REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

FIRST DIVISION

PHILAM PROPERTIES CORPORATION, Petitioner,	**CTA CASE NO. 8469**
	Members:
- versus -	**DEL ROSARIO**, *Chariperson*, **UY**, *and* **MINDARO-GRULLA**, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: JAN 23 2015 1:40 p.m.

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RESOLUTION

DEL ROSARIO, P.J.:

This resolves respondent's **"MOTION FOR RECONSIDERATION"** posted on October 24, 2014, with petitioner's **"OPPOSITION (TO THE MOTION FOR RECONSIDERATION)"** filed on November 25, 2014.

In the subject Motion for Reconsideration, respondent prays that the Court recall its Decision promulgated on September 29, 2014 and a new one be entered denying petitioner's claim for refund. The dispositive portion of the assailed Decision reads:

> **WHEREFORE**, in light of the foregoing principles, the Petition for Review is hereby **PARTIALLY GRANTED**, respondent **COMMISSIONER OF INTERNAL REVENUE** is hereby ordered to refund or issue a tax credit certificate to petitioner **PHILAM PROPERTIES CORPORATION** in the total amount of **TEN MILLION ONE HUNDRED FORTY-FOUR THOUSAND NINE HUNDRED FORTY-EIGHT** and **21/100 (P10,144,948.21)** representing petitioner's excess/unutilized creditable withholding tax for taxable year ended December 31, 2009.
>
> **SO ORDERED.**

Respondent contends that the Court should have denied petitioner's claim for refund on account of petitioner's failure to present the following: a) necessary documents, such as but not limited to, official receipts, sales invoices, detailed general ledger, sales register, management contracts, lease contracts, reconciliation schedules or any other document, which will prove that the income payments related to the claimed creditable withholding taxes may be traced and confirmed as forming part of the taxable gross income reported in the income tax return;[1] b) evidence to prove the actual remittance to the Bureau of Internal Revenue (BIR) of the taxes withheld by the payors; and, c) payors and withholding agents, to testify on the fact of withholding and remittance of the taxes withheld to the BIR.

Petitioner, on the other hand, counter-argues that it presented the source documents which established that the income payments (from which taxes were withheld) were reported as part of petitioner's gross income. Petitioner also retorts that the Certificates of Creditable Tax Withheld at Source (CWTs) are sufficient evidence to prove the fact of withholding.[2]

After a careful evaluation of the records of the case and the parties' respective arguments, the Court finds no sufficient and cogent reason to disturb its ruling in the assailed Decision.

Anent respondent's argument that petitioner did not submit the necessary documents to prove that the income payments related to the claimed creditable withholding taxes formed part of the taxable gross income reported by petitioner in its income tax return, the Court notes that the evidence submitted by petitioner belies such claim. Indubitably, Exhibits "B"[3], "C"[4], "D"[5], "E"[6], "F"[7], "G"[8], "H"[9], "I"[10], "J"[11], "T" to "T2"[12], "U" to "

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[1] In support of her contention, respondent cites *Jardine Lloyd Thompson Insurance Brokers, Inc. vs. Commissioner of Internal Revenue,* CTA Case No. 7916, September 23, 2011 and *Havi Food Services, Phils. vs. Commissioner of Internal Revenue,* CTA Case No. 7735, February 28, 2011.
[2] In support of its position, petitioner cites *Commissioner of Internal Revenue vs. Sonoma Services, Inc.,* CTA EB No. 931, December 11, 2013 which in turn cites *Commissioner of Internal Revenue vs. Asian Transmission Corporation*, G.R. No. 179617, January 19, 2011).
[3] Hard copy of petitioner's Corporate Annual Income Tax Return (ITR) for CY 2009
[4] ITR of petitioner for CY 2010 inclusive of Audited Financial statements filed with the BIR on April 14, 2011.
[5] Summary of income payments and the corresponding amounts of taxes withheld by petitioner's tenants/customers for CY 2009 consisting of five pages.
[6] 1st Quarter ITR of petitioner for CY 2009.
[7] 2nd Quarter ITR of petitioner for CY 2009.
[8] 3rd Quarter ITR of petitioner for CY 2009.
[9] 1st Quarter ITR of petitioner for CY 2010.
[10] 2nd Quarter ITR of petitioner for CY 2010.
[11] 3rd Quarter ITR of petitioner for CY 2010.

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U2"[13], "V" to "V574"[14], "W" to "W46"[15], "X" to "X8"[16], "Y" to "Y2"[17], "Z" to "Z22"[18], "AA" to "AA11"[19], "BB" to "BB113"[20], "CC" to "CC11"[21], "DD" to "DD261"[22], "EE"[23], "FF"[24], "GG"[25], "HH"[26], and "II"[27], which were examined by the Court-commissioned Independent Certified Public Accountant (ICPA), sufficiently established that the income payments related to the claimed creditable withholding taxes indeed formed part of the taxable gross income declared by petitioner in its income tax return.

With regard to respondent's proposition that petitioner should have submitted proof of actual remittance to the BIR of the taxes withheld, the Court finds the same bereft of merit. Pursuant to Section 2.58.3 of Revenue Regulations (RR) No. 2-98, the remittance of the taxes withheld to the BIR is the responsibility of the withholding agent and not the payee. On this point, the pronouncement of the Supreme Court in *Commissioner of Internal Revenue vs. Asian Transmission Corporation*[28] is instructive:

> "xxx **proof of actual remittance by the respondent is not needed in order to prove withholding and remittance of taxes to petitioner.** Section 2.58.3 (B) of Revenue Regulation No. 2-98 clearly provides that proof of remittance is the responsibility of the withholding agent and of the taxpayer-refund claimant. It should be borne in mind by the petitioner that payors of withholding taxes are by themselves constituted as withholding agents of the BIR. The taxes they withhold are held in trust for the government. In the event that the withholding agents commit fraud against the government by not

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[12] Photocopy of Certificate of Creditable Tax Withheld at Source (CWT) for CY 2008.
[13] Photocopy of CWT for CY 2009.
[14] Photocopies of CWTs, supported with original CWTs, and official receipts, with related income recorded in 2009 books.
[15] Photocopies of CWTs, supported with original CWTs and official receipts, with related income recorded in 2008 books.
[16] Photocopies of CWTs, supported with original CWTs, official receipts not provided, with related income not recorded in 2009 books.
[17] Schedule of CWTs with original CWTs, with official receipt dated 2008 and with related income recorded in 2009 books.
[18] Photocopies of CWTs, supported with original CWTs, w/ official receipts dated 2010, with related income recorded in 2009 books.
[19] Photocopies of CWTs supported w/ original CWTs, original ORs not provided with related income in 2009 books.
[20] Photocopies of CWTs supported with originals CWTs; partly valid and partly with exceptions.
[21] Other supporting documents for CWTs with official receipts dated 2010, with related income recorded in 2009 books.
[22] Photocopies of CWTs claimed in CY 2008 ITR.
[23] General Ledger for CY 2009 consisting of 134 pages.
[24] Audit Trail Listing for CY 2009 consisting of 720 pages.
[25] Allocation Report for CY 2009 consisting of 65 pages.
[26] Photocopy of petitioner's duly filed Annual ITR for CY 2008.
[27] Photocopy of petitioner's duly filed ITR for CY 2011.
[28] G.R. No. 179617, January 19, 2011.

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> remitting the taxes withheld, **such act should not prejudice herein respondent who has been duly withheld taxes by the withholding agents acting under government authority.** Moreover, pursuant to Section 57 and 58 of the NIRC of 1997, as amended, the withholding of income tax and the remittance thereof to the BIR is the responsibility of the payor and not the payee. Therefore, respondent, x x x has no control over the remittance of the taxes withheld from its income by the withholding agent or payor who is the agent of the petitioner. 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. **We stress that the pertinent provisions of law and established jurisprudence evidently demonstrate that there is no need for the claimant, respondent in this case, to prove actual remittance by the withholding agent (payor) to the BIR."** (*Emphasis supplied*)

Stated otherwise, proof of actual remittance of the taxes withheld to the BIR is not indispensable in a claim for refund of excess creditable withholding taxes. Petitioner is only required to establish the fact of withholding through the CWTs (BIR Form No. 2307) duly issued by its payors.[29]

Lastly, as regards respondent's argument that the CWTs are not sufficient to establish the fact of withholding as the withholding agents/payors who executed the aforementioned forms were not presented in open court, the Court finds the same insignificant in determining petitioner's entitlement to the claim for refund or issuance of tax credit certificate. Parenthetically, the Court found that the CWTs which appear to have been issued by the payors in the ordinary course of business, and submitted in evidence by petitioner are complete with relevant details which are needed to evaluate its claim. Needless to say, the fact of withholding is necessarily presumed to have been made in the ordinary course of business pursuant to Section 3(q) of Rule 131 of the Revised Rules on Evidence.

All told, there is no basis for the Court to reverse or modify the assailed Decision.

WHEREFORE, based on the foregoing premises, respondent Commissioner of Internal Revenue's **"MOTION FOR RECONSIDERATION"** posted on October 24, 2014 is hereby **DENIED.**

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[29] *Commissioner of Internal Revenue vs. Mirant (Philippines) Operations, Corporation*, G.R. No. 171742, June 15, 2011, *citing Commissioner of Internal Revenue v. Far East Bank & Trust Company (now Bank of the Philippine Islands)*, G.R. No. 173854, March 15, 2010.

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SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

WE CONCUR:

ERLINDA P. UY
Associate Justice

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