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

## SPECIAL SECOND DIVISION

**STATELAND, INC.,**

Petitioner,

- versus -

**COMMISSIONER OF INTERNAL REVENUE,**
Respondent.

**CTA CASE NO. 8633**

Members:

**CASTAÑEDA, JR.,** *Chairperson* and
**CASANOVA,** *JJ.*

Promulgated:

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# RESOLUTION

**CASTAÑEDA, JR.,** ***J.***:

For resolution is respondent's **Motion for Partial Reconsideration (Re: Amended Decision Promulgated on 12 January 2018)**, filed on January 29, 2018 with petitioner's **Comment/Opposition [To Respondent's Motion for Partial Reconsideration dated 26 January 2018]**, filed on February 21, 2018.

Respondent seeks reconsideration of this Court's **Amended Decision** dated January 10, 2018, the dispositive portion of which reads:

> "**WHEREFORE,** the instant Petition for Review is **PARTIALLY GRANTED**. Accordingly, respondent is **ORDERED TO REFUND** or **ISSUE TAX CREDIT CERTIFICATE** to petitioner in the reduced amount of

**₱12,934,749.05** for its unutilized excess CWT for the taxable year 2010.

**SO ORDERED.**"

In the assailed Amended Decision, the Court stated that petitioner has sufficiently proven its entitlement to a refund or issuance of tax credit certificate representing its unutilized excess Creditable Withholding Tax (CWT) for the taxable year 2010, in the modified amount of ₱12,934,749.05, computed as follows:

| | |
|---|---|
| Total CWT claimed per Petition | ₱13,654,761.27 |
| Less: | |
| 1) ICPA's Findings | |
| Cash Basis | 1,338.96 |
| Installment Method – Last Collection in 2010 but RGP in Prior Years | 199,602.23 |
| Installment Method – Last Collection in 2010 but RGP in 2010 | 27,219.33 |
| 2) Court's Findings | |
| Cash Basis | 94,629.93 |
| Corporate Accounts | 292,550.01 |
| HDMF | 104,671.76 |
| **Total refundable CWT for the taxable year 2010** | **₱12,934,749.05** |

Respondent moves for partial reconsideration of the assailed Decision based on the following grounds:

I. The Court erred in considering the additional evidence presented by petitioner as these were not newly discovered but in fact were forgotten evidence.

II. The Court erred in ruling that petitioner is entitled to a refund or issuance of tax credit certificate for alleged unutilized excess creditable withholding tax for the taxable year 2010 in the reduced amount of ₱12,934,749.05 despite no evidence of actual remittance to BIR.

III. The instant claim for tax refund should be denied for petitioner's failure to submit complete documents in support of its administrative claim.

Respondent contends that the additional pieces of evidence should not have been considered by the Court as these were allegedly not newly discovered but instead were forgotten evidence. These were neither omitted through inadvertence nor mistake and were not presented to correct evidence previously offered.

Further, respondent argues that proof of actual remittance of the taxes withheld to the BIR is indispensable in a claim for refund of excess CWT pursuant to Revenue Regulations (RR) No. 2-2006[1].

Lastly, respondent avers that for petitioner to be entitled to refund, there must be compliance with the prescribed checklist of requirements involving claims for unutilized creditable withholding tax pursuant to Revenue Memorandum Order (RMO) No. 53-98[2].

Allegedly, petitioner must first prove its compliance with RMO No. 53-98 and RR 2-2006 to give support to the validity of its claim for unutilized CWTs for the taxable year 2010.

On the other hand, petitioner in its comment/opposition to respondent's motion, claims that its additional evidence are merely clarificatory evidence which were submitted to explain the documents already adduced during the trial proper. Petitioner contends that even on the assumption that petitioner's additional evidence can be construed as new trial, the same is not violative of any procedural principle. The allegation of "forgotten evidence" was already raised in respondent's Opposition to the Omnibus Motion but was not upheld by the Court.

Petitioner also states that the contention of respondent that proof of actual remittance to the BIR of the taxes withheld is indispensable in a claim for refund of excess CWT was only raised for the first time.

Petitioner explains that the remittance to the BIR is easily discernible from the Certificates of Creditable Tax Withheld at Source

[1] Mandatory Attachments of the Summary Alphalist of Withholding Agents of Income Payments Subjected to Tax Withheld at Source (SWAT) 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.

[2] 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 Revenue Officer, all of which Comprise a Complete Tax Docket.

– BIR Form No. 2307 (Exhibits "P-8" to "P-311") and from BIR Form 1616 (Exhibits "P-584" to "P-886") wherein the details of payment were duly indicated and the Alpha List of Payors of Creditable Withholding Tax for Year 2010 (Exhibit "P-1404") was also offered in evidence. Allegedly, the same are *prima facie* proof of actual payments to the government through its withholding agents.

More so, petitioner cited the case of *Commissioner of Internal Revenue vs. Asian Transmission Corporation*[3] which states that proof of actual remittance to the BIR is unnecessary in a claim for tax refund and that proof of remittance is the responsibility of the withholding agent and not of the taxpayer-refund claimant.

Lastly, petitioner in negating respondent's contention that petitioner was not able to submit complete documents in support of its administrative claim for refund, cited several cases that judicial claims should not be denied on the sole ground that the taxpayer failed to submit before the Bureau of Internal Revenue (BIR) complete documents in support of its administrative claim and that complete documents may be determined by the taxpayer as those necessary to support their claim.

