REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL THIRD DIVISION

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ZUELLIG PHARMA CORPORATION, Petitioner,	**CTA Case No. 9030**
	Members:
- versus -	**UY,** *Chairperson,* **RINGPIS-LIBAN,** *and* **MODESTO-SAN PEDRO,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	***Promulgated:*** MAY 2 6 2023 3:42p.m.

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RESOLUTION

UY, *J*.:

For resolution are the following:

1. Respondent's *Motion for Partial Reconsideration (Re: Decision promulgated 2 March 2023)*[1] filed on March 22, 2023, with petitioner's *Comment (Re: Motion for Reconsideration Dated March 17, 2023)* filed on May 2, 2023;[2] and

2. Petitioner's *Motion for Reconsideration (Re: Decision dated March 2, 2023)* filed on March 28, 2023,[3] without respondent's Comment[4] despite due notice.[5]

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[1] Docket – Vol. 4, pp. 1928 to 1937.

[2] Docket – Vol. 4, pp. 1954 to 1962.

[3] Docket – Vol. 4, pp. 1941 to 1951.

[4] Records Verification Report dated May 4, 2023 issued by Leocadia D. Victoria, Records Officer I, and Maria Anna E. Cada, Records Officer III, and noted by Benjamin D. Pineda, Jr., Chief Judicial Staff Officer, Judicial Records Division, states that respondent has no Comment filed on petitioner's *Motion for Reconsideration (Re: Decision dated March 2, 2023)*, Docket – Vol. 4, p. 1963.

[5] Respondent received the *Minute Resolution* dated April 4, 2023 ordering him to file his Comment on petitioner's *Motion for Reconsideration (Re: Decision dated March 2, 2023)* within five (5) days from notice, on April 17, 2023, Docket – Vol. 4, p. 1953.

The dispositive portion of the assailed *Decision* reads:

***Decision* dated March 2, 2023:**

> "**WHEREFORE**, in light of the foregoing considerations, the instant *Petition for Review* is **PARTIALLY GRANTED**. Accordingly, respondent is **ORDERED TO REFUND OR ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner, in the reduced amount of **₱381,864,843.32**, representing petitioner's excess and unutilized CWT for CY ended December 31, 2012.
>
> **SO ORDERED.**"

Respondent's Motion for Partial Reconsideration (Re: Decision promulgated 2 March 2023)

In his *Motion for Partial Reconsideration*, respondent prays that the Court reverse and set aside the *Decision* promulgated on March 2, 2023, and render a new one denying the entire claim for refund.

Respondent explains that one of the vital requirements to entitle a taxpayer to the refund of creditable withholding taxes (CWTs) is that it must be shown in the return that the income, from which withholding tax was withheld, formed part of the taxpayer's gross income.

Allegedly, petitioner did not provide supporting documents to show that the income, from which the CWTs are being claimed, was declared in petitioner's Annual Income Tax Return (AITR), and that there is no direct linkage between the CWTs and the income as reflected in the AITR.

Moreover, respondent asserts that petitioner failed to substantiate its administrative claim for refund because the latter failed to submit the complete requirements under Revenue Memorandum Order (RMO) No. 53-98[6] and Revenue Regulations (RR) No. 2-2006.[7]

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[6] SUBJECT: 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.

[7] SUBJECT: 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

According to respondent, petitioner's failure to prove compliance with the requirements under RMO No. 53-98 and RR No. 2-2006 in the administrative level renders its *Petition for Review* unworthy of refund.

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

Petitioner's *Comment (Re: Motion for Partial Reconsideration Dated March 17, 2023)*

In its *Comment*, petitioner points out that contrary to respondent's position, the income, upon which the CWTs claimed are based, was duly declared by petitioner in its AITR and Audited Financial Statements (AFS), and books of accounts.

Moreover, petitioner emphasizes that the documentary requirements enumerated under RMO No. 53-98 are merely a guide for revenue officers in identifying the documents to be requested from the taxpayer.

Finally, petitioner submits that claims for refund of erroneously paid taxes are, in essence, civil cases. Thus, only a preponderance of evidence is needed to grant a claim for tax refund.

Petitioner's *Motion for Reconsideration (Re: Decision dated March 2, 2023)* *without Comment filed by respondent*

In its *Motion for Reconsideration*, petitioner prays that the Court modify and set aside the assailed *Decision* dated March 2, 2023; and render judgment granting its *Petition for Review* and order respondent to refund or issue a tax credit certificate (TCC) in the full amount of ₱467,578,787.20, representing petitioner's excess and unutilized CWTs for calendar year (CY) 2012.

According to petitioner, with the procedures performed by the

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Tax to the Withholding Tax Remittance Return Filed by the Withholding Agent/Payor of Income Payments.

Independent Certified Public Accountant (ICPA), it is clear that the income, upon which the CWTs are being claimed for refund, was declared as part of petitioner's revenues in its AITR, AFS and Trial Balance. Petitioner also claims that the revenues declared were all duly supported by source documents; hence, all CWTs claimed by petitioner were duly recorded and declared.

Allegedly, its excess and unutilized CWTs for CY 2012, in the amount of ₱467,578,787.20, are duly supported and substantiated by documentary evidence, albeit infirmities found therein. Petitioner explains that the ICPA concluded that the unutilized CWTs are properly supported by BIR Forms No. 2307.

Likewise, petitioner argues that pursuant to the case of *Commissioner of Internal Revenue v. Philippine National Bank*,[8] once a claimant has established a *prima facie* right to a refund by complying with the minimum statutory requirements, the burden is shifted to respondent to disprove such claim. Thus, it was incumbent upon respondent, not the Court, to contest that the amounts withheld by petitioner's withholding agents on behalf of an entity named "Zuellig Pharma Corporation" was not made on behalf of petitioner.

What is important in a claim for refund is that the fact of withholding be established by a copy of the statement duly issued by the payor to the payee-claimant, showing the amount paid and the amount of tax withheld therefrom. Allegedly, nowhere in law and jurisprudence can it be found that the information in the BIR Forms No. 2307 should be precise and accurate. Petitioner submits that the infirmities in the information found in the BIR Forms No. 2307 were due to mere typographical errors committed by petitioner's customers and cannot be attributed to the fault of petitioner. Said BIR Forms No. 2307 still bear information that sufficiently identifies the fact of remittance.

Finally, petitioner posits that the government should not misuse technicalities to keep money that it is not entitled to, such as excess CWTs.

THE COURT'S RULING

The Court finds no merit in the parties' respective *Motions*.

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[8] G.R. No. 212699, March 13, 2019.

Respondent's Motion for Partial Reconsideration (Re: Decision promulgated 2 March 2023)

After a careful examination and consideration of respondent's arguments in his *Motion for Partial Reconsideration*, We note that the same are mere reiteration of matters which have already been considered, weighed and resolved in the assailed *Decision*. However, to dispel any doubt and to put the issues to rest, We reiterate herein the disquisitions made in the assailed *Decision*.

Petitioner was able to prove, in part, that the income, upon which the taxes were withheld, was declared as part of its gross income.

To exercise the option of refund or tax credit under Section 76 (C)[9] of the National Internal Revenue Code (NIRC) of 1997, as amended, one of the conditions that the taxpayer must comply with is that the income, upon which the taxes were withheld, was included in the return of the recipient, i.e., declared as part of the gross income.[10]

Section 2.58.3 (B) of RR No. 2-98,[11] as amended, provides:

> "(B) Claims for tax credit or refund of any creditable income tax which was deducted and withheld on income payments shall be given due course only when it is shown that **the income payment has been declared as part of the gross income** and the fact of withholding is

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[9] SEC. 76. *Final Adjustment Return.* — Every corporation liable to tax under Section 27 shall file a final adjustment return covering the total taxable income for the preceding calendar or fiscal year. If the sum of the quarterly tax payments made during the said taxable year is not equal to the total tax due on the entire taxable income of that year, the corporation shall either: x x x

(C) Be credited or refunded with the excess amount paid, as the case may be.

[10] *Republic of the Philippines, represented by the Commissioner of Internal Revenue v. Team (Phils.) Energy Corporation (formerly Mirant (Phils.) Energy Corporation)*, G.R. No. 188016, January 14, 2015.

[11] SUBJECT: Implementing Republic Act No. 8424, "An Act Amending the National Internal Revenue Code, as Amended" Relative to the Withholding on Income Subject to the Expanded Withholding Tax and Final Withholding Tax, Withholding of Income Tax on Compensation, Withholding of Creditable Value-Added Tax and Other Percentage Taxes.

> established by a copy of the withholding tax statement duly issued by the payor to the payee showing the amount paid and the amount of tax withheld therefrom.
>
> Proof of remittance is the responsibility of the withholding agent." *(Emphasis supplied)*

In the instant case, to prove its compliance with the condition that the income, upon which the taxes were withheld, was declared as part of its gross income, petitioner presented its 2012 AITR,[12] AFS for CYs 2011 and 2012,[13] Reconciliation of Net Income Per Books against Taxable Income,[14] Schedule of Creditable Withholding Taxes Traced to Books (JV) and Related Invoices,[15] Schedule of CWTs According to ATC Codes,[16] Details for Sales Adjustments for CY 2012 per GL code 4000030 amounting to ₱113,363,626.90 per Trial Balance as of December 31, 2012,[17] and Consolidated Sales Register for CY 2012.[18]

The Court-commissioned ICPA examined the aforementioned documents and presented in the ICPA Report dated April 11, 2016[19] the result of the verification as follows:[20]

xxx xxx xxx

> "Out of the properly supported CWT above, we have ascertained that the **income payments relative to CWT amounting to ₱394,539,132.52 were included as part of the Petitioner's books**[21] (trial balance as of December 31, 2012 to be presented ***as Exhibit P-32***), audited financial statements (previously presented as ***Exhibit P-5***) and annual income tax (previously presented as ***Exhibit P-3***) as follows xxx:

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[12] Exhibit "P-3", Docket – Vol. 1, pp. 441 to 448.
[13] Exhibit "P-5", Docket – Vol. 1, pp. 458 to 500, Docket – Vol. 2, p. 501.
[14] Annex 8, ICPA CD.
[15] Annex 37, ICPA CD.
[16] Annex 2, ICPA CD.
[17] Exhibit "P-21495", Hard. Drive.
[18] Exhibit "P-37", Hard Drive.
[19] Exhibit "P-25", Docket – Vol. 1, pp. 307 to 344 and CD.
[20] Exhibit "P-25", p. 35, Docket – Vol. 1, p. 342.
[21] Emphasis and underscoring supplied.

	Annex Reference	Income Payment	Tax Withheld
CWT properly supported by original BIR Form 2307	Annex 3-a	₱ 42,116,749,625.82	₱ 391,998,720.51
CWT duly supported by original BIR Form 2307 with no income payment amount indicated therein	Annex 3-b	6,386,464.79	52,413.00
CWT duly supported by original BIR Form 2307 with Petitioner's name but no Petitioner's TIN indicated therein	Annex 3-c	122,269,809.16	1,215,826.21
CWT duly supported by original BIR Form 2307 with incorrect Petitioner's TIN indicated therein	Annex 3-d	137,607,740.54	1,236,453.50
CWT duly supported by original BIR Form 2307 with incorrect income payment amount and Petitioner's TIN indicated therein	Annex 3-e	7,375,446.23	35,719.30
Total		**₱ 42,390,389,086.54**	**₱394,539,132.52**

From the foregoing, the Court noted that out of the total claimed CWTs for CY 2012 of ₱467,578,787.20, only the CWTs of ₱391,998,720.51 (*under Annex 3-a of Exhibit "P-25"*) were properly supported by original BIR Forms No. 2307 and the **related income payments of ₱42,116,749,625.82 were traced to the gross income recorded in petitioner's books and reported in its AFS and AITR for CY 2012**, subject to the adjustments found on pages 16 to 28 of the assailed *Decision*.

Thus, there is no merit in respondent's claim that petitioner did not provide supporting documents to show that the income, from which CWTs are being claimed, was declared in its AITR.

Petitioner's alleged failure to submit the documents listed under RMO No. 53-98 and RR No. 2-2006 in its administrative claim is not fatal to its judicial claim for refund.

Respondent is mistaken in his assertion that petitioner's failure to prove compliance with the requirements under RMO No. 53-98 and RR No. 2-2006 in the administrative level renders petitioner's *Petition for Review* unworthy of refund.

A perusal of RMO No. 53-98 and RR No. 2-2006 reveals that there is nothing in the said regulations which require the submission of all the documents specified therein before a taxpayer may be entitled to a refund.

In *Pilipinas Total Gas, Inc. v. Commissioner of Internal Revenue*,[22] the Supreme Court held that RMO No. 53-98 is addressed to internal revenue officers and employees, for purposes of equity and uniformity, to guide them as to what documents they may require taxpayers to present upon audit of their tax liabilities. Nothing stated in the issuance would show that it was intended to be a benchmark in determining whether the documents submitted by a taxpayer are actually complete to support a claim for tax credit or refund of excess unutilized excess value-added tax (VAT). There is nothing in RMO No. 53-98 itself that requires submission of the complete documents enumerated in RMO No. 53-98 for a grant of a refund or credit of input VAT. A taxpayer's failure [to comply] with the requirements listed under RMO No. 53-98 is not fatal to its claim for tax credit or refund of excess unutilized excess VAT.

While the foregoing ruling is with respect to a case which involves a claim for refund or credit of unutilized VAT, to the mind of the Court, the principle enunciated therein is also applicable to a claim for refund or issuance of a TCC of unutilized CWTs.

Thus, a taxpayer's failure to submit the requirements listed under RMO No. 53-98 is not fatal to its claim for tax credit or refund considering that RMO No. 53-98 is merely a guide to revenue officers as to what documents they may require taxpayers to present upon audit of their tax liabilities. It is never intended to be a benchmark in determining whether the documents submitted by a taxpayer are actually complete to support a claim for tax credit or refund.

Meanwhile, RR No. 2-2006 merely imposes a penalty for the non-submission of the information or statement required therein, without resulting to an outright denial of the claim for tax refund or credit.

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[22] G.R. No. 207112, December 8, 2015.

In sum, there is no basis to conclude that petitioner's alleged non-compliance with RMO No. 53-98 and RR No. 2-2006 is fatal to its claim for refund or credit.

Petitioner's *Motion for Reconsideration* *(Re: Decision dated March 2, 2023)*

Petitioner claims that with the procedures performed by the ICPA, it is clear that the income, upon which the CWTs are being claimed for refund, was declared as part of petitioner's revenues in its AITR, AFS and Trial Balance.

We do not totally agree.

Petitioner failed to prove, in part, that the income, upon which the CWTs are being claimed, was declared as part of its revenues in its AITR, AFS and Trial Balance.

A perusal of the ICPA Report reveals that:

> "Out of the properly supported CWT above, we have ascertained that the **income payments relative to CWT amounting to ₱394,539,132.52 were included as part of the Petitioner's books**[23] (trial balance as of December 31, 2012 to be presented ***as Exhibit P-32***), audited financial statements (previously presented as ***Exhibit P-5***) and annual income tax (previously presented as ***Exhibit P-3***) as follows xxx:"[24]

Thus, the ICPA himself concluded that only income payments amounting to ₱394,539,132.52 were included as part of the petitioner's books, AFS and AITR. Out of the said amount, only ₱391,998,720.51 was considered by the Court which was then subjected to further verification and further adjustments as thoroughly discussed in the assailed *Decision*.

However, it bears stressing that while the Court accords respect

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[23] Emphasis and underscoring supplied.
[24] Exhibit "P-25", p. 35, Docket – Vol. 1, p. 342.

to the ICPA's findings, said findings are not conclusive upon the Court. Section 3, Rule 13 of the Revised Rules of the Court of Tax Appeals, as amended, provides:

> "SEC. 3. *Findings of independent CPA.* — The submission by the independent CPA of pre-marked documentary exhibits shall be subject to verification and comparison with the original documents, the availability of which shall be the primary responsibility of the party possessing such documents and, secondarily, by the independent CPA. **The findings and conclusions of the independent CPA may be challenged by the parties and <u>shall not be conclusive upon the Court, which may, in whole or in part, adopt such findings and conclusions subject to verification</u>.**" *(Emphasis and underscoring supplied)*

Clearly from the foregoing, the Court is not bound by the findings of the ICPA. The Court is free to either completely or partially adopt or disregard the findings of the ICPA, after making its own verification and evaluation of the evidence on record.

As explained in the assailed *Decision*, after making its own verification and further examination of petitioner's supporting documents, the Court found that the CWTs of ₱391,998,720.51 must be reduced by ₱10,133,877.19, the details of which are found on pages 16 to 28 of the assailed *Decision*.

The infirmities found in several of petitioner's BIR Forms No. 2307 were fatal to its claim for refund of the entire excess and unutilized CWTs for CY 2012.

Petitioner asserts that although there are infirmities found in several of its BIR Forms No. 2307, its excess and unutilized CWTs for CY 2012, in the amount of ₱467,578,787.20, are duly supported and substantiated by documentary evidence, and that the ICPA concluded that the unutilized CWTs are properly supported by BIR Forms No. 2307.

Petitioner is mistaken.

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Again, the Court is not bound by the findings of the ICPA. It is free to either completely or partially adopt or disregard the same, after making its own verification and evaluation of the evidence on record. Thus, notwithstanding respondent's failure to contest that the amounts withheld by petitioner's withholding agents on behalf of an entity named "Zuellig Pharma Corporation" was not made on behalf of petitioner, the Court found, after making its own verification and further examination of petitioner's supporting documents, that the CWTs of ₱391,998,720.51 must be reduced by ₱10,133,877.19.

As regards to the *second condition* for the exercise of the option to claim for refund or tax credit under Section 76 (C) of the NIRC of 1997, as amended, i.e., 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,[25] petitioner claims that what is important is that the fact of withholding be established by a copy of the statement duly issued by the payor to the payee-claimant, showing the amount paid and the amount of tax withheld therefrom. Allegedly, nowhere in law and jurisprudence can it be found that the information in the BIR Forms No. 2307 should be precise and accurate. Petitioner insists that said BIR Forms No. 2307 still bear information that sufficiently identifies the fact of remittance.

We do not agree with petitioner.

To prove the fact of withholding, the taxpayer-claimant must submit the pertinent BIR Forms No. 2307. While there is no law which explicitly requires that the information contained therein should be precise and accurate, it is understood that filling out forms carries the implied instruction and obligation on the part of the taxpayer that the information provided therein must be true and correct.

It bears reiterating that actions for tax refund are in the nature of a claim for exemption and the law is not only construed in *strictissimi juris* against the taxpayer, but also **the pieces of evidence presented entitling a taxpayer to an exemption is *strictissimi* scrutinized** and must be duly proven.[26] As cases filed before the Court are litigated *de novo*, party-litigants shall **prove every minute aspect** of their cases.[27]

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[25] Section 2.58.3 (B) of RR No. 2-98.
[26] *Atlas Consolidated Mining and Development Corporation v. Commissioner of Internal Revenue*, G.R. No. 159490, February 18, 2008.
[27] *Commissioner of Internal Revenue v. United Salvage and Towage (Phils.), Inc.*, G.R. No. 197515, July 2, 2014.

The question of whether the evidence submitted by a party is sufficient to warrant the granting of its prayer lies within the sound discretion and judgment of the Court.[28]

WHEREFORE, in light of the foregoing considerations, respondent's *Motion for Partial Reconsideration (Re: Decision promulgated 2 March 2023)* and petitioner's *Motion for Reconsideration (Re: Decision dated March 2, 2023)* are **DENIED** for lack of merit.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

(On Official Business)
MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

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[28] *Pilipinas Total Gas, Inc. v. Commissioner of Internal Revenue*, G.R. No. 207112, December 8, 2015.