REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus -

AZ CONTRACTING SYSTEM SERVICE, INC.,
Respondent.

CTA EB No. 2757
(CTA Case No. 9558)

Present:

DEL ROSARIO, *P.J.*,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO,
CUI-DAVID,
FERRER-FLORES, *and*
ANGELES, *JJ.*

Promulgated:
AUG 3 0 2024 1:48 pm

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DECISION

BACORRO-VILLENA, J.:

Before the Court is a Petition for Review[1] filed pursuant to Section 2(a)(1)[2], Rule 4 of the Revised Rules of the Court of Tax Appeals (**RRCTA**) by petitioner Commissioner of Internal Revenue (**petitioner/CIR**). It seeks the partial reversal of the Third Division's

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[1] Filed on 16 June 2023, *rollo*, pp. 7-19. The Petition for Review was filed subsequent to the grant of a fifteen (15)-day extension by the Court *En Banc* pursuant to a "Motion for Extension of Time to File Petition for Review" *per En Banc* Minute Resolution dated 02 June 2023, *rollo*, p. 6.

[2] **SEC. 2.** *Cases within the jurisdiction of the Court en banc.* - The Court *en banc* shall exercise exclusive appellate jurisdiction to review by appeal the following:

(a) Decisions or resolutions on motion for reconsideration or new trial of the Court in Division in the exercise of its exclusive appellate jurisdiction over:

1. Cases arising from administrative agencies - Bureau of Internal Revenue, Bureau of Customs, Department of Finance, Department of Trade and Industry and Department of Agriculture[.]

Decision[3] promulgated on 30 June 2020 (**assailed Decision**) and its Resolution[4] (**assailed Resolution**) issued on 11 May 2023, and that a new one be decreed denying respondent AZ Contracting System Service, Inc.'s (**respondent**'s) prior Petition for Review.

PARTIES OF THE CASE

Petitioner CIR is the head of the Bureau of Internal Revenue (**BIR**), the government agency officially responsible for the assessment and collection of all national internal revenue taxes, fees and charges and the enforcement of all forfeitures, penalties and fines connected with such taxes.[5]

Respondent, on the other hand, is a domestic corporation duly organized and existing under the laws of the Republic of the Philippines, primarily engaged in the business of sub-contracting/job contracting of all types of work or services including promotion of goods and the supply of manpower services (except recruitment activities).[6] It is registered with the BIR with Tax Identification Number (TIN) 216-677-401-000, and with registered address at Unit 3 & 4 Best Century 88 Building, National Road, Barangay Maduya, Carmona, Cavite.[7]

FACTS OF THE CASE

Respondent filed its income tax returns (**ITRs**) for calendar year (**CY**) 2014 and CY 2015 on the following dates:

Period	**Tax Return**	**Date of Filing**	**Exhibit**
CY 2014	Original Annual ITR	14 April 2015	"P-4"
CY 2014	Amended Annual ITR	06 May 2016	"P-5"
1Q 2015	Quarterly ITR	25 May 2015	"P-6"
2Q 2015	Quarterly ITR	27 August 2015	"P-7"
3Q 2015	Quarterly ITR	23 November 2015	"P-8"
CY 2015	Amended Annual ITR	25 April 2016	"P-9"

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3 Annex "A", *rollo*, pp. 25-41. Penned by Associate Justice Erlinda P. Uy (Ret.) and concurred in by Associate Justice Ma. Belen Ringpis-Liban and Associate Justice Maria Rowena Modesto-San Pedro.
4 Annex "B", id., pp. 43-55.
5 Id., p. 9.
6 Exhibit "P-2", Division Docket, Volume II, p. 574.
7 Exhibit "P-3", id., p. 582.

Respondent filed its original Annual ITR[8] for CY 2014 on 14 April 2015, which was later amended on 06 May 2016. In its 2014 Amended Annual ITR[9], respondent declared a total income tax credits in the amount of ₱85,156,016.00[10] and an overpayment of ₱73,693,074.00[11], as follows:

Total Income Tax Due	₱11,462,942.00
Less: Total Tax Credits	(85,156,016.00)
Total Overpayments	**(₱73,693,074.00)**

In its Original and Amended Annual ITR for CY 2014, respondent opted to be refunded for its excess and unutilized creditable withholding tax (**CWT**) for CY 2014.[12] Thus, on 26 January 2017, respondent filed its Administrative Claim for Refund, with Application for Tax Refund (BIR Form No. 1914)[13], requesting for the refund of the excess and unutilized CWT for CY 2014 amounting to ₱15,352,600.00.[14]

For petitioner's alleged failure to act on the said administrative claim for refund, respondent filed a Petition for Review[15] with this Court on 30 March 2017. The case was docketed as CTA Case No. 9558 and was raffled to the Third Division.

On 06 April 2017, the Court issued Summons[16] and gave petitioner (then respondent) a period of fifteen (15) days to file his or her Answer to the Petition for Review. The summonses were served by personal service upon petitioner[17] on 10 April 2017 and on the Solicitor General on 11 April 2017.

On 28 July 2017, respondent filed a "Motion to Declare petitioner in Default"[18] stating that petitioner was served with summons and a copy

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8 Exhibit "P-4", id., p. 583.
9 Exhibit "P-5", id., p. 591.
10 Id., Line 17.
11 Id., Line 20.
12 Id., Line 21.
13 Exhibit "P-10", id., p. 613.
14 Id., p. 619.
15 Id., Volume I, pp. 10-29.
16 Id., p. 165.
17 Id.
18 Id., pp. 167-170.

of the Petition for Review together with its annexes on 10 April 2017. Further, petitioner failed to file his or her Answer within the period specified in the RRCTA. Thus, respondent moved that petitioner be declared in default.

On 14 August 2017, *per* the Court's Judicial Records Division's Verification Report[19], petitioner failed to file an Answer. Accordingly, in the Resolution dated 22 August 2017[20], petitioner was declared in default pursuant to Section 3[21], Rule 9 of the Rules of Court (**ROC**), as amended.[22] The Court, through the Third Division, ruled that all the elements of a valid declaration of default are present, namely: (1) the court has validly acquired jurisdiction over the person of petitioner either by service of summons or voluntary appearance; (2) petitioner failed to file an answer within the time allowed therefor; and, (3) a motion to declare petitioner in default has been filed by respondent with notice to petitioner. In the same Resolution, the Court allowed respondent to present its evidence *ex parte* on 27 November 2017.

On 03 October 2017, petitioner filed a "Motion to Lift Order of Default and Admit the Attached Answer"[23] (**Motion to Lift Default Order**), with the attached Answer[24], manifesting that he or she has no intention to file the Answer belatedly nor to violate the mandate of the Court. There, petitioner also explained that the BIR Records were only forwarded to the Litigation Division on 22 September 2017, despite several follow-up requests. Additionally, petitioner requested that the Order of Default be lifted and the attached Answer be admitted.

In its "Comment/Opposition (Re: Motion to Lift Order of Default and Admit Attached Answer)"[25] filed on 03 November 2017, respondent contended that petitioner did not challenge the propriety of the Third Division's Order of Default. Respondent argued that such failure to challenge the Order of Default was an implied admission that all the requisites necessary for a court of law to declare a party in default were present.

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19 Id., p. 171.
20 Id., pp. 173-175.
21 SEC. 3. *Default; Declaration of.*
22 2019 Amendments to the 1997 Rules of Civil Procedure (A.M. No. 19-10-20-SC).
23 Division Docket, Volume I, pp. 176-187.
24 Id., pp. 200-207.
25 Id., pp. 210-213.

Respondent added that petitioner's Motion to Lift Default Order did not sufficiently show that the failure to file the Answer on time was due to any excusable negligence. According to respondent, the justification that petitioner had not yet received the complete BIR Records before drafting the Answer should not have prevented the latter from filing the necessary motion for the extension of time (to file the Answer). Furthermore, petitioner could have filed an opposition to respondent's motion to declare him or her in default. Having failed to pursue both available remedies, petitioner's Motion to Lift Default Order should be denied.

In a Resolution dated 09 November 2017[26], the Third Division denied petitioner's Motion to Lift Default Order and ruled that the order of default could not be lifted without any showing that petitioner's failure to file an Answer was indeed due to excusable negligence and that he or she had a meritorious defense. The circumstances of belated transmittal of the BIR Records, heavy workload and a supposed difficulty in coordinating with the Revenue Officer (**RO**) do not constitute excusable negligence. These excuses proffered are not enough to preclude petitioner from filing an Answer or from opposing respondent's motion to declare him or her (petitioner) in default.

Later, in view of the manifestation of petitioner's counsel during the hearing held on 27 November 2017 that he or she was intending to file a Motion for Reconsideration (**MR**) of the Resolution dated 09 November 2017[27], the Court reset the initial presentation of respondent's evidence to 20 March 2018.

Still later, on 29 November 2017, petitioner filed a "Motion for Reconsideration (Re: Resolution dated November 9, 2017)"[28] (**MR**), alleging that his or her failure to file an Answer was due to excusable negligence. Further, that he or she can no longer ask for an extension of time because the period to file an Answer had already lapsed when the case was assigned to a counsel. Petitioner reiterated that he or she cannot meritoriously and intelligently prepare an Answer because of the late transmittal of the BIR Records. Thus,

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26 Id., pp. 216-219.

27 See Minutes of the Hearing and Order, both dated 27 November 2017, id., pp. 299 and 300, respectively.

28 Id., pp. 301-309.

petitioner moved that the Resolution dated 09 November 2017 be reversed and set aside.

In the "Comment/Opposition (Re: [MR])"[29] filed on 21 December 2017, respondent argued that petitioner's MR must be denied for lack of factual and legal basis. Additionally, the MR was a mere reiteration of the arguments already considered by the Third Division. It insisted that petitioner's plea for liberal application must fail since no reasonable circumstance was established to justify the latter's failure to file the Answer.

In the Resolution dated 10 January 2018[30], the Third Division denied petitioner's MR for lack of merit. It considered the said MR as a second MR since it essentially prayed for the Court to reconsider its resolution declaring respondent in default. Thus, the Court denied petitioner's motion based on Section 2[31], Rule 52 of the ROC, as amended.

Thereafter, petitioner filed a Petition for *Certiorari*[32] (dated 16 March 2018) with the Supreme Court. It sought to annul and set aside the Third Division's Resolution dated 10 January 2018 that declared petitioner in default.

In the *interim*, on 12 September 2018, the Third Division received a copy of the Supreme Court's Resolution (of 18 June 2018), requiring respondent to comment on the Petition for *Certiorari*. Respondent complied and filed its Comment[33] dated 02 October 2018.

On 15 January 2019, the Third Division received another Notice[34] from the Supreme Court's First Division, stating that a Resolution dated 17 October 2018 was issued requiring petitioner to file a Reply.

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[29] Id., pp. 314-317.
[30] Id., pp. 320-323.
[31] SEC. 2. *Second Motion for Reconsideration.* — No second motion for reconsideration of a judgment or final resolution by the same party shall be entertained.
[32] Docketed to be G.R. No. 238093; Division Docket, Volume I, pp. 349-372.
[33] Id., Volume II, pp. 637-651.
[34] Id., p. 691.

Meanwhile, on 14 March 2018, respondent filed a "Motion to Commission (an Independent Certified Public Accountant [**ICPA**])"[35] praying that Emmanuel Y. Mendoza (**Mendoza**) be commissioned as an ICPA pursuant to Section 1[36], Rule 13 of the RRCTA.

During the hearing held on 20 March 2018[37], respondent presented its witnesses, Bienvenida De Villa[38] (**De Villa**) and Mendoza.[39]

At the said hearing, De Villa, identified her Judicial Affidavit dated 22 November 2017[40] where she declared essentially that: (1) as respondent's Vice President for Finance, her duties include supervising and ensuring the former's compliance with pertinent laws, payment of taxes, and keeping the books of accounts and accounting records of the respondent; (2) respondent is engaged in the business of subcontracting of all types of works or services including promotion of goods and supply of local general manpower services more particularly providing and supplying semi- skilled, professional, technical and highly trained and experienced workers to local industry companies and enterprise; and, (3) respondent is registered with the Securities and Exchange Commission (**SEC**) and with the BIR.

De Villa also explained how respondent arrived at the refund claim amount of ₱15,352,600.00 and that respondent unequivocally indicated its intention to refund the excess and unutilized CWT in its 2014 Annual ITR. She also testified that respondent did not carry over the excess CWT, which was the subject of the refund claim, in its 2015 Annual ITR. She explained each reconciling item, accounting for the difference between the income reported in the Summary Alphalist of Withholding Tax (**SAWT**) and that reported in the 2014 Annual ITR.

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35 Id., Volume I, pp. 324-325.

36 **SEC. 1.** *Appointment of independent Certified Public Accountant (CPA).* – A party desiring to present voluminous documents in evidence before the Court may secure the services of an independent Certified Public Accountant (CPA) at its own expense. The Court shall commission the latter as an officer of the Court solely for the purpose of performing such audit functions as the Court may direct.

37 See Minutes of the Hearing and Order, both dated 27 November 2017, Division Docket, Volume I, pp. 345 and 347-348, respectively.

38 Exhibit "P-11", id., pp. 224-237.

39 Exhibit "P-23", id., Volume II, pp. 535-540.

40 Exhibit "P-11", supra at note 38.

Thereafter, Mendoza also assumed the witness stand where he identified his Judicial Affidavit dated 23 May 2018.[41] There, he declared essentially that: (1) he is an ICPA accredited with the BIR and SEC; (2) he has thirty (30) years of experience in the accounting industry; (3) he is not connected in any manner with respondent; (4) he does not have any professional or personal relationship with any of respondent's officers or members of its board of directors; and, (5) he has not been engaged as an external or internal auditor or employed by respondent in any capacity. Thereafter, the ICPA submitted his ICPA Report[42] on 13 April 2018.[43]

Later, on 10 September 2018, respondent filed its Formal Offer of Evidence[44] (**FOE**). In the Resolution dated 04 December 2018[45], the Third Division admitted some of respondent's exhibits but denied some exhibits[46] for not being found in the records of the case.

On 19 December 2018, respondent filed a "Motion for Partial Reconsideration"[47] (**MPR**) praying that the Third Division reconsider the previously denied exhibits. According to respondent, the Court-commissioned ICPA identified these denied exhibits in the ICPA Report submitted to the Court.

On 15 March 2019, the Third Division granted respondent's MPR and admitted all the denied exhibits, subject to its final evaluation, relevancy and probative value to the issues involved in this case.[48] In the same Resolution, respondent was ordered to file its Memorandum.

Still later, after its receipt of respondent's Memorandum[49], the Court submitted the case for decision on 09 May 2019.[50] In the now

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41 Exhibit "P-23", supra at note 39.
42 Exhibit "P-13", Division Docket, Volume II, pp. 463-527.
43 See Transmittal Memo dated 13 April 2018, id., p. 462.
44 Id., pp. 559-570.
45 Id., pp. 677-678.
46 See Exhibits "P-14-A120-6" to "P-14-A120-8", "P-14-A120-10", "P-14-B121-2", "P-14-B126", "P-16-A4-31", "P-17-B21", "P-21-A52", "P-21-B77-1", "P-21-A81", "P-21-B81", "P-21-A118", and "P-21-A181", id.
47 Id., pp. 679-682.
48 See Resolution dated 15 March 2019, id., pp. 719-720.
49 Id., pp. 725-743.
50 Id., p. 748.

assailed Decision of 30 June 2020[51], the Third Division partially granted respondent's refund claim. The dispositive portion thereof reads:

> ...
>
> **WHEREFORE**, in light of the foregoing considerations, the instant *Petition for Review* is **PARTIALLY GRANTED**. Accordingly, respondent is hereby **ORDERED TO REFUND OR ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner the total amount of **₱13,556,461.56** representing petitioner's excess and unutilized Creditable Withholding Tax for the calendar year ended December 31, 2014.
>
> **SO ORDERED.**
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> ...

In partially granting the refund claim, the Third Division mainly held that respondent was able to successfully satisfy the following requirements:

(1) The claim was filed with the CIR within the two (2)-year period from the date of payment of the tax, as prescribed under Section 229 of the National Internal Revenue Code (**NIRC**) of 1997, as amended;

(2) 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; and,

(3) It was shown on the return of the recipient that the income received was declared as part of the gross income.

The Third Division also emphasized that the two (2)-year prescriptive period within which to claim a refund commences to run at the earliest, on the date of the filing of the adjusted final tax return.

Meanwhile, on 24 July 2020, respondent filed a "Motion for Entry of Judgment and Issuance of Writ of Execution"[52] (**First Motion to Enter and Execute Judgment**). On 06 August 2020, the Supreme Court

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[51] Supra at note 3.
[52] Division Docket, Volume II, pp. 768-772.

issued a Notice of Resolution dated 13 January 2020[53], which granted petitioner's motion for extension of time to file a Reply and directed the Clerk of Court of this Court to elevate the records of the case.

On 25 August 2020, the Third Division submitted respondent's First Motion to Enter and Execute Judgment for resolution.[54] On 18 August 2020, petitioner filed an MPR dated 06 August 2020[55], on the assailed Decision promulgated on 30 June 2020. In its MPR, petitioner argued that respondent did not provide enough supporting documents to show that the income from which the CWT being claimed was declared in the Annual ITR.

On 07 September 2020, respondent filed its comment/opposition to petitioner's MPR.[56] On 02 October 2020, the Third Division issued a Resolution directing its Clerk of Court to elevate the entire docket of the instant case to the Supreme Court.[57] In view thereof, the resolution of respondent's First Motion to Enter and Execute Judgment filed on 24 July 2020 and petitioner's MPR was held in abeyance. Accordingly, the Third Division recalled and set aside the Resolution dated 25 August 2020, submitting respondent's First Motion to Enter and Execute Judgment for resolution.

On 02 July 2021, respondent filed a second "Motion for Entry of Judgment and Issuance of Writ of Execution"[58] (**Second Motion to Enter and Execute Judgment**), attached to the said Motion was the Supreme Court Resolution dated 26 January 2021[59] that dismissed petitioner's Petition for *Certiorari*.[60] On 21 October 2021, the Third Division resolved to defer the resolution of respondent's motions to enter judgment and execute the same (filed on 24 July 2020 and 02 July 2021, respectively), pending receipt of the supposed Supreme Court Resolution dated 26 January 2021[61] and of the entire case docket.[62]

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53 Id., p. 773.
54 Id., p. 781.
55 Id., pp. 782-789.
56 Id., pp. 792-797.
57 Id., pp. 799-800.
58 Id., pp. 806-809.
59 Id., pp. 810-817.
60 Supra at note 32.
61 Supra at note 59.
62 See Resolution dated 21 October 2021, Division Docket, Volume II, pp. 820-821.

On 15 March 2022, the Third Division received the Supreme Court's Resolution[63] dated 26 January 2021, which affirmed the Third Division's Resolution dated 10 January 2018.[64] There, the Supreme Court dismissed petitioner's Petition for *Certiorari*. Petitioner filed an MR thereon which the Supreme Court also denied in a Resolution dated 15 June 2022.[65]

Subsequently, the Supreme Court issued an Entry of Judgment dated 15 June 2022[66], certifying that its Resolution dated 26 January 2021[67] had become final and executory.

On 07 March 2023, the Third Division also issued a Resolution[68] denying: (**a**) petitioner's First Motion to Enter and Execute Judgment filed on 24 July 2020[69] for lack of merit; and, (**b**) petitioner's Second Motion to Enter and Execute Judgment filed on 02 July 2021[70], including another "Motion for Issuance of Writ of Execution" filed on 26 January 2023, for being premature.[71] In the same Resolution, the Third Division submitted petitioner's MPR[72] for resolution upon receipt of the docket from the Supreme Court.

On 04 April 2023, the Supreme Court remanded the entire records of the case back to this Court.[73] On 11 May 2023, the Third Division issued the assailed Resolution[74] denying petitioner's MPR.

Thereafter, on 16 June 2023, following the extension of time granted to petitioner, the latter filed the present Petition for Review before the Court *En Banc*. On 02 August 2023, the Court *En Banc* resolved to give due course to the instant case and submitted it for decision.[75]

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63 Id., pp. 822-825; The Supreme Court First Division Clerk of Court sent a copy of the Resolution dated 26 January 2021 *via* registered mail on 21 June 2021.
64 Supra at note 30.
65 Division Docket, Volume II, p. 826.
66 Id., p. 839.
67 Supra at note 59.
68 Division Docket, Volume II, pp. 864-874.
69 Supra at note 52.
70 Supra at note 58.
71 Division Docket. Volume II, pp. 848-859, with annexes.
72 Supra at note 55.
73 Division Docket, Volume II, p. 875.
74 Supra at note 4.
75 *Rollo*, p. 68.

ISSUES

Before Us, petitioner puts forward the following issue for the Court *En Banc*'s resolution:

> WHETHER THE THIRD DIVISION ERRED IN RULING THAT RESPONDENT AZ CONTRACTING SYSTEM SERVICE, INC. IS ENTITLED TO A REFUND IN THE REDUCED AMOUNT OF ₱13,556,461.56, REPRESENTING ALLEGED EXCESS AND UNUTILIZED CREDITABLE WITHHOLDING TAX (CWT) FOR THE CALENDAR YEAR (CY) ENDED 31 DECEMBER 2014.

ARGUMENTS

In its bid for the Court *En Banc* to reverse the Third Division's actions, petitioner insists that respondent failed to prove that there was an erroneous or illegal assessment of taxes against it.[76] Petitioner reiterates his or her argument that respondent failed to provide enough supporting documents to show that the income from which CWT being claimed was declared in the Annual ITR.[77] Petitioner argues that respondent failed to prove actual remittance to the BIR of withheld taxes.[78]

As for respondent, it argued that the present petition should be denied based on the following grounds: (1) it is a mere reiteration of the allegations already ruled upon in the assailed Decision and Resolution; (2) respondent was already able to prove in part that the income upon which taxes were withheld was declared as part of the gross income; and, (3) the documents enumerated in Revenue Memorandum Order (**RMO**) No. 53-98[79] merely serve as a guide as to what should be presented in case of an audit and these documents are not required to support a claim for tax credit or refund.[80]

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[76] Paragraph 24, ARGUMENTS/DISCUSSIONS, Petition for Review, supra at note 1, p. 14.
[77] Par. 4, id., p. 10.
[78] Par. 15, id., p. 12.
[79] Checklist of Documents to be Submitted by a Taxpayer upon Audit of his Tax Liabilities as well as of the Mandatory Reporting Requirements to be Prepared by a Revenue Officer, all of which Comprise a Complete Tax Docket.
[80] *Rollo*, pp. 57-65.

RULING OF THE COURT *EN BANC*

At the outset, it is noted that the present petition before the Court *En Banc* has been timely filed.

Petitioner received a copy of the assailed Resolution on 19 May 2023.[81] Petitioner had 15 days from receipt of the assailed Resolution, pursuant to Section 3(b)[82], Rule 8 of the RRCTA, or until 03 June 2023, to file a Petition for Review before the Court *En Banc*. On 31 May 2023, petitioner filed a "Motion for Extension of Time to file his or her Petition for Review".[83] The Court *En Banc* granted the said motion and allowed petitioner until 18 June 2023. Thus, on 16 June 2023, petitioner timely filed the present Petition for Review.[84]

We proceed.

After a careful review of the records of the case and the contrasting arguments of the parties, the Court *En Banc* finds the petition bereft of merit.

It is worthwhile to note that the allegations and arguments in the instant petition are but reiterations of petitioner's pleadings before the Third Division which the latter has already exhaustively discussed and

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[81] Division Docket, Volume II, p. 876.

[82] **SEC. 3.** *Who may appeal; period to file petition.* —
(a) A party adversely affected by a decision, ruling or the inaction of the Commissioner of Internal Revenue on disputed assessments or claims for refund of internal revenue taxes, or by a decision or ruling of the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry, the Secretary of Agriculture, or a Regional Trial Court in the exercise of its original jurisdiction may appeal to the Court by petition for review filed within thirty days after receipt of a copy of such decision or ruling, or expiration of the period fixed by law for the Commissioner of Internal Revenue to act on the disputed assessments. In case of inaction of the Commissioner of Internal Revenue on claims for refund of internal revenue taxes erroneously or illegally collected, the taxpayer must file a petition for review within the two-year period prescribed by law from payment or collection of the taxes.
(b) A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court by filing before it a petition for review within fifteen days from receipt of a copy of the questioned decision or resolution. Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of the reglementary period herein fixed, the Court may grant an additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review.

[83] *Rollo*, p. 6.

[84] Supra at note 1.

passed upon. For emphasis and for petitioner's further enlightenment, We will oblige to discuss anew the more salient points in *seriatim*.

RESPONDENT'S REFUND CLAIM IS ANCHORED ON SECTION 76 OF THE NATIONAL INTERNAL REVENUE CODE (NIRC) OF 1997, AS AMENDED.

The Third Division correctly ruled that respondent's claim for refund is anchored on Section 76 of the NIRC of 1997, as amended, which provides:

> ...
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> SEC. 76. *Final Adjustment Return.* — Every corporation liable to tax under Section 27 shall file a final adjustment return covering the total taxable income for the preceding calendar or fiscal year. If the sum of the quarterly tax payments made during the said taxable year is not equal to the total tax due on the entire taxable income of that year, the corporation shall either:
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> (A) Pay the balance of tax still due; or
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> (B) Carry-over the excess credit; or
>
> (C) Be credited or refunded with the excess amount paid, as the case may be.
>
> In case the corporation is entitled to a tax credit or refund of the excess estimated quarterly income taxes paid, the excess amount shown on its final adjustment return may be carried over and credited against the estimated quarterly income tax liabilities for the taxable quarters of the succeeding taxable years. <u>Once the option to carry-over and apply the excess quarterly income tax against income tax due for the taxable quarters of the succeeding taxable years has been made, such option shall be considered irrevocable for that taxable period and no application for cash refund or issuance of a tax credit certificate shall be allowed therefor.</u>[85]
>
> ...

The last sentence of Section 76 above is clear and unequivocal. Once a corporation exercises the option to carry over and apply the excess quarterly income tax against the tax due for the taxable quarters of the succeeding taxable years, such option is irrevocable for that

[85] Italics in the original text and underscoring supplied.

taxable period. Having chosen to carry over the excess quarterly income tax, the corporation cannot thereafter choose to apply for a cash refund or for the issuance of a tax credit certificate (**TCC**) for the amount representing such overpayment.

In *Philam Asset Management, Inc. v. Commissioner of Internal Revenue*[86], the Supreme Court expounds on the two (2) alternative options of a corporate taxpayer whose total quarterly income tax payments exceed its tax liability, and on how the choice of one (1) option precludes the other, *viz*:

> ...
>
> The first option is relatively simple. Any tax on income that is paid in excess of the amount due the government may be refunded, provided that a taxpayer properly applies for the refund.
>
> The second option works by applying the refundable amount, as shown on the Final Adjusted Return ("FAR") of a given taxable year, against the estimated quarterly income tax liabilities of the succeeding taxable year.
>
> These two options under Section 76 are alternative in nature. The choice of one precludes the other. ...
>
> ...

In *Philippine Bank of Communications v. Commissioner of Internal Revenue*[87], the Supreme Court ruled that a corporation must signify its intention—whether to request a tax refund or claim a tax credit—by marking the corresponding option box provided in the Final Adjusted Return (**FAR**). While a taxpayer is required to mark its choice in the form provided by the BIR, this requirement is only for the purpose of facilitating tax collection. One cannot get a tax refund and a tax credit at the same time for the same excess income taxes paid.

As the Third Division correctly pointed out, respondent opted to be refunded of its excess CWT by marking the option "to be refunded" in its original[88] and amended Annual ITR.[89] Respondent's income tax due, amounting to ₱11,462,942.00[90], was paid using a portion of its prior

[86] G.R. No. 156637 & 162004, 14 December 2005; Citation omitted.
[87] G.R. No. 112024, 28 January 1999.
[88] Exhibit "P-4", Line 21, Division Docket, Volume II, p. 583.
[89] Exhibit "P-5", Line 21, id., p. 591.
[90] Exhibit "P-5", Line 16, id., p. 591.

year's excess credits of ₱69,803,416.00[91]; thus, leaving a balance of the prior year's excess credits in the amount of ₱58,340,474.00, and CWT during CY 2014 in the amount of ₱15,352,600.00, totaling to ₱73,693,074.00 excess tax credits as of 31 December 2014. The excess tax credit balance as of 31 December 2014 is summarized in the table below:

Prior Year's Excess Credit		₱69,803,416.00
Less: Income Tax Due		11,462,942.00
Balance of Prior Year Excess Credit		₱58,340,474.00
Add: Creditable Tax Withheld during CY2014		
From previous quarters	₱11,320,708.00	
For the fourth quarter	4,031,892.00	15,352,600.00
Excess Tax Credits as of 31 December 2014		**₱73,693,074.00**

Respondent also opted to be refunded of its excess tax credits for the CY 2014 amounting to ₱15,352,600.00. Similarly, the Court *En Banc* notes that only the balance of the prior year's excess credits (in the amount of ₱58,340,474[92]) was carried over to the subsequent quarters of CY 2015 and reflected as "Prior Year's Excess Credits" in its 2015 Quarterly ITRs[93] and 2015 Annual ITR[94] (the excess CWTs in CY2014 in the amount of ₱15,352,600.00 may be the proper subject of a claim for refund under Section 76 of the NIRC of 1997, as amended).

In granting the refund claim, the Third Division correctly ruled that respondent was able to prove the following requirements[95], to wit:

(1) The claim must be filed with the CIR within the two (2)-year period from the date of payment of the tax, as prescribed under Section 229 of the NIRC of 1997, as amended;

(2) 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; and,

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91 Exhibit "P-5", Line 1, id., p. 596.

92 P0.78 rounding off difference compared to Exhibit "P-6"; *Per* computation, the balance of prior year's excess credits is P58,340,474.00.

93 Exhibits "P-6", "P-7" and "P-8", Line 31A, Division Docket, Volume II, pp. 599-604.

94 Exhibit "P-9", Schedule 7, Line 1, id., p. 610.

95 *Commissioner of Internal Revenue v. Univation Motor Philippines, Inc.* (*formerly Nissan Motor Philippines, Inc.*), G.R. No. 231581, 10 April 2019.

(3) It must be shown on the return of the recipient that the income received was declared as part of the gross income.

The *first* requisite is based on Sections 204(C) and 229 of the NIRC of 1997, as amended, to wit:

> ...
>
> SEC. 204. *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.* — The Commissioner may —
>
> ...
>
> (c) Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. **No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two (2) years after the payment of the tax or penalty**: *Provided, however,* that a return filed showing an overpayment shall be considered as a written claim for credit or refund.
>
> ...
>
> SEC. 229. *Recovery of Tax Erroneously or Illegally Collected.* — No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, **until a claim for refund or credit has been duly filed with the Commissioner**; but such suit or proceeding may be maintained, whether or not such tax, penalty or sum has been paid under protest or duress.
>
> **In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment**: *Provided, however,* That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid.[96]
>
> ...

[96] Emphasis supplied and italics in the original text.

Section 204 of the NIRC of 1997, as amended, refers to the CIR's administrative authority to credit or refund erroneously paid or illegally collected taxes. Under this provision, an administrative claim for refund or credit must be filed within two (2) years from payment of the tax. Section 229, on the other hand, requires two (2) conditions for the filing of judicial claims: (1) an administrative claim must be filed first; and, (2) the judicial claim must be filed within two (2) years after payment of the tax sought to be refunded.

Reading the two (2) provisions in tandem, both administrative and judicial claims must be filed within the two (2)-year period. Furthermore, the administrative claim must precede the filing of the judicial claim. The Supreme Court has previously declared that the "timeliness of the filing of the claim is mandatory and jurisdictional... [t]he Court of Tax Appeals cannot take cognizance of a judicial claim for refund filed either prematurely or out of time".[97]

The Third Division did not also err when it emphasized that the two (2)-year prescriptive period within which to claim a refund commences to run at the earliest, on the date of the filing of the adjusted final tax return.[98] This must be so because it is only on such date when it can be finally ascertained if the taxpayer still has to pay additional income tax or if it is entitled to a refund of overpaid income tax.[99] We summarize the relevant dates in the table below:

Event	Date
Filing of the Annual ITR for CY 2014[100]	14 April 2015
Deadline for filing of both administrative and judicial claim	14 April 2017
Filing of administrative claim[101]	26 January 2017
Filing of judicial claim[102]	30 March 2017

From the above table, it is clear that both the administrative and the judicial claims for refund were timely filed. Hence, the Third Division properly assumed jurisdiction to review respondent's petition.

