar quarter or year, a written statement showing the income or other payments made by the withholding agent during such quarter or year, and the amount of the tax deducted and withheld therefrom, simultaneously upon payment at the request of the payee, but not late than the twentieth (20th) day following the close of the quarter in the case of corporate payee, or not later than March 1 of the following year in the case of individual payee for creditable withholding taxes. For final withholding taxes, the statement should be given to the payee on or before January 31 of the succeeding year.'
>
> Pursuant to Section 58(B) of NIRC, as amended, and as implemented by Section 2.58(B) of Revenue Regulations No. 2-98, every **payor/withholding agent** is required to furnish each payee/income recipient with a written statement showing the amount of income payments made by payor/withholding agent and the corresponding tax deducted and withheld therefrom. Said statement refers to BIR Form No. 2307 (Certificate of Creditable Tax Withheld at Source) which is a proof of the fact of withholding. *fr*

Subsequently, Section 2.58.3(B) of RR No. 2-98, as amended, clearly provides:

> 'SECTION 2.58.3. Claim for Tax Credit or Refund. —
>
> xxx xxx xxx
>
> (B) Claims for tax credit or refund of any creditable income tax which was deducted and withheld on income payments shall be given due course only when it is shown that the income payment has been declared as part of the gross income and the fact of withholding is established by a copy of the withholding tax statement duly issued by the payor to the payee showing the amount paid and the amount of tax withheld therefrom.
>
> **Proof of remittance is the responsibility of the withholding agent.**'

Thus, SMIC is correct in holding that it is not responsible for the proof of remittance of the creditable taxes withheld.

Further, the Supreme Court consistently held that the certificate of creditable tax withheld at source is the competent proof to establish the fact that taxes are withheld, to wit:

> 'Thus, **upon presentation of a withholding tax certificate complete in its relevant details and with a written statement that it was made under the penalties of perjury, the burden of evidence then shifts to the Commissioner of Internal Revenue to prove that (1) the certificate is not complete; (2) it is false; or (3) it was not issued regularly.**
>
> 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 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.**'

As extensively discussed in *Commissioner of Internal Revenue v. Asian Transmission Corporation,* the Supreme Court, citing the ruling of the Court of Tax Appeals (CTA) En Banc, held that proof of actual remittance of the taxes withheld is not necessary:

> '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 Regulations 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 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.**'
>
> Thus, based on the foregoing, the denial of respondent's motion is in order."

Thus, it is settled that proof of remittance is the responsibility of the withholding agent and that the certificate of creditable tax withheld at source is the competent proof to establish the fact that taxes are withheld. As such, the Court finds respondent's argument untenable.

A second motion for reconsideration is prohibited

With respect to the issue raised by respondent with regard to the recall of petitioner's witness, the Court observes that respondent practically lifted his discussions from his Omnibus Motion (a) Motion for Reconsideration of the Resolution dated 23 July 2019; and (b) To cancel the hearing set on 14 August 2019, filed on August 9, 2019.

In other words, the instant motion is in the nature of a prohibited second motion for reconsideration.

In *Systra Philippines, Inc. v. Commissioner of Internal Revenue,*[1] the Supreme Court held that:

> "The denial of a motion for reconsideration is final. It means that the Court will no longer entertain and consider further arguments or submissions from the parties respecting the correctness of its decision or resolution. It signifies that, in the Court's considered view, nothing more is left to be discussed, clarified or

[1] G.R. No. 176290, September 21, 2007.

done in the case since all issues raised have been passed upon and definitely resolved. Any other issue which could and should have been raised is deemed waived and is no longer available as ground for a second motion. A denial with finality underscores that the case is considered closed. Thus, as a rule, a second motion for reconsideration is a prohibited pleading. The Court stressed in *Ortigas and Company Limited Partnership v. Velasco*:

A second motion for reconsideration is forbidden except for extraordinarily persuasive reasons, and only upon express leave first obtained."

In the instant case, respondent failed to allege any extraordinary persuasive reason for the Court to consider his motion. Respondent also failed to obtain express leave for the same.

Considering the foregoing, the Court sees no reason to disturb the conclusion in the assailed Amended Decision. Hence, the denial of the instant motion is in order.

WHEREFORE, the instant Motion for Partial Reconsideration (Re: Amended Decision promulgated 18 November 2019) is **DENIED**, for lack of merit.

SO ORDERED.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

I CONCUR:

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice