REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	CTA EB No. 1464 (CTA Case No. 8638)
	Present:
-versus-	DEL ROSARIO, *PJ*; CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN, and MANAHAN, *JJ*.
HONDA CARS MAKATI, INC., Respondent.	Promulgated: JUN 21 2018 4:00 p.m.

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RESOLUTION

Fabon-Victorino, J.:

On December 4, 2017, this Court rendered a Decision disposing the above-entitled case as follows:

> **WHEREFORE**, the Petition for Review dated June 15, 2017 filed by the Commissioner of Internal Revenue is hereby **DENIED**, for lack of merit.
>
> **SO ORDERED**.[1]

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[1] *Rollo*, p.166.

On January 5, 2018, petitioner filed the instant Motion for Reconsideration,[2] insisting that the Court in Division has no jurisdiction to entertain respondent's judicial claim for refund as it was prematurely filed by respondent who failed to submit to the Bureau of Internal Revenue (BIR) supporting documents enumerated under Revenue Memorandum Order (RMO) No. 53-98 and Revenue Regulation (RR) No. 2-2006. By so doing, respondent failed to exhaust administrative remedies available at his level, thereby depriving the Court of jurisdiction over its Petition for Review.

Moreover, respondent failed to meet all the conditions set forth under RR No. 2-98 to be entitled to the refund of its alleged creditable withholding tax (CWT). In particular, respondent was unable to establish the fact of withholding and remittance of the subject CWTs to the BIR. For want of proof of actual withholding and remittance of the subject CWTs to the BIR, respondent's judicial claim for refund must fail.

In rejecting the foregoing arguments, respondent retorts that the points that petitioner raised were weighed and found wanting by the Court in Division in its Decision and Resolution dated January 14, 2016 and May 11, 2016 respectively. In any event, it claims that: 1) the non-submission of documents in support of its refund claim at administrative level is not lethal to its cause per settled case-law on the matter; 2) the fact of withholding of the CWTs subject of the refund claim to the extent of ₱25,298,788.31 was clearly established in the proceedings before the Court in Division and shown in several documents presented particularly its schedule of creditable taxes withheld, summary of certificates of creditable taxes withheld at source, along with various Certificates of Creditable Tax Withheld at Source; and 3) proof of actual remittance of the subject CWTs may be dispensed with since it is the payor-withholding agent who bears the responsibility of remitting the same to the BIR.

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[2] Ibid. at pp. 168-177.

THE RULING OF THE COURT

The instant Motion lacks merit.

The issue of non-submission of documents in an administrative claim for refund has been the usual, if not the regular bone of contention in most of petitioner's appeal. And notwithstanding the constant ruling of this Court that non-submission of complete supporting documents in the administrative level is not fatal to the claimant's judicial recourse, petitioner would time and again raise this issue in his appeal. In any event, in page 6 of the impugned Decision, the Court declared that this Tribunal is not precluded from admitting evidence identified and formally offered by petitioner. Whether the documents presented during the trial were submitted to the BIR level shall have no bearing in resolving the present controversy as the basis of the Court's decision is only the pieces of evidence formally offered by the parties and consequently admitted by the Court. Under Section 8 of RA 1125, the Court of Tax Appeals (CTA) is described as a court of record. As cases filed before it are litigated *de novo,* party litigants should prove every minute aspect of their cases.[3]

Petitioner further argues that respondent failed to prove the fact of withholding and actual remittance of the CWTs subject of the refund, warranting the denial of its refund claim.

The argument deserves scant consideration.

Proof of *actual remittance* is not a condition *sine qua non* for a successful prosecution of CWT refund. Under Sections 57 and 58 of the 1997 National Internal Revenue Code (NIRC), as amended, it is the payor-withholding agent, and not the payee-refund claimant such as respondent, who bears the responsibility of withholding and remitting income taxes.[4] Respondent has no control over the remittance of the taxes withheld from its income by the withholding agent

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[3] *Commissioner of Internal Revenue vs. Manila Mining Corporation,* G.R. No. 153204, August 31, 2005.
[4] *Commissioner of Internal Revenue vs. Philippine National Bank*, G.R. No. 180290, September 29, 2014.

or payor who is the agent of petitioner.[5] On the strength of the foregoing observations, it is clear that there is no need for respondent to demonstrate by competent proof the actual remittance of the CWTs sought to be refunded for the *onus* of establishing the same lies with the payors-withholding agents, or the persons/entities accountable for remitting withholding taxes and not the former.

