REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

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SM INVESTMENTS CORPORATION, Petitioner,	**CTA Case No. 9569**
	Members:
- versus -	**UY,** *Chairperson,* **RINGPIS-LIBAN,** *and* **MODESTO-SAN PEDRO,** JJ.
COMMISSIONER OF INTERNAL REVENUE, Respondent.	***Promulgated:*** MAR 1 1 2022 1:54 p.m.

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AMENDED DECISION

UY, J.:

For resolution are the following:

1) Petitioner's ***MOTION FOR RECONSIDERATION (WITH MOTION FOR LEAVE OF COURT TO REOPEN THE CASE FOR THE RECALL OF A WITNESS)***[1] filed on August 3, 2020, with respondent's ***OPPOSITION (TO PETITIONER'S MOTION FOR RECONSIDERATION WITH MOTION FOR LEAVE OF COURT TO REOPEN THE CASE FOR THE RECALL OF A WITNESS)***[2] filed on September 21, 2020; and

2) Respondent's ***MOTION FOR PARTIAL RECONSIDERATION (re: Decision dated 29 June 2020)***[3] filed on August 17, 2020, with petitioner's ***COMMENT (To Respondent's Motion for Partial Reconsideration)***[4] filed on October 26, 2020.

[1] Docket – Vol. 2, pp. 889 to 897.
[2] Docket – Vol. 2, pp. 957 to 961.
[3] Docket – Vol. 2, pp. 945 to 950.
[4] Docket – Vol. 2, pp. 967 to 979.

Both *Motions* pray for the reconsideration of the Court's Decision dated June 29, 2020,[5] the dispositive portion of which reads:

> "**WHEREFORE,** the instant *Petition for Review* is **PARTIALLY GRANTED**. Accordingly, let a tax refund or a tax credit certificate be issued in favor of petitioner in the total amount of **₱289,755,163.16,** representing petitioner's excess and unutilized Creditable Withholding Tax for the calendar year ended December 31, 2014.
>
> **SO ORDERED.**

Records show that on December 1, 2020, the Court issued a Resolution[6] granting petitioner's *Motion for Leave of Court to Reopen the Case for the Recall of a Witness* and holding in abeyance the resolution of petitioner's *Motion for Reconsideration* and respondent's *Motion for Partial Reconsideration.* In the said Resolution, the Court set the case for hearing for the recall of petitioner's witness, ICPA Romeo A. De Jesus.

On October 21, 2021, petitioner filed its *Supplemental Formal Offer of Evidence (In Support of the Petitioner's Motion for Reconsideration)*[7]. On November 2, 2021, respondent filed his *Comment (on Petitioner's Supplemental Formal Offer of Evidence)*[8].

In the Resolution[9] dated December 14, 2021, the Court admitted petitioner's supplemental evidence and submitted the instant *Motions* for resolution. Hence, this amended decision.

Petitioner's Motion for Reconsideration

In its *Motion*, petitioner claims that the errors in the TIN noted in the CWT certificates (BIR Form No. 2307) are mere clerical errors that do not affect the substantial information in the said certificates.

As regards the unreadable certificates, petitioner contends that the same is due to error in scanning the original documents.

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[5] Docket – Vol. 2, pp. 863 to 888.
[6] Docket – Vol. 2, pp. 991 to 994.
[7] Docket – Vol. 2, pp. 1028 to 1033.
[8] Docket – Vol. 2, pp. 1041 to 1042.
[9] Docket – Vol. 2, pp. 1046 to 1047.

Petitioner maintains that the original copies of the certificates show that the texts and numbers as printed are readable; and that only the scanned copies are unreadable.

Further, petitioner submits that contrary to the Court's findings, the income payments with corresponding CWT amounting to ₱13,900,301.79 were reported as part of petitioner's gross income.

In his *Opposition*, respondent argues that the disallowance of CWTs amounting to ₱40,736,883.45 is proper. According to respondent, petitioner failed to comply with the requisites to be entitled to a refund of its alleged unutilized and excess CWTs.

Respondent likewise avers that tax refunds are in the nature of tax exemptions; that the same cannot merely lie on presumptions; and that a claim must be duly supported and proven by evidence.

Respondent's Motion for Partial Reconsideration

In his *Motion*, respondent reiterates that petitioner failed to exhaust administrative remedies before elevating the case to this Court. Allegedly, petitioner's claim is subject to administrative investigation/ examination by respondent and pending closure of such investigation, no grant of refund may be given to petitioner based on the filed claim.

