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. 931
(CTA CASE NO. 7911)

Present:

DEL ROSARIO, *PJ*,
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA,
FABON-VICTORINO,
MINDARO-GRULLA,
COTANGCO-MANALASTAS, *and*
RINGPIS-LIBAN, *JJ.*

Promulgated:
DEC 11 2013 Apolinario 1:56 p.m.

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DECISION

DEL ROSARIO, PJ.:

This is a Petition for Review filed by petitioner Commissioner of Internal Revenue (CIR) on September 7, 2012 seeking to reverse and set aside the Decision[1] (assailed Decision) promulgated on April 25, 2012 by the former First Division[2] of the Court of Tax Appeals (CTA-First Division) and its Resolution[3] (assailed Resolution) dated August 16, 2012 in CTA Case No. 7911, entitled *Sonoma Services, Inc. vs. Commissioner of Internal Revenue*, which granted Sonoma Services, Inc.'s (Sonoma) claim for refund representing excess and unutilized creditable withholding taxes for taxable year 2006 in the total amount of Php3,991,800.00.

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[1] Annex "A", *CTA En Banc Docket*, pp. 9-38.
[2] Composed of then Presiding Justice Ernesto D. Acosta, Associate Justice Erlinda P. Uy and Associate Justice Esperanza R. Fabon-Victorino.
[3] Annex "B", *CTA En Banc Docket*, pp. 39-50.

THE FACTS

Sonoma is a duly organized and existing domestic corporation, with principal place of business at the 35th Floor, Tower One and Exchange Plaza, Ayala Triangle, Ayala Avenue, Makati City. It is registered and was issued by the Bureau of Internal Revenue (BIR), with Taxpayer Identification No. 220-868-954-000.[4]

Sonoma's primary purpose is to provide general services with any party, including but not limited to [rendition] of management and other allied services within limits allowed by law, such as office and clerical support services, maintenance services of any kind, also to engage in any preservation, maintenance or repair work upon any and every kind of property, and to enter into and execute contracts [therefor] or relating thereto.[5]

On the other hand, the CIR is vested with the power to decide, approve and grant refunds or tax credits of overpaid or erroneously paid taxes. She holds office at the BIR National Office Building, BIR Road, Diliman, Quezon City.[6]

On April 16, 2007, Sonoma filed with the BIR its Annual Income Tax Return (BIR Form 1702) for taxable year 2006. In Line 31 of the said Return, Sonoma marked the box "To be refunded", indicating its intention to claim a refund of its excess/unutilized creditable withholding tax for 2006.[7]

On December 19, 2007, Sonoma filed with the BIR, Revenue Region No. 8, Revenue District Office No. 50, a letter dated December 18, 2007, requesting for refund of its excess creditable tax withheld for taxable year 2006 in the amount of Php3,991,800.00.[8]

Due to the CIR's inaction on Sonoma's claim for refund, the latter filed a Petition for Review on April 14, 2009[9] which was subsequently raffled to the CTA-First Division.

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[4] Decision, *CTA En Banc Docket*, pp. 9 to 10.
[5] *Id.*, p. 10.
[6] *Id.*
[7] *Id.*, p. 11.
[8] *Id.*
[9] *Id.*

In her Answer to the Petition for Review, the CIR interposed special and affirmative defenses, which essentially state that Sonoma has the burden of proving its entitlement to the refund or issuance of tax credit certificate in the amount of Php3,991,800.00.

After trial on the merits, the CTA-First Division rendered the assailed Decision, the dispositive portion of which reads:

> "**IN VIEW WHEREOF**, the instant Petition for Review dated April 14, 2009 is **GRANTED**. Accordingly, respondent is hereby **DIRECTED TO REFUND or TO ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner Sonoma Services, Inc. the amount of **THREE MILLION NINE HUNDRED NINETY-ONE THOUSAND EIGHT HUNDRED PESOS (P3,991,800.00),** representing its excess and unutilized creditable withholding taxes for taxable year 2006.
>
> **SO ORDERED**."