The next question – was respondent able to sufficiently establish that the creditable taxes in the present claim for refund were indeed subjected to *withholding*? The answer is in the affirmative.

Section 58(B)[6] of the NIRC, as amended states that payors/withholding-agents are mandated, *inter alia* to provide respondent-income payee a written statement containing the amount of income or yield paid, as well as the amount of tax deducted and withheld therefrom. Such documents[7] are in turn enshrined in the various Certificates of Creditable Tax Withheld at Source (BIR Form No. 2307) duly issued by respondent's income payors/withholding agents. 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.[8]

A revisit of the record reveals that respondent presented numerous Certificates of Creditable Tax Withheld at Source (BIR Form No. 2307)[9] comprising of CWTs in the

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[5] See *Commissioner of Internal Revenue vs. Asia Transmission Corporation,* G.R. No. 179617, January 19, 2011.

[6] **SEC. 58. Returns and Payment of Taxes Withheld at Source.** – xxx

(B) Statement of Income Payments Made and Taxes Withheld. - Every withholding agent required to deduct and withhold taxes under Section 57 shall furnish each recipient, in respect to his or its receipts during the calendar quarter or year, <u>a written statement showing the income or other payments made by the withholding agent during such quarter or year, and the amount of the tax deducted and withheld therefrom</u>, simultaneously upon payment at the request of the payee xxx (underscoring supplied).

[7] The document which may be accepted as evidence of the fact of withholding must emanate from the payor itself, and not merely from the payee, and must indicate the name of the payor, the income payment basis of the tax withheld, the amount of the tax withheld and the nature of the tax paid. See *Banco Filipino Savings and Mortgage Bank vs. Court of Appeals, et al.,* G.R. No. 155682, March 27, 2007.

[8] See Note 5.

[9] Exhibits P-32-1 to P-32-5206.

aggregate amount of ₱25,812,793.00. However, a portion thereof, totaling ₱514,004.69,[10] failed to pass the benchmark of substantiation prescribed under Section 58(B) of the NIRC, as amended, as implemented by Section 2.58.3 of RR No. 2-98. As such, no creditable taxes may be validly demanded therefrom. Deducting the disallowances made, respondent has indubitably proved, albeit partially, that the creditable taxes in the total amount of ₱25,298,788.31[11] were indeed subjected to withholding by its payors/withholding agents.

To conclude, the all too familiar complaint is that the government acts with dispatch when it comes to tax collection, but pays little, if any, attention to tax claims for refund or exemption. It is high time our tax collectors prove the cynics wrong.[12]

WHEREFORE, finding no compelling reason to modify, much more, depart from the ruling in the impugned Decision of December 4, 2017, petitioner Commissioner of Internal Revenue's Motion for Reconsideration dated January 4, 2018 is **DENIED**, for lack of merit.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

We Concur:

ROMAN G. DEL ROSARIO
Presiding Justice

[10] The amount of ₱182,361.53 pertains to disallowances due to erroneous issuance and double entries of BIR Form No. 2307 of respondent's payors as found by the Court-commissioned independent certified public accountant, while ₱331,643.16 were further disallowances as found by the Court in Division (₱182,361.53 + ₱331,643.16 = ₱514,004.69).
[11] ₱25,812,793.00 - ₱514,004.69.
[12] See *Commissioner of Internal Revenue vs. Mirant Pagbilao Corporation (Formerly Southern Energy Quezon, Inc.),* G.R. No. 172129, September12, 2008.

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

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

(On Leave)
CATHERINE T. MANAHAN
Associate Justice