97 *Commissioner of Internal Revenue v. Carrier Air Conditioning Philippines, Inc.*, G.R. No. 226592, 27 July 2021.
98 *ACCRA Investments Corporation v. The Honorable Court of Appeals, et al.*, G.R. No. 96322, 20 December 1991.
99 *Commissioner of Internal Revenue v. TMX Sales, Inc., et al.*, G.R. No. 83736, 15 January 1992.
100 Supra at note 8.
101 Supra at note 13.
102 Supra at note 15.

RESPONDENT SUBMITTED ENOUGH SUPPORTING DOCUMENTS AND SUCCESSFULLY PROVED THAT THE INCOME FROM WHICH THE CREDITABLE WITHHOLDING TAX (CWT) BEING CLAIMED WAS DECLARED IN THE ANNUAL INCOME TAX RETURN (ITR).

As regards the *second* and *third* requisites, Section 2.58.3(B) of Revenue Regulations (**RR**) No. 2-98[103], as amended, provides guidance on claims for tax credits or refund of creditable income tax:

> ...
>
> SEC. 2.58.3. *Claim for Tax Credit or Refund.* —
>
> ...
>
> (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.[104]
>
> ...

In *Commissioner of Internal Revenue v. Philippine National Bank*[105], the Supreme Court ruled as follows:

> ...
>
> The **certificate of creditable tax withheld at source is the competent proof to establish the fact that taxes are withheld.** 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.
>
> ...

---

103 Implementing Republic Act No. 8424, "An Act Amending the National Internal Revenue Code, as Amended" Relative to the Withholding on Income subject to the Expanded Withholding Tax and Final Withholding Tax, Withholding of Income Tax on Compensation, Withholding of Creditable Value-Added Tax and Other Percentage Taxes.

104 Emphasis supplied and italics in the original text.

105 G.R. No. 180290, 29 September 2014; Citations omitted and emphasis supplied.

In support of its compliance with the *second* requisite, respondent presented Certificates of Creditable Tax Withheld at Source[106] (BIR Form No. 2307) issued to it by various withholding agents for the year 2014. In the ICPA Report dated 13 April 2018, ICPA Mendoza summarized his findings as follows[107]:

Particulars	**Amount**	
	Tax Base	**Tax Withheld**
A. Properly Substantiated		
Sales that were subjected to CWT were supported by Official Receipts (**ORs**) while the CWT were supported by BIR Form 2307 issued by [respondent's] customers	₱668,770,469.61	₱13,365,793.16
Sales that were subjected to CWT were supported by ORs but the amount of CWT *per* BIR Form 2307 was less than the tax withheld	91,706,377.40	1,834,127.55
Subtotal of Properly Substantiated	**₱760,476,847.01**	**₱15,199,920.71**
B. Not Properly Substantiated		
Difference of CWT *per* BIR Form 2307 and CWT *per* ORs	₱994,155.82	₱28,986.84
CWT claimed without supporting documents	6,184,609.73	123,692.19
Subtotal of not Properly Substantiated	**₱7,178,765.55**	**₱152,679.03**
Total CWT	**₱767,655,612.56**	**₱15,352,599.74**

The Third Division correctly removed from respondent's claim the amount of ₱152,679.03. This amount was included in the refund claim but was not properly substantiated as it lacked supporting documents or showed discrepancies between the BIR Form 2307 and the ORs that respondent issued.

In addition, there were CWTs being claimed by respondent amounting to ₱364,317.60 that ought to be disallowed on the ground that the CWT Certificates indicated a TIN different from that of respondent. Respondent's TIN is 216-677-401-000, but TIN 216-667-401-005 appears on the disallowed BIR Form 2307. Our findings are summarized in the table below:

106 Exhibits "P-14-C1" to "P-16-C19", ICPA Report (CD).
107 Table 17, Division Docket, Volume II, p. 476.

Payor's Name	Exhibit No.	Income Payments	Taxes Withheld
L AND K INDUSTRIES PHILIPPINES, INC.	"P-14-C33"	₱4,632,987.60	₱92,659.75
L AND K INDUSTRIES PHILIPPINES, INC.	"P-14-C77"	3,662,910.65	73,258.21
L AND K INDUSTRIES PHILIPPINES, INC.	"P-14-C119"	1,272,385.50	25,447.71
L AND K INDUSTRIES PHILIPPINES, INC.	"P-14-C120"	4,191,370.05	83,827.40
L AND K INDUSTRIES PHILIPPINES, INC.	"P-14-C167"	4,456,226.13	89,124.52
TOTAL		₱18,215,879.93	₱364,317.60

Petitioner likewise insisted on the absence of the *third* requirement after respondent allegedly failed to prove the fact of withholding (showing the amount paid and the amount of tax withheld) and that the income it received was declared as part of the gross income.

In proving that the income from which the CWT being claimed was declared in the Annual ITR, the ICPA showed a reconciliation of the gross sales subject to withholding tax against the sales *per* general ledger and 2014 Annual ITR. The schedule[108] prepared by the ICPA is presented below:

Period Covered	**Gross Sales Subject to Withholding Tax *per* Schedule in Php**	**Sales *per* General Ledger and 2014 Annual ITR in Php**	**Difference in Php**
1st Quarter	167,523,459.53	193,618,707.67	(26,095,248.14)
2nd Quarter	184,793,585.54	193,085,120.54	(8,291,535.00)
3rd Quarter	213,739,930.95	238,045,858.86	(24,305,927.91)
4th Quarter	201,598,636.88	219,176,661.93	(17,578,025.05)
Total	**767,655,612.90**	**843,926,349.00**	**(76,270,736.10)**

The ICPA noted a difference of ₱76,270,736.10 by comparing the Gross Sales Subject to Withholding Tax and the Sales reported in respondent's 2014 Annual ITR. The ICPA's reconciliation[109] is shown in the table below:

108 Table 3, ICPA Report, Division Docket, Volume II, p. 468.
109 Table 4, id., pp. 468-469.

Description	Total
Sales *per* General Ledger/ITR	₱843,926,349.00
Reconciling items:	
a. **Income recorded and reported in 2013 ITR and collected in 2014**	**33,897,560.04**
b. Income recorded and reported in 2014 ITR and collected in 2015	(52,335,307.80)
c. **Reimbursable charges subjected by clients to withholding tax at 2%**	**30,033,905.64**
d. **Reimbursable charges subjected by clients to withholding tax at 1%**	**51,250.00**
e. Revenue not subjected to withholding tax by [respondent's] clients	(87,863,727.84)
f. Over/under deduction of withholding tax (net)	(1,760.67)
g. Unpaid revenue	(3,977.04)
h. Amounts reported in the ORs were different from the amount reported in the CWT Alphalist[110]	(48,682.59)
i. Difference due to rounding off	4.56
Reconciled amount (Sales subjected to withholding tax)	**₱767,655,613.30**

a. INCOME RECORDED AND REPORTED IN 2013 ANNUAL INCOME TAX RETURN (ITR) AND COLLECTED IN 2014 - ₱33,897,560.04

The discrepancy amounting to ₱33,897,560.04 pertains to income already recorded in the books of respondent in its 2013 Annual ITR and subsequently collected in 2014. Respondent submitted certified true copies of the service invoice and OR[111] to show the difference in the date of issue of the service invoice *vis-a-vis* the date of collection *per* OR. This item was correctly added in the income *per* Alphalist of CWT since this was not included as income in 2014.