We rule for the petitioner.

*First,* respondent is not correct in his argument that the additional pieces of evidence presented by petitioner should not have been considered by the Court as these were allegedly not newly discovered evidence but instead were forgotten evidence.

It can be recalled that in respondent's Manifestation [Re: Petitioner's Motion to Admit Attached Formal Offer of Evidence with Attached Amended Supplemental Formal Offer of Evidence dated 27 December 2016], filed on January 25, 2017[4], he did not interpose objection to the admission of petitioner's exhibits, except only as to the manner they were identified in open court and subject to the condition that the same have faithfully complied with the necessity of comparison with the original documents as required under Section 4, Rule 12 of the Revised Rules of the Court of Tax Appeals.

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[3] G.R. No. 179617, January 19, 2011.
[4] Docket, vol. VIII. p. 4152.

As held in the case of *Edmundo Quebral vs. Court of Appeals and Union Refinery Corporation*[5], evidence not objected to become property of the case, and all parties to the case are considered amenable to any favorable or unfavorable effects resulting from the evidence.

Notably, respondent was also given equal opportunity to present additional evidence, however respondent through counsel manifested that he will no longer present the same.

Section 8 of RA No. 1125, as amended, creating the Court of Tax Appeals, expressly provides that proceedings before this Court shall not be governed strictly by technical rules of evidence and there are instances where the Court allows the reopening of trial even though judgment has already been rendered.

Accordingly, petitioner demonstrated convincing reason for the Court to apply the technical rules liberally. Hence, the additional pieces of evidence presented were considered in resolving the instant case.

*Second,* respondent's contention that proof of actual remittance to the BIR of the taxes withheld is indispensable in a claim for refund is not correct.

In the original Decision dated July 12, 2016[6], the Court has already established petitioner's compliance with the second requirement in a claim for refund. Petitioner presented its Certificates of Creditable Tax Withheld at Source (BIR Form No. 2307)[7], Withholding Tax Remittance Returns (BIR Form No. 1606)[8], and Certificates Authorizing Registration for the year 2010[9].

Citing the case of *Philippine National Bank vs. Commissioner of Internal Revenue*[10], the Supreme Court held that the Withholding Tax Remittance Return (BIR Form No. 1606) is sufficient in proving that taxes withheld from buyers were indeed remitted to the BIR, to wit:

[5] G.R. No. 101941, January 25, 1996.
[6] Docket vol. V, pp. 2994-3012.
[7] Exhibits "P-8" to "P311".
[8] Exhibits "P-584" to "P-618", "P-620" to "P-634", "P-636" to "P-715", "P-717" to "P-720", "P-722" to "P-777", "P-779" to "P-793", "P-796" to "P-803", "P-805" to "P-828", and "P-830" to "P-886".
[9] Exhibits "P-619", "P-635", "P-716", "P-721", "P-778", "P-794", "P-795", "P-804", and "P-829".
[10] G.R. No. 206019, March 18, 2015.

> "In claims for excess and unutilized creditable withholding tax, the submission of BIR Forms 2307 is to prove the fact of withholding of the excess creditable withholding tax being claimed for refund. This is clear in the provision of Section 58.3, RR 2-98, as amended, and in various rulings of the Court. In the words of Section 2.58.3, RR 2-98, '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.
>
> xxx xxx xxx
>
> It must be noted that PNB had already presented the **Withholding Tax Remittance Returns (BIR Form No. 1606)** relevant to the transaction. The said forms show that the amount of P74,400,028.49 was withheld and paid by PNB in the year 2003. It **contains, among other data, the name of the payor and the payee, the description of the property subject of the transaction, and the determination of the taxable base, and the tax rate applied. These are the very same key information that would be gathered from BIR Form No. 2307.**" (*Emphasis supplied*)

Based on the foregoing, petitioner was able to establish the fact of withholding and remittance of its CWT to the BIR through the documents presented to the Court.

*Finally*, respondent's contention that petitioner was not able to submit complete documents in support of its administrative claim for refund is untenable.

It must be emphasized that the submission of complete supporting documents by the taxpayer-claimant is presumed. This is in accordance with the Supreme Court's pronouncement in *CBK Power Company Limited vs. Commissioner of Internal Revenue*[11] wherein it was held that:

> "Bearing in mind that the burden to prove entitlement to a tax refund is on the taxpayer, it is

[11] G.R. Nos. 198729-30, January 15, 2014.

> presumed that in order to discharge its burden, petitioner had attached complete supporting documents necessary to prove its entitlement to a refund in its application, absent any evidence to the contrary."

The question of whether or not the evidence submitted by a party is sufficient to warrant the granting of a claim for refund lies within the sound discretion and judgment of the Court. [12]

In view of the foregoing, this Court finds no compelling reason to reverse or modify the assailed Amended Decision.

**WHEREFORE**, premises considered, respondent's **Motion for Partial Reconsideration (Re: Amended Decision Promulgated on 12 January 2018)** is hereby **DENIED** for lack of merit.

**SO ORDERED.**

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

I CONCUR:

**CAESAR A. CASANOVA**
Associate Justice

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[12] *Commissioner of Internal Revenue vs. Semirara Mining Corporation*, G.R. No. 202922, June 19, 2017, citing *Pilipinas Total Gas, Inc. vs. Commissioner of Internal Revenue,* G.R. No. 207112, December 8, 2015.