**REPUBLIC OF THE PHILIPPINES**
**COURT OF TAX APPEALS**
**QUEZON CITY**

***EN BANC***

**PROVINCIAL GOVERNMENT OF BOHOL,**
*Petitioner,*

- *versus* -

**COMMISSIONER OF INTERNAL REVENUE,**
*Respondent.*

**CTA EB NO. 3022**
(CTA Case No. 10394)

Present:

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

Promulgated:
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# DECISION

***ANGELES, J.:***

Before the Court of Tax Appeals (CTA) *En Banc* is a *Petition for Review*[1] filed on October 30, 2024, under Section 3(b), Rule 8 of the Revised Rules of the Court of Tax Appeals (RRCTA),[2] as amended, praying for the reversal and setting aside of the *Decision* dated March 26, 2024 (assailed Decision)[3] and the *Resolution* dated September 24,

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[1] Court *En Banc* Docket (*EB* Docket), pp. 11 to 35; *Petition for Review* dated October 30, 2024, received on November 12, 2024.

[2] SEC. 3. *Who may appeal; period to file petition.* – x x x (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.

[3] *EB* Docket, pp. 37 to 54; The Decision was penned by Associate Justice Catherine T. Manahan, and concurred in by Presiding Justice Roman G. del Rosario, and Associate Justice Marian Ivy F. Reyes-Fajardo.

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2024 (assailed Resolution),[4] both promulgated by the Special First Division of the CTA in CTA Case No. 10394, entitled *Provincial Government of Bohol v. Commissioner of Internal Revenue*, the dispositive portion of which, respectively, read:

<u>Assailed Decision:</u>

> "**WHEREFORE**, in light of the foregoing considerations, the present *Petition for Review* is **DENIED** for lack of merit.
>
> **SO ORDERED.**"

<u>Assailed Resolution:</u>

> "**WHEREFORE**, petitioner's *Motion for Reconsideration (on the Decision promulgated on March 26, 2024)* is hereby **DENIED** for lack of merit.
>
> **SO ORDERED.**"

## THE PARTIES

Petitioner is a local government unit (LGU) duly organized and existing under the laws of the Philippines, with principal address at New Provincial Capitol Building, Gov. Lino I. Chatto Drive, Brgy. Cogon, Tagbilaran City, Bohol 6300, Philippines, represented herein by the Provincial Governor and the Provincial Treasurer by virtue of Provincial Board Resolution No. 2020-781.[5]

Respondent is the duly appointed Commissioner of Internal Revenue (CIR), who is tasked to assess and collect all national internal revenue taxes, fees and charges, and enforce all forfeitures, penalties, and fines connected therewith. Respondent holds office at the Bureau of Internal Revenue (BIR) National Office Building located in Senator Miriam Defensor-Santiago Road, Diliman, Quezon City.[6]

## FACTS OF THE CASE

As an LGU in the exercise of its governmental and administrative functions, petitioner makes payments to its suppliers of goods and services. Petitioner claims that, for taxes due for the month

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[4] *Id.* at pp. 56 to 100; The Resolution was penned by Associate Justice Catherine T. Manahan, and concurred in by Presiding Justice Roman G. del Rosario, and Associate Justice Marian Ivy F. Reyes-Fajardo.
[5] Court *En Banc* Docket (*EB* Docket), p. 135; Exhibit "P-1."
[6] *EB* Docket, p 12.

of September 2018, including creditable withholding taxes (expanded) (EWT), Value Added Tax (VAT), and other percentage taxes (OPT), petitioner remitted to the BIR on October 09, 2018 withholding taxes amounting to ₱4,776,667.11.[7]

Upon subsequent verification, petitioner allegedly discovered that the correct total withholding taxes for September 2018 should have been ₱2,328,997.72, resulting in an over-remittance in the amount of ₱2,447,669.39.[8]

Specifically, petitioner allegedly found discrepancies in the remittances under BIR Form 1601-E (tax return for EWT) and BIR Form 1600 (tax return for VAT and OPT) against its two (2) respective schedules, namely (1) BIR Form 1601-E – Schedule I[9] and (2) BIR Form 1600 – Schedule II,[10] or the alphalists.[11]

To correct the mistake of over-remittance, petitioner, through Provincial Treasurer Eustaquio A. Socorin,[12] filed a letter dated January 28, 2019[13] before the BIR requesting the refund of its alleged over-remittance, which were followed up with letters dated June 11, 2019,[14] and February 10, 2020,[15] requesting the status of their claim.

On September 22, 2020, petitioner filed before the BIR another letter dated September 21, 2020[16] together with a duly accomplished BIR Form No. 1914 (Application for Tax Credits/Refunds),[17] requesting tax credit or refund in the total amount of ₱2,447,669.39 representing the alleged excess portion of the ₱4,776,667.11 in withholding taxes it remitted for September 2018.

Alleging inaction of the BIR, petitioner filed before the CTA a *Petition for Review* through registered mail on October 08, 2020, which the Court received on November 06, 2020, reiterating its allegations of erroneous payment and praying for tax credit.

Petitioner alleges that the inadvertence was due to faulty internet connection causing petitioner to enter incorrect amounts in the BIR

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7 *EB* Docket, p. 13.
8 *Ibid.*
9 Division Docket – Vol. I, pp. 350 to 359; Exhibit "P-13."
10 Division Docket – Vol. I, pp. 392 to 403; Exhibit "P-21."
11 *EB* Docket, p. 14.
12 Division Docket – Vol. I, p. 332; Exhibit "P-1."
13 Division Docket – Vol. I, p. 334; Exhibit "P-2," Letter dated January 28, 2019 to Revenue District Officer Aldo B. Osmeña.
14 Division Docket – Vol. I, p. 335; Exhibit "P-3."
15 Division Docket – Vol. I, p. 336; Exhibit "P-4."
16 Division Docket – Vol. I, pp. 337 to 342; Exhibit "P-5."
17 Division Docket – Vol. I, p. 343; Exhibit "P-6."

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online returns distinct from petitioner's alphalists.[18] Reproduced below is petitioner's summary of discrepancies as recited in its *Petition for Review*:[19]

**Table A-4: Excess Remittance of EWT**[20]

| | |
|---|---|
| Total Amount Still Due (Item 30 per 1601 – EQ filed) – amount remitted | ₱749,992.47 |
| Less: Total Amount Still Due (Per recomputation) | (468,995.65) |
| **Amount of excess remittance** | **₱280,996.82** |

**Table B-3: Excess Remittance of VAT and OPT withheld**[21]

| | |
|---|---|
| Total Tax Required to be Withheld and Remitted (Item No. 14 of BIR Form No. 1600 that was filed) | ₱4,026,674.64 |
| Less: Recomputed amount of Total Tax Required to be Withheld and Remitted | (1,860,002.07) |
| **Amount of excess remittance** | **₱2,166,672.57** |

**Summary**[22]

| | |
|---|---|
| Excess remitted EWT withheld | ₱280,996.82 |
| Add: Excess remitted VAT and other percentage taxes withheld | 2,166,672.57 |
| **Total Excess remittance for September 2018** | **₱2,447,669.39** |

In sum, petitioner alleges that under BIR Form 1601-E – Schedule I (alphalist), the total correct withholding tax due was ₱468,995.65, while the amount actually remitted reached ₱749,992.47, resulting in an over-remittance of ₱280,996.82. Likewise, under BIR Form 1600 – Schedule II (alphalist), the correct withholding taxes due totaled ₱1,860,002.07, whereas petitioner remitted ₱4,026,674.64, thereby generating an excess remittance of ₱2,166,672.57.[23]

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[18] Division Docket – Vol. 1, p. 15.
[19] *EB* Docket, *Petition for Review*, p. 70.
[20] *Ibid.*
[21] *EB* Docket, p. 72.
[22] *EB* Docket, p. 73.
[23] *Ibid.*

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Within the extended period granted by the Court, respondent filed his *Answer*[24] alleging, among others, that petitioner failed to prove actual remittance of the taxes and failed to submit relevant supporting documents for its claim.[25]

Pre-trial was held on November 11, 2021, wherein the Court ordered the parties to submit their *Joint Stipulation of Facts and Issues* (JSFI) within thirty (30) days or until December 31, 2021.[26] During pre-trial conference, respondent also manifested that it will no longer present any documentary and testimonial evidence.[27]

On March 14, 2022, the Court deemed the parties' right to file a JSFI waived for failure to submit the same in the time required and pre-trial was terminated.[28] On May 11, 2022, the Court issued its pre-trial order.[29]

Trial ensued, whereby petitioner presented testimonial[30] and documentary[31] evidence. Petitioner was then given until April 22, 2022 within which to file its Formal Offer of Evidence (FOE).

In a Resolution dated August 26, 2022,[32] the Court admitted petitioner's exhibits "P-27," "P-28," and "P-29," pertaining to petitioner's submitted judicial affidavits and the attached Landbank certification proving payment, and denied the rest for failure to submit duly marked exhibits and/or failure to present originals for comparison. Notably, the Court denied petitioner's alphalists, which were Exhibits "P-13," "P-19," "P-20," and "P-21," for failure to present the originals.

Petitioner filed a *Motion for Leave and Urgent Motion for Partial Reconsideration*[33] seeking admission of previously denied documentary exhibits. The Court partially granted petitioner's motions and admitted most of the previously denied exhibits, except Exhibit "P-13," BIR Form 1601-E – Schedule I (alphalist of EWT), which remained denied for failure to submit the duly marked exhibit and present the original for comparison.[34]

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[24] Division Docket – Vol. I, pp. 128 to 136.
[25] Division Docket – Vol. I, p. 129.
[26] Division Docket – Vol. I, pp. 226 to 227.
[27] *Id.*
[28] Division Docket – Vol. I, p. 255.
[29] Division Docket – Vol. I, pp. 284 to 292.
[30] Division Docket – Vol. I, pp. 319 to 331.
[31] *Id.*
[32] Division Docket – Vol. II, pp. 552 to 553.
[33] Division Docket – Vol. II, pp. 568 to 571.
[34] Division Docket – Vol. II, p. 590; *Resolution* dated February 03, 2023.

Upon filing of their respective memoranda, whereby respondent filed Manifestations adopting the arguments in his *Answer* as his Memorandum, the case was submitted for decision on April 04, 2023.[35]

On March 26, 2024, the Special First Division (Court in Division) rendered the assailed Decision, denying the *Petition for Review* for lack of merit, on the finding that petitioner's claim is unsupported by sufficient evidence.[36]

In its *Motion for Reconsideration*,[37] petitioner admitted that it failed to submit the source documents due to its mistaken belief that the BIR tax returns and alphalists sufficiently substantiated its claim. It thus attached to the *Motion for Reconsideration* the Journal Entry Vouchers (JEVs)[38] for September 2018 to corroborate its previously submitted evidence, and Letters from BIR dated June 18, 2021,[39] August 11, 2021,[40] and December 15, 2021,[41] to show BIR's recognition of petitioner's over-remittance for September 2018.

On September 24, 2024, the Court in Division rendered the assailed Resolution, sans respondent's comment, denying the *Motion for Reconsideration* for lack of merit.[42]

Thereafter, petitioner filed, by registered mail, a *Motion for Extension of Time to File a Petition for Review* on October 16, 2024, and the subject *Petition for Review* before the Court *En Banc* on October 30, 2024.[43]

In a Minute Resolution dated January 20, 2025[44] the Court *En Banc* granted the *Motion for Extension* and directed respondent to file its comment on the *Petition for Review* within ten (10) days from receipt of notice.

On April 2, 2025, the Court *En Banc* noted[45] the Records Verification Report dated June 13, 2024 stating respondent failed to

[35] Division Docket – Vol. II, pp. 562 to 565.
[36] Division Docket – Vol. II, pp. 695 to 712.
[37] Division Docket – Vol. II, pp. 713 to 720.
[38] *Motion for Reconsideration*, Annex A, Division Docket – Vol. II, pp. 721 to 727.
[39] *Motion for Reconsideration*, Annex B, Division Docket – Vol. II, pp. 728 to 730.
[40] *Motion for Reconsideration*, Annex C, Division Docket – Vol. II, pp. 731 to 740.
[41] *Motion for Reconsideration*, Annex D, Division Docket – Vol. II, pp. 741 to 742.
[42] Division Docket – Vol. II, pp. 764 to 769.
[43] Docket – Vol. II, p. 757.
[44] *Motion for Reconsideration*, Annex D, Division Docket – Vol. II, p. 741.
[45] Division Docket – Vol. II, p. 758.

comment on the *Petition for Review* and submitted the case for decision.[46]

## ASSIGNMENT OF ERRORS

Petitioner submits the following assignment of errors for the Court *En Banc*'s resolution:

I. Whether Petitioner is entitled for tax credit for the erroneous payment of creditable withholding tax amounting to ₱280,996.82.

II. Whether Petitioner is entitled for tax credit for the erroneous payment of VAT and other percentage taxes withheld in the amount of ₱2,166,672.57.

III. Whether the Claim for Tax Credit should be construed *Strictissimi Juris* against the Petitioner.

IV. Whether Respondent is estopped from denying the tax credit by reason of its issuances/correspondences dated June 18, 2021, August 11, 2021, and December 15, 2021 recognizing such tax credit.[47]

## PETITIONER'S ARGUMENTS

*First*. On its claim for refund for EWT in the amount of ₱280,996.82, petitioner argues that the CTA Special First Division erred in excluding Exhibit "P-13," its BIR Form 1601-E – Schedule 1, or petitioner's alphalist. According to petitioner, the exhibit is admissible under the exceptions to the Best Evidence Rule and sufficient to substantiate its claim.

*Second*. On its claim for refund for VAT and OPT refund amounting to ₱2,166,672.57, petitioner argues that the alphalist forms part of the required documents by BIR in connection with filing and remitting withholding taxes for VAT and OPT, and not receipts/invoices. Thus, the alphalist alone sufficiently substantiates its claim. Petitioner further contends that the summarized figures reflected in BIR Form No. 1600 (tax return) should yield to the more detailed and specific entries appearing in BIR Form 1600 – Schedule II (the alphalist). On its face, the discrepancies between the figures reflected in the tax return and the alphalist clearly demonstrate the erroneous excess remittances.

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[46] *Ibid*.
[47] *EB* Docket, *Petition for Review*, p. 20.

*Third.* Petitioner argues that, as a withholding agent, it merely acted as a collector of taxes on behalf of the government and is distinct from the taxpayer upon whom the tax is imposed. Therefore, petitioner maintains that the doctrine that tax refunds are construed *strictissimi juris* against taxpayer should not apply to petitioner.

*Fourth.* Petitioner argues that the CTA Special First Division failed to appreciate the probative value of respondent's issuances and correspondence dated June 18, 2021, August 11, 2021, and December 15, 2021, which allegedly recognized the excess remittances. Petitioner contends that such issuances and correspondence should have been treated as admissions against interest under Section 27 of the Revised Rules on Evidence.

## RULING OF THE COURT EN BANC

The *Petition for Review* is devoid of merit.

*The Court En Banc has jurisdiction over the instant Petition.*

Before we discuss the substantive issues raised by the parties, we must first discuss the jurisdiction of the Court to take cognizance of this case.

It is well-entrenched in jurisprudence that the CTA is a court of special jurisdiction and can only take cognizance of matters that are clearly within its jurisdiction.

Section 2, Rule 4 of the RRCTA, provides in part:

> 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:
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> (a) Decisions or resolutions on motions for reconsideration or new trial of the **Court in Divisions** 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, Department of Agriculture; x x x (Emphasis supplied)

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The instant petition seeks the review of the assailed Decision[48] and assailed Resolution[49] of the Court in Division in CTA Case No. 10394, which dismissed the *Petition for Review* and *Motion for Reconsideration* for lack of merit. Accordingly, appellate jurisdiction over the subject matter of the instant *Petition for Review* properly lies with the Court *En Banc.*

Furthermore, and as previously noted, the petition was filed pursuant to Section 3(b), Rule 8 of the RRCTA:

> Sec. 3. *Who may appeal; period to file petition.* – x x x
>
> (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. (Emphasis supplied)

The Court *En Banc* notes that the petitioner received a copy of the assailed Resolution on October 01, 2024.[50] Subsequently, petitioner filed a *Motion for Extension of Time to File a Petition for Review* on October 16, 2024, which was granted by the Court *En Banc* through a Resolution dated January 20, 2025.

The *Petition for Review* was timely filed within the prescribed timeframe on October 30, 2024, thereby vesting the Court *En Banc* with jurisdiction to hear the matter.

We now proceed to resolve the case on its merits.

*Refunds and/or credit under Sections 204(C) and 229 of the NIRC of 1997, as amended, require proof not only of payment but that such payment is erroneous*

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[48] *Supra*, note 3.

[49] *Supra*, note 4.

[50] A copy of the assailed Resolution was served to petitioner through accredited courier service provider on September 27, 2024 with LBC # 1273 4590 5099, which petitioner received on October 01, 2024.

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Petitioner seeks the issuance of a tax credit certificate in the total amount of ₱2,447,669.39, allegedly representing its over-remittance of EWT, VAT, and OPT withheld for the month of September 2018.[51]

At the outset, petitioner's claim must be examined in light of the statutory requirements governing claims for refund or tax credit of taxes allegedly erroneously or illegally collected.

The power of the CIR to refund or credit taxes is recognized under Section 204(C) of the National Internal Revenue Code (NIRC) of 1997, as amended:

> Section 204. *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.* – The Commissioner may –
>
> x x x
>
> (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 as provided under Section 229 of this Code: Provided, however, That a return filed showing an overpayment shall be considered as a written claim for credit or refund.

On the other hand, Section 229 of the NIRC of 1997, as amended, provides the rules for recovery of tax erroneously or illegally collected:

> Section 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, of any sum alleged to have been excessively or in any manner wrongfully 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.

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[51] EB Docket, p. 26.

> In any case, no such suit or proceeding shall be filed unless there is a full or partial denial of the claim for refund or credit by the Commissioner or there is a failure on the part of the Commissioner to act on the claim within the one hundred eighty (180)-day period under Section 204 of this Code; 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.
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> x x x

Accordingly, to establish entitlement to a refund of taxes erroneously or illegally collected, the following requisites must be satisfied:

(1) That there must be an erroneous or illegal collection of tax or a penalty collected without authority, or sum excessively or wrongfully collected;[52]
(2) That the claim for refund has been duly filed with the Commissioner, within two (2) years after the payment of tax or penalty; and
(3) That the suit or proceeding is instituted with the CTA within two (2) years from the date of payment of the tax or penalty.[53]

In the present case, the second and third requisite, or the timeliness of petitioner's administrative and judicial claims is no longer the decisive issue. Petitioner remitted the subject withholding taxes on October 09, 2018. It filed its administrative claim through a letter dated January 28, 2019 before the BIR within the two-year period, and thereafter, instituted its judicial claim through a *Petition for Review* before this Court on October 08, 2020. Thus, the decisive issue is not prescription, but on the first requisite: whether petitioner discharged its burden on proving, by competent evidence, that the amounts remitted were erroneous or excessive.

*Petitioner only proved payment,*
*but not erroneous payment*

To prove its alleged over-remittance of EWT in the amount of ₱280,996.82, petitioner offered in evidence the following:

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[52] *Manila Peninsula Hotel, Inc. v. Commissioner of Internal Revenue*, G.R. No. 229338, April 17, 2024 [Per J. Caguioa, Third Division].
[53] *Commissioner of Internal Revenue v. Carrier Air Conditioning, Inc.*, G.R. No. 226592, July 27, 2021 [Per J. Leonen, *En Banc*].

1. BIR Form No. 1601 E - Schedule I (alphalist for September 2018);[54]
2. Tax Return for Third Quarter EWT for year 2018;[55]
3. eFPS Payment Form;[56]
4. eFPS Confirmation Receipt;[57]
5. BIR print-out of Tax Return;[58]
6. Reference No. for payment;[59] and
7. Certification of payment issued by LandBank.[60]

Similarly, to prove its alleged over-remittance of VAT and OPT withheld in the amount of ₱2,166,672.57, petitioner offered the following:

1. BIR Form No. 1600 - Schedule II (alphalist for September 2018);[61]
2. Tax Return for September 2018;[62]
3. eFPS Payment Form;[63]
4. eFPS Confirmation Receipt;[64]
5. BIR print-out of Tax Return;[65]
6. Reference No. for payment;[66] and
7. Certification of payment issued by LandBank.[67]

Herein, the returns, payment confirmation, BIR printouts with reference number of payment, and LandBank certification of payment only prove remittance, but do not necessarily prove that the amount remitted exceeded what was legally due. The documents formally offered by petitioner establish, at most, that taxes were remitted to the BIR. They do not, standing alone, establish that the remitted amounts were erroneous or excessive.

As discussed below, petitioner failed to discharge the burden of proof necessary to substantiate its claim for tax credit or refund.

*Petitioner failed to present and offer documents sufficient to substantiate its claim*

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54 Division Docket – Vol. I, p. 350 to 359; Exhibit "P-13."
55 Division Docket – Vol. I, p 360; Exhibit "P-14."
56 Division Docket – Vol. I, p. 361; Exhibit "P-15."
57 Division Docket – Vol. I, p. 362; Exhibit "P-16."
58 Division Docket – Vol. I, p. 363; Exhibit "P-17."
59 Division Docket – Vol. I, p. 364; Exhibit "P-18."
60 Division Docket – Vol. I, pp. 365 to 378; Exhibit "P-27."
61 Division Docket – Vol. I, pp. 392 to 403; Exhibit "P-21."
62 Division Docket – Vol. I, p. 404; Exhibit "P-22."
63 Division Docket – Vol. I, p. 405; Exhibit "P-23."
64 Division Docket – Vol. I, p. 406; Exhibit "P-24."
65 Division Docket – Vol. I, p. 407; Exhibit "P-25."
66 Division Docket – Vol. I, p. 408; Exhibit "P-26."
67 Division Docket – Vol. I, p. 409; Exhibit "P-27."

Petitioner claims that the alphalists alone sufficiently substantiates its claim for credit or refund. Accordingly, petitioner did not present the disbursement vouchers, invoices, official receipts, contracts, billing statements, or other competent source documents showing the actual payments to suppliers for September 2018. Neither did petitioner present evidence sufficiently tracing each alleged erroneous entry from the underlying transaction, to the withholding tax due, to the amount actually remitted.

In *Tullett Prebon (Philippines), Inc. v. Commissioner of Internal Revenue (Tullet Prebon)*,[68] the Supreme Court reiterated that the sufficiency of a claimant's evidence and the determination of the amount refundable are factual matters, and that refund claims must be proven by preponderance of evidence. The Court also clarified that there is no hard and fast rule as to the specific evidence required to prove entitlement to refund. Nevertheless, the claimant must still present competent evidence, which, taken together, sufficiently establishes the factual basis of the refund claim.

In *Tullett Prebon*, the Supreme Court found that the CTA should have more carefully appreciated the taxpayer's cumulative evidence, which included schedules, billing invoices, official receipts, general ledger entries, and the independent certified public accountant's tracing and evaluation thereof. The case also cautioned that the fact that the reported sales or income is greater than the income corresponding to the withholding tax claimed is not, by itself, absolutely determinative of entitlement to refund.

In the present case, petitioner's theory depends principally on a comparison between the amounts appearing in the **tax returns** and the lower amounts appearing in the **alphalists** for September 2018. According to petitioner, the discrepancy on the face of these documents sufficiently proves over-remittance and thus erroneous collection by respondent.[69]

The Court is not persuaded.

The correct amount of withholding tax due cannot be determined merely by comparing the total amount reflected in the tax return with the total amount appearing in the alphalist. The amount of tax required to be withheld necessarily depends on the underlying transactions: the actual payments made, the nature of the payments, the payees

[68] G.R. No. 257219, July 15, 2024, [Per J. Dimaampao, Third Division].
[69] *EB* Docket, p. 21.

involved, the applicable withholding tax rates, and the correct tax base. Without the source documents supporting those transactions, the Court cannot verify whether the figures appearing in the alphalists are accurate, complete, and properly computed.

The alphalists are, at most, summary or reportorial documents reflecting petitioner's own declarations as withholding agent. They may show what petitioner reported, but they do not independently prove the correctness of the underlying tax base or the existence of an erroneous payment.

Absent source documents, this Court is left only with petitioner's assertion that the figures in the alphalists are correct and that the figures in the returns are erroneous. But allegations, however plausible, do not constitute evidence. The Court cannot grant a refund or tax credit on the basis of petitioner's unilateral computations.

*Petitioner failed to offer competent proof for the claim of credit or refund for EWT*

Petitioner argues that the Court in Division erred in excluding Exhibit "P-13," its BIR Form 1601-E – Schedule I or alphalist for EWT on the ground that petitioner failed to present the original for comparison. Petitioner insists that the exhibit falls under the exceptions to the Original Document Rule and that, if admitted, it would prove its entitlement to the claimed credit or refund.[70]

Under the Original Document Rule (formerly Best Evidence Rule), when the subject of the inquiry is the contents of a document, the original document must be produced, except in the instances recognized by the Rules of Court.[71]

Petitioner invokes the exception of voluminous documents under Section 3(c) of the Original Document Rule.[72] However, jurisprudence states that before a summary of numerous documents

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[70] *EB* Docket, p. 21.

[71] Rules on Evidence, as amended, Rule 130, Section 3. *Original document must be produced; exceptions.* - <u>When the subject of inquiry is the contents of a document, writing, recording, photograph or other record, no evidence is admissible other than the original document itself,</u> except in the following cases: xxx
(b) When the original is in the custody or under the control of the party against whom the evidence is offered, and the latter fails to produce it after reasonable notice, or the original cannot be obtained by local judicial processes or procedures;
(c) When the original consists of numerous accounts or other documents which cannot be examined in court without great loss of time and the fact sought to be established from them is only the general result of the whole; xxx (Underscoring supplied)

[72] *EB* Docket, p. 22.

may be admitted in lieu of the originals, the proponent must first establish that the underlying source documents are themselves admissible and available for examination. In *Republic v. Mupas*,[73] the Supreme Court ruled:

> The trial court may admit a **summary of voluminous original documents**, in lieu of original documents, if the party has shown that the underlying writings are numerous and that an in-court examination of these documents would be inconvenient. **In other words, Section 3(c), Rule 130 of the Rules of Court does away with the item-by-item court identification and authentication of voluminous exhibits which would only be burdensome and tedious for the parties and the court.**
>
> **However, as a condition precedent to the admission of a summary of numerous documents, *the proponent must lay a proper foundation for the admission of the original documents on which the summary is based.*** The proponent must prove that the source documents being summarized are also admissible if presented in court.
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> x x x
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> The primary reason for these procedural foundations is that the summary of numerous documents is, in strict terms, **hearsay evidence**. The trial court should not haphazardly allow a party to present a summary of numerous documents and immediately admit and give probative value to such summary without sufficiently laying these foundations. If the source documents of the summary are non-original, the trial court would commit grave error in admitting and/or giving probative value to the summary of non-original documents; the evidence admitted would be **double hearsay**.
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> (Underscoring supplied)

Thus, the invocation of submitting a summary in lieu of voluminous records under the Original Document Rule does not dispense with the need to prove the reliability of the documents summarized. Otherwise, the summary would amount to hearsay or double hearsay.

Herein, petitioner did not lay the foundation. It did not present the underlying source documents from which the alphalist was prepared. In fact, petitioner moved to waive the conduct of additional commissioner's hearing,[74] which was an opportunity for petitioner to

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[73] G.R. Nos. 181892, 209917, 209696 & 209731, September 08, 2015 [Per J. Brion, *En Banc*].
[74] *Supra*, note 4.

offer additional documentary evidence to prove that the alphalist accurately summarized admissible original documents.

Petitioner also invokes the exception of adverse party's custody or control under Section 3(b) of the Original Document Rule. As petitioner pointed out, the original copy of the exhibit was submitted to the BIR and is in the lawful custody of the Commission on Audit (COA).[75]

To reiterate, the above exception does not automatically dispense with the requirement of producing the original document. Where the original is alleged to be in the custody or control of another party, the rules require a showing that reasonable notice was given for its production and that, despite such notice and satisfactory proof of its existence, the document was not produced. Only then may secondary evidence be received in lieu of the original.[76]

In this case, if the original document was indeed in the custody of the BIR or the COA, petitioner could have availed of the procedural remedies under the Rules of Court to secure its production, such as motion for production or inspection of documents, or the issuance of a *subpoena duces tecum*. At the very least, petitioner could have requested a certified true copy from the government office having lawful custody of the document. Having failed to show it exerted such efforts, petitioner did not sufficiently account for the non-production of the original. Thus, it cannot invoke the exception under Section 3(b) of the Original Document Rule to justify the admission of secondary evidence.

In any event, even if the Exhibit "P-13" were admitted, petitioner's claim would still fail. The defect in petitioner's case is not merely the exclusion of one exhibit; rather, it is the absence of competent proof showing the actual transactions, the correct withholding tax base, and the amount that should have been remitted. The alphalist, standing alone, cannot fill the evidentiary gap.

The same reasoning applies to petitioner's claim for erroneous payment of VAT and OPT.

*Petitioner likewise failed to offer competent proof for the claim of credit or refund for VAT and OPT*

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[75] *EB* Docket, p. 22.
[76] Rules on Evidence, as amended, Rule 130, Section 6.

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Petitioner maintains that, with respect to its claim for VAT and OPT withheld, the alphalist alone is sufficient to substantiate its claim. Petitioner argues that BIR only requires the submission of alphalist in claims for refund for VAT and OPT and not receipts or invoices.[77]

That an alphalist may be required for BIR filing purposes does not mean that it is, by itself, sufficient to prove entitlement to a judicial claim for refund or tax credit. Administrative requirements for filing a return are not identical with evidentiary requirements in court. In a judicial proceeding for refund, the claimant must still prove the factual and legal bases of the claim through competent, relevant, and formally offered evidence.[78]

The Court does not discount the relevance of an alphalist in a proper case. However, its probative value depends on the evidence supporting it. If corroborated by competent source documents, it may assist the Court in verifying the transactions and computations involved. But where, as here, the alphalist is unsupported by documents from which the alleged correct withholding taxes may be determined, it remains insufficient to establish over-remittance.

The Court takes judicial notice that in its *Motion for Reconsideration* before the Court in Division, petitioner attached Journal Entry Vouchers (JEVs) for its transactions in September 2018 to corroborate previously submitted evidence.[79]

Even assuming petitioner properly offered the same during trial, the JEVs would not independently establish petitioner's entitlement to refund or tax credit. At most, they are accounting entries. Unless tied to the underlying disbursement vouchers, invoices, official receipts, contracts, billing statements, and actual withholding transactions, they merely corroborate petitioner's internal recording of the transactions. They do not strengthen petitioner's claim that the withholding taxes remitted to the BIR were erroneous or excessive.

In sum, petitioner failed to discharge the burden required in claims for refund or tax credit for EWT, VAT, and OPT.

*Petitioner, as withholding agent, is not relieved of the burden of proof*

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77 *Ibid.*
78 *Commissioner of Internal Revenue v. Philippine Bank of Communications*, G.R. No. 211348, February 23, 2022 [Per J. Hernando, Second Division].
79 *Motion for Reconsideration*, Exhibit "P-13," Division Docket – Vol. II, p. 746.

Petitioner argues that the doctrine that tax refunds are construed *strictissimi juris* against the taxpayer should not apply because petitioner acted merely as a withholding agent and not as a statutory taxpayer upon whom the tax was imposed.

In *Commissioner of Internal Revenue v. Proctor & Gamble Philippine Manufacturing Corporation*,[80] the Supreme Court recognized the right of a withholding agent to claim a refund of taxes withheld and remitted to the government. The Court explained that a withholding agent is not a mere passive conduit. Rather, under the withholding tax system, the withholding agent is personally liable for such tax, and is directly and independently liable for the correct amount of tax that should be withheld and remitted.

Thus, petitioner cannot invoke its status as withholding agent to avoid the strict evidentiary burden imposed in refund cases. The very reason a withholding agent may bring a refund claim is that the law treats it as a person liable for the tax withheld and remitted. Having come to court to recover amounts allegedly over-remitted in that capacity, petitioner must likewise prove, by competent and sufficient evidence, that the remittance was erroneous and excessive.

Accordingly, the doctrine that tax refunds are construed *strictissimi juris* against the claimant applies with equal force. Petitioner's status as withholding agent does not relieve it of the burden of proving its entitlement to refund.

*The BIR letters do not constitute conclusive proof of petitioner's entitlement to refund or tax credit*

Petitioner further argues that the Court in Division failed to appreciate the probative value of respondent's letters dated June 18, 2021,[81] August 11, 2021,[82] and December 15, 2021,[83] which allegedly recognized petitioner's over-remittance for September 2018. Petitioner thus insists that these letters should have been treated as admissions against interest under Section 27, Rule 130 of the Revised Rules on Evidence.[84]

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80 G.R. No. 66838 (Resolution), December 02, 1991 [Per J. Feliciano, *En Banc*].
81 *Supra*, note 39.
82 *Supra*, note 40.
83 *Supra*, note 41.
84 *EB* Docket, p. 26.

Under Section 27, Rule 130 of the Revised Rules on Evidence,[85] the act, declaration, or omission of a party as to a relevant fact may be given in evidence against him. For an admission to be admissible, however, it must: (a) involve matters of fact, and not of law; (b) be categorical and definite; (c) be knowingly and voluntarily made; and (d) be adverse to the admitter's interests; otherwise it would be self-serving and inadmissible.[86]

Even assuming that the subject letters may be treated as admissions, such characterization bears only on their admissibility, or whether they may be considered together with the other evidence on record. It does not necessarily determine their probative value, much less render them conclusive proof of petitioner's entitlement to a refund or tax credit. As explained in *UCPB General Insurance Co., Inc. v. Pascual Liner, Inc.*,[87] admissibility refers to whether a piece of evidence may be considered at all, while probative value refers to whether such admitted evidence sufficiently proves an issue. Thus, the subject letters, even if admitted, must be determined not in isolation, but from the whole statement and from other matters intimately related or connected therewith.

Here, the subject letters do not categorically and definitely admit that petitioner is entitled to the claimed tax credit in the amount of ₱2,447,669.39. The letters do not identify the specific transactions allegedly subjected to erroneous withholding. The letters do not establish the correct tax base nor show the applicable withholding tax rates. Neither do the letters prove that the amounts actually remitted exceeded the amounts legally due.

At most, the letters show that petitioner's administrative claim for credit on its September 2018 over-remittance was received and evaluated by the BIR, or that certain computations were made in the course of such evaluation. They do not dispense with petitioner's burden to prove by competent and sufficient evidence every fact necessary to establish its claim.

Further, there is no sufficient showing that the alleged admissions were made by the CIR in a categorical and final manner. Absent a clear, definite, and adverse admission by the proper party, and absent competent evidence proving the actual erroneous payment, petitioner's reliance on the BIR letters must fail.

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85 Rule 130, Section 27. *Admission of a party.* – The act, declaration or omission of a party as to a relevant fact may be given in evidence against him or her.

86 *People v. Thanaraj y Gloria*, G.R. No. 262944, July 29, 2024 [Per J. J.Y. Lopez, Second Division].

87 G.R. No. 242328, April 26, 2021 [Per J. J.Y. Lopez, Third Division].

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In sum, while the Court *En Banc* has jurisdiction over the instant Petition and petitioner's administrative and judicial claims were seasonably filed, petitioner nevertheless failed to discharge the burden required in claims for refund or tax credit under Section 204(C) and 229 of the NIRC of 1997, as amended.

The evidence on record established only that petitioner remitted withholding taxes for September 2018. It did not completely establish that the amounts remitted were excessive or beyond what was legally due such that it is tantamount to erroneous collection under Section 229 of the NIRC of 1997, as amended. Petitioner's reliance on the discrepancies between the tax returns and the alphalists were allegations, at best, absent the underlying disbursement vouchers, invoices, official receipts, or other competent source documents. Without the source documents, the Court had no evidentiary basis to verify petitioner's claim. To reiterate for purpose of emphasis, cases before the CTA are decided strictly on the basis of the evidence formally offered and admitted thereto.[88] The Court cannot speculate on the existence or correctness of the alleged over-remittance, much less supply the missing evidence necessary to sustain petitioner's claim of over-remittance or erroneous payment.

Neither can petitioner's status as withholding agent excuse it from the strict evidentiary burden imposed in refund cases. The very basis of its right to sue is its direct and independent liability for the taxes withheld and remitted.

Finally, the BIR letters invoked by petitioner do not constitute a categorical, definite, and final admission of entitlement of the claimed tax credit, and cannot substitute for competent proof of erroneous payment.

All told, petitioner's claim rests on its own summaries and computations of the alleged over-remittance, which are unsupported by competent source documents sufficient to establish the factual and legal bases of erroneous collection. Since tax refunds and credits partake of the nature of tax exemptions and are construed *strictissimi juris* against the claimant, petitioner was bound to prove every fact necessary to support its claim of ₱2,447,669.39. This, petitioner failed to do. Consequently, the Court finds no reversible error on the part of the Court in Division in denying petitioner's claim for tax credit.

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88 *Commissioner of Internal Revenue v. United Salvage and Towage (Phils.), Inc.*, G.R. No. 197515, July 02, 2014 [Per J. Peralta, Third Division].

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**WHEREFORE**, premises considered, the instant *Petition for Review* is **DENIED** for lack of merit. The assailed Decision and Resolution dated March 26, 2024 and September 24, 2024, respectively, in CTA Case No. 10394 are **AFFIRMED.**

**SO ORDERED.**

**HENRY S. ANGELES**
Associate Justice

**WE CONCUR:**

**MA. BELEN M. RINGPIS-LIBAN**
Presiding 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

*(I concur as to result.)*
**CORAZON G. FERRER-FLORES**
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.

Ma. Belen S.L.
**MA. BELEN M. RINGPIS-LIBAN**
Presiding Justice