Unfortunately, as correctly pointed out in the assailed Decision, the said income cannot be traced nor verified if indeed it was reported and declared as part of the income in CY 2013. **Accordingly, for respondent's failure to sufficiently establish that the said income formed part of its declared income, the corresponding two percent (2%) CWT pertinent thereto amounting to ₱677,951.20 shall be disallowed.**

[110] Annex "B-8", ICPA Report (CD)
[111] Exhibits "P-17", ICPA Report (CD).

b. INCOME RECORDED AND REPORTED IN 2014 INCOME TAX RETURN (ITR) AND COLLECTED IN 2015 - ₱(52,335,307.80)

The discrepancy amounting to ₱(52,335,307.80) refers to income already recorded in the books of respondent in its 2013 Annual ITR and subsequently collected in 2014. Respondent submitted certified true copies of the service invoice and OR[112] to show the difference in the date of issue of the service invoice *vis-a-vis* the date of collection *per* OR.

c. REIMBURSABLE CHARGES SUBJECTED BY CLIENTS TO WITHHOLDING TAX AT 2% - ₱30,033,905.64.

The discrepancy amounting to ₱30,033,905.64 pertains to reimbursable charges representing billing and collections that respondent did not include in its taxable income. The Third Division correctly disallowed this amount due to respondent's failure to prove that the income was included in the return of the recipient. **Thus, 2% of the said discrepancy, amounting to ₱600,678.11, was correctly disallowed in respondent's claim for refund.**

d. REIMBURSABLE CHARGES SUBJECTED BY CLIENTS TO WITHHOLDING TAX AT 1% - ₱51,250.00

The discrepancy amounting to ₱51,250.00 pertains to reimbursable charges representing billing and collections that respondent did not include in its taxable income. Again, the Third Division correctly disallowed the same for respondent's failure to prove that the income was included in the return of the recipient. **Thus, 1% of the said discrepancy, amounting to ₱512.50, was correctly disallowed in the claim for refund by respondent.**

[112] Exhibits "P-18", ICPA Report (CD).

e. REVENUE NOT SUBJECTED TO WITHHOLDING TAX BY PETITIONER'S CLIENTS - ₱(87,863,727.84)

This reconciling item corresponds to the total income payments made by respondent's customers that were included in respondent's 2014 Annual ITR, but were not subjected to withholding tax (by their customers). Thus, the ICPA likewise correctly excluded this item in its reconciliation. Respondent submitted certified true copies of the service invoices and OR[113] to demonstrate the non-withholding.

f. OVER/UNDER DEDUCTION OF WITHHOLDING TAX (NET) - ₱(1,760.67)

This discrepancy resulted from over or under deduction of withholding taxes from various transactions from customers. The net effect resulted in an understatement of the Schedule of CWT and was correctly deducted by the ICPA in its computation.

g. UNPAID REVENUE – ₱(3,977.04)

This reconciling item pertains to unpaid services from various clients for which the full amount has not yet been collected. This amount was included in the gross receipts of respondent, and the ICPA correctly deducted the same in his reconciliation.

We summarize below the basis of the Third Division in arriving at the decision to partially grant a refund or issuance of a TCC:

Creditable Withholding Tax *per* Claim		₱15,352,600.00
Less: Disallowances		
Not properly substantiated CWTs *per* CPA	₱152,679.03	
Not supported by proper BIR Form 2307	364,317.60	
Untraceable income declared in CY 2013	677,951.20	
Reimbursable charges — 2%	600,678.11	
Reimbursable charges — 1%	512.50	1,796,138.44
Refundable Excess CWT		**₱13,556,461.56**

113 Exhibits "P-21", ICPA Report (CD).

In conclusion, respondent submitted sufficient supporting documents to prove that the income from which the CWT was being claimed was included in the Annual ITR. The Third Division also evaluated the evidence and the records disallowing those items that were not included in respondent's Annual ITR. Thus, We find no merit in petitioner's general arguments in its petition.

PROOF OF ACTUAL REMITTANCE OF TAXES TO THE BUREAU OF INTERNAL REVENUE (BIR) IS NOT INDISPENSABLE IN A CLAIM FOR REFUND OF EXCESSS CREDITABLE WITHHOLDING TAX (CWT).

Petitioner maintains that proof of actual remittance is indispensable in a claim for refund of excess CWTs.

We disagree.

In *Commissioner of Internal Revenue v. Philippine National Bank*[114], that the Third Division cited in its assailed Decision, the Supreme Court held that the certificate of creditable tax withheld at source is the competent proof to establish the fact that taxes were withheld. In the same case, it categorically stated that proof of actual remittance is not a condition to claim for a refund of unutilized tax credits, to wit:

> ...
>
> 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.
>
> ...

In the case of *Commissioner of Internal Revenue v. Honda Cars Makati, Inc.*[115], the Supreme Court held that proof of actual remittance

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[114] G.R. No. 180290, 29 September 2014; Emphasis supplied.

[115] G.R. No. 247792 (Notice), 09 September 2020.

by the taxpayer is not needed in order to prove withholding and remittance of taxes to the BIR. Proof of remittance is the responsibility of the withholding agent and not of the taxpayer - refund claimant. Payors of withholding taxes are by themselves constituted as the BIR's withholding agents. 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 the refund claimant who has been duly withheld taxes by the withholding agents acting under government authority.[116] 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, a taxpayer/claimant has no control over the remittance of the taxes withheld from its income by the withholding agent or payor who is petitioner's agent. The Certificates of Creditable Tax Withheld at Source issued by the government's withholding agents are *prima facie* proof of actual payment by a taxpayer-payee to the government itself (through said agents).

From the foregoing, it is clear that respondent is no longer required to prove that it has remitted the income tax. Respondent's compliance with the requirement that the fact of withholding must be established by a copy of a statement duly issued by the payor (withholding agent) to the payee, showing the amount paid and the amount of tax withheld therefrom[117], is shown through the presentation of its relevant Certificates of Creditable Tax Withheld at Source (BIR Form No. 2307).

RESPONDENT'S ALLEGED FAILURE TO SUBMIT THE DOCUMENTS LISTED UNDER REVENUE MEMORANDUM ORDER (RMO) No. 53-98 IS NOT FATAL TO ITS ADMINISTRATIVE AND JUDICIAL CLAIM FOR REFUND.