Respondent further maintains that petitioner failed (1) to prove actual remittance of the taxes claimed to have been withheld; and (2) to submit complete documents prided under RMO No. 53-98[10] and RR No. 2-2006[11].

Finally, respondent avers that petitioner is not entitled to the claim for refund of CWTs since it did not provide supporting

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[10] *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.*

[11] *Mandatory Attachments of the Summary Alphalist of Withholding Agents of Income Payments Subjected to Tax Withheld at Source (SAWT) to Tax Returns With Claimed Tax Credits due to Creditable Tax Withheld At Source and of the Monthly Alphalist of Payees (MAP) Whose Income Received Have Been Subjected to Withholding Tax to the Withholding Tax Remittance Return Filed by the Withholding Agent/Payor of Income Payments.*

documents to show that the income from which the creditable withholding tax being claimed was declared as income.

In its *Comment*, petitioner counter-argues that recourse to CTA in case of inaction of the CIR is allowed under the rules. Further, contrary to respondent's assertion, it was able to establish a linkage between the creditable withholding tax and income reflected in its Annual Income Tax return (AITR).

THE COURT'S RULING

After careful and thorough review of the parties' allegations and arguments raised in their respective Motion for Reconsideration, the Court finds sufficient basis to partially reconsider the assailed Decision dated July 29, 2020.

Petitioner's Motion for Reconsideration

After a second hard look at the records of the instant case including the supplemental evidence submitted by petitioner, the Court reconsiders the disallowance of the following CWTs for reasons indicated below:

Submission of the original copies of BIR Form 2307 with payor's signature			
Airlite Intl Travel & Tours Inc.	"P-34-173"	₱ 47,773.53	₱ 2,388.69
SM Prime Holdings, Inc.	"P-34-647"	1,401,204.55	48,895.58
Submission of the original copies of BIR Form 2307 that are readable			
Star Appliance Center Inc.	"P-34-142"	36,666,071.59	5,499,910.74
	"P-34-142"	36,666,071.23	733,321.42
Prime Spots Inc.	"P-34-116"	750,000.00	112,500.00
Total			₱6,397,016.43

However, the Court maintains the disallowance of the following CWTs:

CWTs supported by original BIR Forms No. 2307 with incorrect Company TIN			
Brand & Lifestyle	"P-34-29"	₱70,398.72	₱3,519.94
Development Partners, Inc.	"P-34-30"	73,398.72	3,769.94
	"P-34-198"	72,898.72	3,644.94
	"P-34-199"	72,898.72	3,644.94
	"P-34-200"	70,398.72	3,519.94
	"P-34-201"	70,398.72	3,519.94
	"P-34-482"	70,398.72	3,519.94
	"P-34-483"	83,918.66	4,195.93
	"P-34-484"	76,418.66	3,820.93
Anchorland Holdings Inc.	"P-34-11"	1,137,812.70	56,890.64
	"P-34-12"	1,137,812.71	56,890.63
	"P-34-13"	1,137,812.70	56,890.63
	"P-34-180"	1,137,812.70	56,890.63
	"P-34-181"	1,164,806.31	58,240.32
	"P-34-182"	1,164,806.31	58,240.32
	"P-34-443"	1,178,303.12	58,915.15
	"P-34-444"	1,200,150.42	60,007.52
	"P-34-445"	1,308,498.04	65,424.90
Bayan Telecommunications Inc	"P-34-16"	15,750.00	787.5
	"P-34-451"	16,537.00	826.88
	"P-34-452"	16,537.00	826.88
	"P-34-453"	16,537.00	826.88
Stanfield International Corp.	"P-34-140"	257,802.44	12,459.02
Watsons Personal Care Stores (Phils) Inc.	"P-34-163"	125,782,679.68	18,867,401.95
Alize Voyages & Adventures	"P-34-176"	42,943.90	2,147.20
ePLDT Inc.	"P-34-239"	568,497.60	27,424.88
	"P-34-240"	568,497.60	27,424.88
Purf Restaurants, Inc (Burger King)	"P-34-574"	1,650.00	82.5
	"P-34-575"	2,475.00	123.75
Teletech Customer Management	"P-34-682"	312,375.00	15618.75
Philippines Inc.	"P-34-683"	249,900.00	12,495.00
CWTs supported by original BIR Form 2307 with erasure in the Company's TIN but without countersignature			
Warehouse Development Company Inc	"P-34-950"	19,828,622.47	962,388.77
TOTAL			**₱20,492,382.02**

It bears noting that the TIN serves as identification of taxpayers in relation to their payment with the BIR.[12] Accordingly, CWT certificates bearing a different TIN should be deemed not belonging to petitioner. As such, the disallowance of the corresponding CWT should remain.

Further, petitioner's explanation that the errors noted in the CWT certificates are mere typographical errors was **not** confirmed nor corroborated by the entities which actually issued and accomplished the said certificates. Thus, this Court cannot give weight to such bare allegation of petitioner. It is basic in the rule of evidence that bare allegations, unsubstantiated by evidence, are not equivalent to proof. In short, mere allegations are not evidence.[13]

In view thereof, We sustain the disallowance of the said CWTs evidenced by certificates with incorrect TIN and with erasures not properly countersigned.

As regards the disallowance of CWTs amounting to ₱13,900,301.79 for failure of petitioner to prove that the corresponding income payments were declared as part of income, We likewise maintain the disallowance.

Alleged Income payments due to timing difference - ₱3,331,136.77

It bears reiterating that the evidence submitted by petitioner is insufficient to prove that the related income payments was indeed reported and declared as part of petitioner's income in CY2013. Upon verification, the Court cannot trace the said income payments to petitioner's declared income per its 2013 AITR. Hence, We maintain that the disallowance is proper.

Unsubstantiated income payments – ₱10,516,348.07

A perusal of the explanation propounded by petitioner, through the ICPA, shows that the same are mere reiteration of matters which have been completely addressed in the assailed Decision. To

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[12] *Commissioner of Internal Revenue v. Philippine Bank of Communications,* CTA EB Nos. 1421 and 1423, May 23, 2017.
[13] *Virginia Real v. Sisenando H. Belo*, G.R. No. 146224, January 26, 2007.

reiterate, based on the evidence on record, the Court is unable to trace and confirm whether the subject income payments were indeed declared as income in petitioner's 2014 AITR.

It must be emphasized that the sufficiency of a claimant's evidence and the determination of the amount of refund, as called for in this case, are questions of fact, which are for the judicious determination by the CTA of the evidence on record.[14] In fine, the determination by the CTA must rest on all the evidence introduced and its ultimate determination must find support in credible evidence.[15]

Thus, having failed to establish that the income payments were declared as part of its gross income, the disallowance of CWTs amounting to ₱13,900,301.79 should remain.

At this juncture, it bears stressing that the claimant has the burden of proof to establish the factual basis of his or her claim for tax credit or refund.[16] Tax refunds are in the nature of tax exemptions. As such, they are regarded as in derogation of sovereign authority and to be construed *strictissimi juris* against the person or entity claiming the refund.[17] The pieces of evidence presented entitling a taxpayer to an exemption are also *strictissimi* scrutinized and must be duly proven.[18]

Recomputation of petitioner's refundable excess CWT

Petitioner has sufficiently proven its entitlement to the refund or issuance of a TCC, representing unutilized excess CWT for CY 2014 in the modified amount of **₱296,152,179.59**, computed as follows:

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[14] *Fortune Tobacco Corporation v. Commissioner of Internal Revenue*, G.R. No. 192024, July 1, 2015.
[15] *Commissioner of Internal Revenue v. Hantex Trading, Co., Inc.*, G.R. No. 136975, March 31, 2005.
[16] *Citibank, N.A. vs. Court of Appeals and Commissioner of Internal Revenue*, G.R. No. 107434, October 10, 1997.
[17] *Commissioner of Internal Revenue vs. S.C. Johnson and Son, Inc., et al.*, G.R. No. 127105, June 25, 1999.
[18] *Kepco Philippines Corporation vs. Commissioner of Internal Revenue*, G.R. No. 179961, January 31, 2011.

Creditable Withholding Per Claim		₱330,559,574.00
Less: Disallowances		
Supported by Scanned Copy of BIR Form 2307	₱ 11,555.84	
Not Supported by BIR Form 2307	3,154.76	
Not supported by proper BIR Form 2307	20,492,382.02	
Untraceable	52,816.95	
Income payments due to timing difference	3,331,136.77	
Unsubstantiated income payments	10,516,348.07	34,407,394.41
Refundable Excess CWT		**₱296,152,179.59**

Respondent's Motion for Partial Reconsideration

We deny respondent's *Motion for Partial Reconsideration* for lack of merit.

A perusal of the instant *Motion* shows that the grounds raised therein are mere reiteration of matters which have already been considered, weighed and resolved in the assailed Decision.

A taxpayer-claimant need not wait for the decision of the CIR before filing a judicial claim when the 2-year prescriptive period is about to expire.

The CIR argues that petitioner failed to exhaust administrative remedies before elevating the case to the Court in Division.

We disagree.

Contrary to respondent's assertion, it would have been fatal for petitioner not to file its judicial claim within two (2) years from the date of payment of the tax as the same is required under Section 229 of the NIRC of 1997, as amended, *to wit:*

> "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." (Emphasis supplied)

Clearly, the judicial claim for tax refund must be made within two (2) years from the date of payment of the tax or penalty, regardless of any supervening cause that may arise after such payment. And when the two-year prescriptive period is about to end, a taxpayer-claimant need not wait for the decision of the CIR before filing a case with this Court.

Moreover, in no wise does Section 229 of the NIRC of 1997 imply that the CIR must first act upon the taxpayer's claim, and that the taxpayer shall not go to court before such taxpayer is notified of the CIR's action.[19] It must be emphasized that the claim with the CIR was intended primarily as a notice of warning that unless the tax or penalty alleged to have been collected erroneously or illegally is refunded, court action will follow.[20]

In this case, there is no showing that respondent ever acted on petitioner's administrative claim for refund from the time it was filed on September 21, 2015 up to the filing of its judicial claim on April 7, 2017, when the two-year prescriptive period is about to end. Thus, it was correct on the part of petitioner to have elevated its judicial claim before the expiration of the said two-year prescriptive period under Section 229 of the NIRC of 1997.

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[19] *CBK Power Company Limited vs. Commissioner of Internal Revenue*, et seq., G.R. Nos. 193383-84 and 193407-08, January 14, 2015, citing *P.J. Kiener Co., Ltd. vs. David*, 92 Phil. 945 (1953)
[20] *Ibid.*

Proof of actual remittance of alleged withheld taxes to the BIR is not necessary.

Respondent's allegation that petitioner allegedly failed (1) to present evidence of actual remittance of the taxes claimed to have been withheld; and (2) to submit complete documents in support of its claim, deserves scant consideration.

Proof of actual remittance of taxes withheld is not a pre-requisite in claiming refund of unutilized creditable withholding tax. It must be emphasized that proof of remittance of withholding taxes is the responsibility of the payor-withholding agent and not of the payee.

Further, it bears emphasis that the payee-refund claimant, such as petitioner in this case, need only prove the **fact of withholding of taxes**, which is established by a copy of the withholding tax statement; and not its actual remittance to the BIR.

As regards respondent's claim that petitioner allegedly failed to submit complete documents in support of its claim pursuant to RMO No. 53-98 and RR No. 2-2006, the same is likewise without merit. We reiterate that nowhere is it stated in RMO No. 53-98 and RR No. 2-2006, that the non-submission of the documents enumerated therein would *ipso facto* result to the denial of the claim for tax refund or credit. Further, it bears noting that RR No. 2-2006 merely imposes a penalty of fine for non-submission of the information or statement required therein, but not the outright denial of the claim for tax refund or credit.

Thus, the failure of petitioner to present the proof of actual remittance and to submit complete documents enumerated under RMO No. 53-98 and RR No. 2-2006, is not fatal to its claim for refund.

In fine, the Court finds no sufficient basis to grant respondent's *Motion for Partial Reconsideration.*

WHEREFORE, in light of the foregoing considerations, petitioner's *Motion for Reconsideration* is **PARTIALLY GRANTED.**

Accordingly, the Court's Decision dated June 29, 2021, is hereby amended to read as follows:

"**WHEREFORE**, in light of the foregoing consideration, the instant *Petition for Review* is **PARTIALLY GRANTED**. Accordingly, respondent is **ORDERED TO REFUND OR ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner the amount of **₱296,152,179.59**, representing petitioner's excess and unutilized Creditable Withholding Tax for calendar year ended December 31, 2014.

SO ORDERED."

On the other hand, respondent's *Motion for Partial Reconsideration* is **DENIED** for lack of merit.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

ATTESTATION

I attest that the conclusions in the above Amended Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ERLINDA P. UY
Associate Justice
Chairperson, 3rd Division

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution and the Division Chairperson's Attestation, it is hereby certified that the conclusions in the above Amended 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