Aggrieved, the CIR moved for the reconsideration of the assailed Decision which was, however, denied by the CTA-First Division in the assailed Resolution, *viz.*:

> "**WHEREFORE**, the Motion for Reconsideration dated May 18, 2012 and the Supplemental Motion for Reconsideration dated June 18, 2012, both filed by respondent are **DENIED**, for lack of merit.
>
> SO ORDERED."

Hence, the instant Petition for Review where petitioner CIR raises the following issues:[10]

a) Whether or not the CTA-First Division erred in granting respondent Sonoma's Petition for Review and ordering the refund of the amount of Php3,991,800.00 representing excess and unutilized creditable withholding income taxes for taxable year 2006; and,

b) Whether or not the CTA-First Division erred in denying petitioner CIR's Motion for Reconsideration.

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[10] Petition for Review, *CTA En Banc Docket*, p. 4.

THE PARTIES' ARGUMENTS

Petitioner CIR's Arguments

Petitioner CIR argues that respondent Sonoma is not entitled to a tax refund because the evidence it submitted such as the certificates of creditable taxes withheld, accomplished by its withholding agents and showing the amount deducted and withheld from its income in support of the tax refund, do not constitute conclusive evidence of payment and remittance to the BIR of the taxes withheld on respondent Sonoma's income. It is stressed that the best proof of remittance is the certification from the Revenue Accounting Division (RAD) of the BIR. Since respondent Sonoma did not present a certification from BIR RAD, petitioner CIR concludes that respondent Sonoma failed to prove that the creditable taxes withheld by the payors were indeed remitted to the BIR.

Citing the ruling of this Court in *Raytheon-Ebasco Overseas Ltd.-Philippine Branch vs. Commissioner of Internal Revenue*[11](*Raytheon* case), petitioner CIR further asserts that respondent Sonoma's claim should be denied as a perusal of its Annual Income Tax Returns for taxable year 2006 would show that **there is no entry whatsoever in the Creditable Tax Withheld column** located in page 2 of the Annual Income Tax Return, specifically Schedule 1 or the *"Schedule of Sales/Revenues/Receipts/Fees"*.

Respondent Sonoma's Counter- Arguments

Respondent Sonoma contends that there is no law, jurisprudence or administrative regulation that requires the submission of a certification from the BIR RAD as proof of the existence and validity of creditable withholding taxes (CWTs). Allegedly, the applicable law and jurisprudence merely require the submission of 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, as proof of the fact of withholding. Respondent Sonoma also avers that under Sections 2.58(B) and 2.58.3 of Revenue Regulations (RR) No. 2-98, as amended, the remittance of the taxes withheld is the responsibility of the withholding agent. It then invokes *CIR vs. Asian Transmission Corporation* [12] where the Supreme Court, in interpreting the afore-stated provision of RR No. 2-98, categorically stated that the claimant-taxpayer need not prove actual remittance of the tax withheld by the withholding agent (payor) to the BIR.

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[11] CTA EB No. 597, March 17, 2011.
[12] G.R. No. 179617, January 19, 2011.

Respondent Sonoma stresses the CTA-First Division's finding that the evidence it submitted proves that the income from which the CWTs being claimed for refund were withheld was reported in its Annual Income Tax Return for taxable year 2006. It posits that there is no legal basis for petitioner CIR's argument that the absence of any entry in the "Creditable Tax Withheld" column in Schedule 1 of respondent Sonoma's Annual Income Tax Return for taxable year 2006 creates a conclusive presumption that the income from which the CWTs being claimed for refund were withheld was not declared as part of its gross income for taxable year 2006. According to respondent Sonoma, what the law, tax regulations, and jurisprudence require is that the "income upon which the taxes were *withheld*" be included as part of the gross income declared in the income tax return of the recipient/payee.

Finally, respondent Sonoma submits that reliance on the *Raytheon* case is misplaced. Unlike in the *Raytheon* case, respondent Sonoma allegedly was able to present documentary and testimonial evidence which sufficiently proved that the income from which the CWTs being claimed for refund were withheld was included as part of the gross income reflected in its Annual Income Tax Return for taxable year 2006.

THE RULING OF THE COURT *EN BANC*

In the assailed Decision, the CTA-First Division aptly states that aside from compliance with Section 76 of the 1997 NIRC, as amended, a taxpayer must satisfy the following requisites to be entitled to a refund of excess CWTs, to wit:

> 1. The claim for refund was filed within the two-year prescriptive period as provided under Section 204(C) in relation to Section 229 of the 1997 NIRC;
>
> 2. The fact of withholding is 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; and,
>
> 3. The income upon which the taxes were withheld were included in the return of the recipient.

In the instant petition for review, petitioner CIR *in esse* questions respondent Sonoma's compliance with the above-stated second and third requisites.

With regard to the second requisite, petitioner CIR insists that the best proof of actual remittance of the taxes withheld to the BIR is the certification from the BIR RAD.

As the CTA-First Division opined, respondent Sonoma need not prove that there is actual remittance of the taxes withheld to the BIR. Pursuant to Section 2.58.3 of RR No. 2-98, the remittance of the taxes withheld to the BIR is the responsibility of the withholding agent and not the payee. On this point, the pronouncement of the Supreme Court in *Commissioner of Internal Revenue vs. Asian Transmission Corporation,*[13] is instructive:

> "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 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, 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 prove actual remittance by the withholding agent (payor) to the BIR.** (*Emphases supplied*)

Based on the foregoing, proof of actual remittance of the taxes withheld to the BIR is not indispensable in a claim for refund of excess CWTs. Respondent Sonoma is only required to establish the fact of withholding through the withholding tax certificates (BIR Form No. 2307) duly issued by its payors.[14] OM

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[13] G.R. No. 179617, January 19, 2011.

[14] Commissioner of Internal Revenue vs. Mirant (Philippines) Operations, Corporation, G. R. No. 171742, June 15, 2011, citing Commissioner of Internal Revenue v. Far East Bank & Trust Company (now Bank of the Philippine Islands), G.R. No. 173854, March 15, 2010, 615 SCRA 417.

Accordingly, the Court *En Banc* sustains the ruling of the CTA-First Division with regard to respondent Sonoma's compliance with the second requirement, to wit:

> "With regard [to] the second requisite — that the fact of withholding is 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 — petitioner presented Certificates of Creditable Tax Withheld at Source (BIR Form No. 2307) duly issued to it by various withholding agents for the taxable year 2006, reflecting creditable withholding taxes in the total amount of P3,991,800.00. The second requisite is satisfied as well."

Petitioner CIR also questions respondent Sonoma's compliance with the third requirement *"that it must be shown on the return that the income received was declared as part of the gross income"*; specifically, petitioner CIR raises the issue of whether respondent Sonoma's failure to fill up the entry in the "Creditable Tax Withheld" column in Schedule 1 of page 2 of the Annual Income Tax Return is fatal to its claim for a tax refund.

There is neither law nor jurisprudence that states that the taxpayer's failure to fill up the entry in the *"Creditable Tax Withheld"* column in Schedule 1 of the Annual Income Tax Return would be fatal to a claim for refund. What Section 2.58.3 of RR No. 2-98 [15] and the applicable jurisprudence require is that the taxpayer be able to declare as part of its gross income in the Annual Income Tax Return the income payment from which the withholding was made.

An entry into the *"Creditable Tax Withheld"* column found in page 2 of the Annual Income Tax Return (BIR Form 1702), specifically Schedule 1 or the *"Schedule of Sales/Revenues/Receipts/Fees"* may expedite the determination of Sonoma's compliance with the requirement that the income

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[15] "SECTION 2.58.3. Claim for Tax Credit or Refund. —

(A) The amount of creditable tax withheld shall be allowed as a tax credit against the income tax liability of the payee in the quarter of the taxable year in which income was earned or received.

(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.

payments from which the withholding of taxes were made formed part of its gross income declared in its Annual Income Tax Return. It does not, however, follow that the Court should immediately deny Sonoma's claim for refund only because it failed to make such entry, without the Court looking at the evidence submitted by Sonoma.

Stated otherwise, failure on the part of a taxpayer to make an entry in the *"Creditable Tax Withheld"* column found in page 2 of the Annual Income Tax Return, specifically Schedule 1 or the *"Schedule of Sales/Revenues/Receipts/Fees"* is not a sufficient basis to conclude that the taxpayer failed to comply with the requirement that *"the income upon which the taxes were withheld were included in the return of the recipient"* when the taxpayer has offered other evidence to establish its compliance with this requirement.

On this note, the Court *En Banc* affirms the pronouncement of the CTA-First Division in the assailed Decision, to wit:

> "As to the third requisite mandating that the income received from which the excess CWT arose be declared as part of the gross income, a review of the withholding tax certificates proves that the creditable taxes of P3,991,800.00 were withheld from income payments of P27,060,000.00 received by petitioner for the year 2006. **Petitioner's Annual Income Tax Return for the year 2006 reveals a gross income of P36,680,857.00.** Petitioner presented a Breakdown of Revenues, as follows:

	Per 2307	**INCOME TAX RETURN**
Interest Income on Loans		P2,770,257.00
Miscellaneous Income		6,700.00
Administration Fee		
Withholding Agents	P26,463,900.00	P26,463,900.00
Non-withholding Agents (Individuals)		7,440,000.00
Recovery on Costs	596,100.00	-
Total	**P27,060,000.00**	**P36,680,857.00**

> The Court-commissioned Independent CPA explained the difference of P596,100.00, as follows:
>
> '5. Recovery on Costs was rental and miscellaneous expenses shared by the Petitioner's managed companies in accordance with their Cost Recovery Agreements (to be presented as Exhibits CC-1 to CC-3). For the month of January 2006,

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> Recovery on Costs was collected with Administration fees and thus was initially recorded in the 'Administration Fees' ledger account (to be presented as Exhibit DD-1). A reclassifying entry (to be presented as Exhibit EE) was made in August 3, 2006 wherein the amount recorded in 'Administration fee' of P298,050 was reclassified as a credit (addition) to the 'Recovery on Costs' ledger account (to be presented as Exhibit DD-2). Subsequent collections of Recovery on Costs as supported by official receipts 453, 456 and 458 (to be presented as Exhibits FF-19, FF-22 and FF-24) totaling P298,050 were directly credited to the Recovery on Costs ledger account (to be presented as Exhibit DD-2).
>
> Total Recovery on Costs for the calendar year 2006 amounted to P596,100 (breakdown as shown in Annex 5).'
>
> The clear explanation of the ICPA established that petitioner's income from which the creditable income taxes of P3,991,800.00 were withheld were reported in its Annual Income Tax Return for the year 2006." (Emphasis supplied)

Taxes are the lifeblood of the government. Yet, if the State expects its taxpayers to observe fairness and honesty in paying their taxes, so must it apply the same standard against itself in refunding excess payments. When it is undisputed that a taxpayer is entitled to a refund, the State should not invoke technicalities to keep money not belonging to it. No one, not even the State, should enrich oneself at the expense of another. [16]

There being no reversible error committed by the CTA-First Division in this case, this Court *En Banc* finds no cogent reason to reverse and set aside the assailed Decision promulgated on April 25, 2012 and the assailed Resolution dated August 16, 2012.

WHEREFORE, in light of the foregoing principles, the *Petition for Review* is hereby **DENIED** for lack of merit. Accordingly, the Decision dated April 25, 2012 and Resolution dated August 16, 2012 of the former First Division of this Court in CTA Case No. 7911, entitled *Sonoma Services, Inc. vs. Commissioner of Internal Revenue*, which granted Sonoma Services Inc.'s claim for refund representing its excess and unutilized creditable withholding taxes for taxable year 2006 in the total amount of **THREE MILLION NINE HUNDRED NINETY-ONE THOUSAND EIGHT HUNDRED PESOS (Php3,991,800.00)** are hereby **AFFIRMED.** [handwritten initials]

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[16] BPI-Family Savings Bank, Inc. vs. Court of Appeals, G.R. No. 122480, April 12, 2000, 330 SCRA 507.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CERTIFICATION

Pursuant to Section 13 of Article VIII 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 *En Banc*.

ROMAN G. DEL ROSARIO
Presiding Justice