Petitioner's insistence that all the documents listed in RMO No. 53-98[118] must be submitted to prove entitlement for refund must also fail. There is nothing in the said RMO that requires the submission of

116 Id.
117 Revenue Regulations No. 2-97, Section 2.58.3(B).
118 Supra at note 79.

all the documents specified therein before a taxpayer may be entitled to a refund.

In *Commissioner of Internal Revenue v. Univation Motor Philippines, Inc. (Formerly Nissan Motor Philippines, Inc.)*[119] (**Univation**), which the Third Division cited in its assailed Decision, the Supreme Court held that failure to submit the complete documents at the administrative level is *not* fatal to a claim for refund at the judicial level brought about by the CIR's inaction, to wit:

> ...
>
> Petitioner CIR argued that failure of the respondent to submit the required complete documents as required by Revenue Memorandum Order No. 53-98 and Revenue Regulations No. 2-2006 rendered the petition with the CTA dismissible on the ground of lack of jurisdiction. It reasoned out that when a taxpayer prematurely filed a judicial claim with the CTA, the latter has no jurisdiction over the appeal.
>
> In the instant case, respondent's failure to submit the complete documents at the administrative level did not render its petition for review with the CTA dismissible for lack of jurisdiction. At this point, it is necessary to determine the grounds relied upon by a taxpayer in filing its judicial claim with the CTA. The case of *Pilipinas Total Gas, Inc. v. Commissioner of Internal Revenue* is instructive, thus:
>
>> A distinction must, thus, be made between administrative cases appealed due to inaction and those dismissed at the administrative level due to the failure of the taxpayer to submit supporting documents. If an administrative claim was dismissed by the CIR due to the taxpayer's failure to submit complete documents despite notice/request, then the judicial claim before the CTA would be dismissible, not for lack of jurisdiction, but for the taxpayer's failure to substantiate the claim at the administrative level. When a judicial claim for refund or tax credit in the CTA is an appeal of an unsuccessful administrative claim, the taxpayer has to convince the CTA that the CIR had no reason to deny its claim. It, thus, becomes imperative for the taxpayer to show the CTA that not only is he entitled under substantive law to his claim for refund or tax credit, but also that he satisfied all the documentary and evidentiary requirements for an administrative claim. It is, thus, crucial for a taxpayer in a judicial claim for

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119 G.R. No. 231581, 10 April 2019, supra at note 95; Citations omitted and italics in the original text.

> refund or tax credit to show that its administrative claim should have been granted in the first place. Consequently, a taxpayer cannot cure its failure to submit a document requested by the BIR at the administrative level by filing the said document before the CTA.

In this case, it was the inaction of petitioner CIR which prompted respondent to seek judicial recourse with the CTA. Petitioner CIR did not send any written notice to respondent informing it that the documents it submitted were incomplete or at least require respondent to submit additional documents. As a matter of fact, petitioner CIR did not even render a Decision denying respondent's administrative claim on the ground that it had failed to submit all the required documents.

Considering that the administrative claim was never acted upon, there was no decision for the CTA to review on appeal *per se*. However, this does not preclude the CTA from considering evidence that was not presented in the administrative claim with the BIR. Thus, RA No. 1125 states:

> Section 8. *Court of record; seal; proceedings.* — The Court of Tax Appeals shall be a court of record and shall have a seal which shall be judicially noticed. It shall prescribe the form of its writs and other processes. It shall have the power to promulgate rules and regulations for the conduct of the business of the Court, and as may be needful for the uniformity of decisions within its jurisdiction as conferred by law, but such proceedings shall not be governed strictly by technical rules of evidence.

The law creating the CTA specifically provides that proceedings before it shall not be governed strictly by the technical rules of evidence. The paramount consideration remains the ascertainment of truth. Thus, the CTA is not limited by the evidence presented in the administrative claim in the Bureau of Internal Revenue. The claimant may present new and additional evidence to the CTA to support its case for tax refund.

Cases filed in the CTA are litigated *de novo* as such, respondent "should prove every minute aspect of its case by presenting, formally offering and submitting x x x to the Court of Tax Appeals all evidence x x x required for the successful prosecution of its administrative claim." Consequently, the CTA may give credence to all evidence presented by respondent, including those that may not have been submitted to the CIR as the case is being essentially decided in the first instance.

...

In this case, respondent filed its Petition for Review[120] on 30 March 2017 due to petitioner's failure to act on its administrative claim for refund. Based on the Supreme Court's pronouncement in the *Univation* case, as quoted, petitioner cannot invoke respondent's alleged non-compliance with RMO No. 53-98[121] as basis for the denial of respondent's claim for tax refund or credit.

Moreover, as the Supreme Court explained in *Pilipinas Total Gas, Inc. v. Commissioner of Internal Revenue*[122], RMO No. 53-98 does not require the submission of the complete documents enumerated therein in order for a taxpayer's claim for refund or credit to be granted. The Supreme Court further clarified that RMO No. 53-98 is addressed to internal ROs and employees for purposes of equity and uniformity (to guide them as to what documents they may require taxpayers to present upon audit of their tax liabilities). Nothing in the said issuance would show that it was intended to be a benchmark in determining whether the documents submitted by a taxpayer are actually complete to support a claim for tax credit or refund of excess unutilized excess VAT. Taxpayers cannot simply be faulted for failing to submit the complete documents enumerated in RMO No. 53-98[123], absent notice from an RO or employee that other documents are required. If the BIR finds that a taxpayer's documents are inadequate, the latter should be notified thereof and be required to produce the necessary documents for a just and expeditious resolution of a taxpayer's claim. Indeed, a taxpayer's failure to comply with the requirements listed under RMO No. 53-98 is not fatal to its claim for tax credit or refund of excess and unutilized excess VAT.

From the foregoing, and as discussed in the assailed Decision, respondent has sufficiently proved its entitlement to the refund of its unutilized excess CWT for CY 2014. *Ergo*, the Court *En Banc* finds no compelling reason to reconsider, modify, or reverse the assailed Decision and Resolution.

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120 Supra at note 15.
121 Supra at note 79.
122 G.R. No. 207112, 08 December 2015.
123 Supra at note 79.

WHEREFORE, with the foregoing considered, the instant Petition for Review filed by petitioner Commissioner of Internal Revenue on 16 June 2023 is **DENIED** for lack of merit. Accordingly, the assailed Decision dated 30 June 2020 and assailed Resolution dated 11 May 2023, of the Third Division in CTA Case No. 9558, entitled *AZ Contracting System Service, Inc. v. Commissioner of Internal Revenue*, are hereby **AFFIRMED**.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

ON LEAVE
MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice

HENRY S. ANGELES
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice