REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

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COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

CTA EB No. 2373
(CTA Case No. 9804)

Present:

DEL ROSARIO, P.J.,
CASTAÑEDA, JR.,
UY,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO, and
CUI-DAVID, JJ.

- versus -

TULLET PREBON (PHILIPPINES), INC.,
Respondent.

Promulgated:

MAY 25 2022 1:30 pm

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RESOLUTION

UY, J.:

For resolution is petitioner's *Motion for Reconsideration (Re: Decision promulgated 16 December 2021)*[1] filed through electronic mail on January 10, 2022, and a hard copy thereof subsequently filed on February 2, 2022; with respondent's *Comment (Re: Motion for Reconsideration dated January 4, 2022)*[2] filed on March 14, 2022.

In the said *Motion*, petitioner prays that the Court *En Banc's Decision* promulgated on December 16, 2021 be reversed and set aside, and another one be rendered denying respondent's entire claim for refund. The dispositive portion thereof reads:

[1] EB Docket, pp. 100 to 110.
[2] EB Docket, pp. 115 to 132.

"**WHEREFORE**, in light of the foregoing considerations, the instant *Petition for Review* is hereby **DENIED** for lack of merit. Accordingly, the *Decision* dated June 15, 2020, and the *Resolution* dated October 20, 2020 by the Second Division of this Court in CTA Case No. 9804 are hereby **AFFIRMED**.

SO ORDERED."

Petitioner's arguments:

In support of his *Motion*, petitioner argues that in a claim for refund, the claimant has the burden of proving its entitlement thereto. Allegedly, respondent failed to provide supporting documents to prove that the income from which creditable withholding tax (CWT) is being claimed was declared in its Annual Income Tax Return (AITR).

Moreover, respondent must prove compliance with Revenue Memorandum Order (RMO) No. 53-98[3] and Revenue Regulations (RR) No. 2-2006[4] in order to support its claim for unutilized CWT. Without compliance with the administrative requirements enumerated in RMO No. 53-98 and RR No. 2-2006, the administrative claim for tax refund or credit is merely pro-forma and treated as if no administrative claim was filed at all. Thus, respondent cannot seek judicial relief due to prematurity or lack of cause of action.

According to petitioner, respondent should have presented evidence to prove actual remittance of the CWT to the Bureau of Internal Revenue (BIR) because proof of actual remittance to the BIR of the taxes withheld is indispensable in a claim for refund of CWT.

[3] 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.

[4] 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.

Finally, petitioner submits that a tax refund is in the nature of a tax exemption which must be construed *strictissimi juris* against the taxpayer. As such, the taxpayer must present convincing evidence to substantiate a claim for refund.

Respondent's counter-arguments:

Respondent points out that petitioner's arguments in his *Motion* are mere restatements of the same arguments proffered in his *Petition for Review*. According to respondent, petitioner failed to cite any error that may serve as basis for reconsideration of the assailed *Decision*. Thus, said *Motion* should be dismissed outright for being *pro forma* and for raising arguments that have been thoroughly considered and passed upon by the Court *En Banc*.

Respondent likewise asserts that the evidence it had submitted sufficiently proves that the income from which the CWT being claimed as refund was included in the gross income reported in its AITR. Allegedly, the Court in Division and the Court *En Banc* have uniformly found that income payments of ₱123,433,851.71, with the corresponding CWT of ₱10,987,193.77, formed part of the income declared in its AITR for calendar year (CY) 2015, and petitioner failed to refute said factual findings.

Moreover, the documents mentioned in RMO No. 53-98 and RR No. 2-2006 are allegedly not essential requisites in proving entitlement to a claim for refund of excess and unutilized CWT. RMO No. 53-98 is merely a directive addressed to the BIR revenue officers advising them of the documents to be requested from taxpayers in case of an audit of tax liabilities. Meanwhile, there is allegedly nothing in RR No. 2-2006 which states that the submission of the Summary Alphalist of Withholding Agents of Income Payments subjected to Withholding Taxes is a pre-requisite in order to grant a taxpayer's claim for refund of excess and unutilized CWT.

Respondent further counter-argues that proof of actual remittance of CWT to the BIR is not a requirement for proving entitlement to a claim for refund of excess and unutilized CWTs. The Supreme Court has repeatedly held that the certificate of creditable tax withheld at source is the competent proof to establish the fact that the taxes were withheld.

Lastly, respondent maintains that claims for refund of overpaid or erroneously paid taxes are founded on the legal principle of *solutio indebiti*; thus, the rule that tax exemptions are construed *strictissimi juris* against the taxpayer does not apply.

THE COURT *EN BANC*'S RULING

Petitioner's motion lacks merit.

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

Petitioner's allegation that respondent failed to prove that the income from which CWT is being claimed was declared in the latter's AITR, is without merit. As explained by the Court in Division, and affirmed by the Court *En Banc* in the assailed *Decision*, income payments of ₱123,433,851.71, with the corresponding CWT of ₱10,987,193.77, formed part of the income declared in respondent's AITR for CY 2015.

Moreover, contrary to petitioner's assertions, there is nothing in RMO No. 53-98 which requires the submission of all the documents specified therein before a taxpayer may be entitled to a refund.[5] RMO No. 53-98 merely enumerates the documents the BIR may require from the taxpayer upon the audit of the latter's tax liability. Meanwhile, RR No. 2-2006 was "issued to help promote a better business environment by limiting BIR audits of returns with corresponding tax withheld at source to those without substantiation, and to secure government revenues by insuring observance of the withholding tax system".[6]

Petitioner is also mistaken in its contention that respondent has to prove actual remittance of the CWT to the BIR. There are three conditions for the grant of a claim for refund of CWT, *to wit*: 1) the claim is filed with the Commissioner of Internal Revenue within the two-year period from the date of payment of the tax; 2) it is shown on the return of the recipient that the income payment received was declared as part of the gross income; and 3) the fact of withholding is

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[5] *Pilipinas Total Gas, Inc. v. Commissioner of Internal Revenue*, G.R. No. 207112, December 8, 2015.
[6] Background, RR No. 2-2006.

established by a copy of a statement duly issued by the payor to the payee showing the amount paid and the amount of the tax withheld therefrom.[7]

Respondent was able to comply with all three conditions. First, the filing of respondent's administrative claim for refund on September 15, 2017, and the filing of the earlier *Petition for Review* on April 10, 2018, were within the two-year prescriptive period which ended on April 11, 2018. Second, and as mentioned above, the income from which the CWT being claimed as refund was included in respondent's gross income reported in its AITR. Third, the fact of withholding was sufficiently established by respondent upon the presentation of the relevant BIR Forms No. 2307.

It is worth noting that no law, jurisprudence, or existing regulation provide that proof of actual remittance of tax is a requirement in order to claim for a refund of unutilized tax credits. The certificate of creditable tax withheld at source is the competent proof to establish the fact that taxes were withheld.[8]

Finally, while tax refunds, like tax exemptions, are strictly construed against the taxpayer, it has been ruled that the government should not misuse technicalities to keep money it is not entitled to, *to wit*:

> "Lastly, while tax exemptions are strictly construed against the taxpayer, the government should not misuse technicalities to keep money it is not entitled to.
>
> > Substantial justice, equity and fair play are on the side of petitioner (respondent in the instant case). Technicalities and legalisms, however exalted, should not be misused by the government to keep money not belonging to it, thereby enriching itself at the expense of its law-abiding citizens. **Under the principle of *solutio indebiti* provided in Art. 2154, Civil Code, the BIR received something "when there [was] no right to demand it," and thus, it has the obligation to return it.**

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[7] *Banco Filipino Savings and Mortgage Bank v. Court of Appeals, et al.*, G.R. No. 155682, March 27, 2007.

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

> Heavily militating against respondent Commissioner is the ancient principle that **no one, not even the state, shall enrich oneself at the expense of another. Indeed, simple justice requires the speedy refund of the wrongly held taxes**."[9] *(Emphasis supplied)*

Thus, considering that respondent has sufficiently proved its partial entitlement to the refund sought, there is no valid reason to deny its claim for refund in its entirety.

In view of the foregoing, the Court *En Banc* finds no compelling reason to reconsider, modify, or reverse the assailed *Decision*.

WHEREFORE, in light of the foregoing considerations, the instant *Motion for Reconsideration* is **DENIED** for lack of merit.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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

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[9] *Philippine Airlines, Inc. (PAL) v. Commissioner of Internal Revenue*; G.R. Nos. 206079-80, January 17, 2018; *Commissioner of Internal Revenue v. Philippine Airlines, Inc. (PAL)*, G.R. No. 206309, January 17, 2018.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice