REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	CTA EB No. 1789 (CTA Case No. 9027)
	Present:
-versus-	DEL ROSARIO, *PJ*; CASTAÑEDA, JR., UY, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN, and MANAHAN, *JJ*.
UNIVATION MOTOR PHILIPPINES, INC. (FORMERLY NISSAN MOTOR PHILIPPINES, INC.), Respondent.	Promulgated: JUL 05 2019 11:22 a.m.

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DECISION

Fabon-Victorino, J.:

In this Petition for Review[1] dated February 20, 2018, petitioner Commissioner of Internal Revenue impugns the Decision[2] and the Resolution[3] dated September 22, 2017 and January 31, 2018, respectively, both rendered by the Court in Division in CTA Case No. 9027. The impugned Decision partially granted respondent's refund claim of excess and unutilized creditable withholding taxes (CWT) for taxable year (TY) 2012 in the sum of ₱7,091,999.52.

[1] *Rollo*, pp. 1-9.
[2] Ibid. at pp. 10-26.
[3] Id. at pp. 27-30.

The facts remain undisputed.

Petitioner is the Commissioner of the Bureau of Internal Revenue (BIR) who has the power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto or other matters arising under the National Internal Revenue Code (NIRC) or other laws or portions thereof administered by the BIR. He holds office at the BIR National Office Building, Agham Road, Quezon City.

Respondent Univation Motor Philippines, Inc., on the other hand, is a BIR-registered[4] domestic corporation engaged in the business of buying, acquiring, manufacturing, assembling, producing, importing, holding, selling, disposing, distributing, dealing in motor trucks, cars, engines and other kinds of automobiles and mechanically propelled vehicles, means of transportation and industrial machinery, their bodies, spare parts, accessories; and to repair, maintain, service, condition and/or recondition said products. Its principal office is located at Nissan Technopark, Barangay Pulong, Sta. Cruz, Sta. Rosa, Laguna.[5]

For TY 2012, respondent filed its original, as well as amended Annual Income Tax Return (AITR) on the following dates:

AITR	Mode of Filing	Date Filed
Original	eFPS[6]	April 12, 2013[7]
Original	Manual	April 25, 2013[8]
Amended	eFPS	July 9, 2013[9]
Amended	Manual	July 13, 2013[10]

On December 9, 2013, respondent filed with the BIR Large Taxpayers Excise Audit Division (LTEAD) II an administrative claim for refund or issuance of Tax Credit

[4] Per BIR Certificate of Registration No. OCN8RC0000054095 dated January 31, 1996; and Taxpayer Identification Number (TIN) 000-389-353-000.
[5] Exhibit P-1.
[6] BIR Electronic Filing and Payment System.
[7] Exhibit P-3.
[8] Exhibit P-3-a.
[9] Exhibit P-4.
[10] Exhibit P-4-a.

Certificate (TCC) for alleged excess and unutilized CWT for TY 2012 in the amount of ₱7,281,271.00.[11]

On April 10, 2015, respondent filed a Petition for Review before the Court in Division, claiming inaction on its administrative claim for refund on the part of petitioner.

On September 22, 2017, the Court in Division rendered the impugned Decision,[12] disposing the case in the following fashion:

> **WHEREFORE**, premises considered, the Petition for Review is **PARTIALLY GRANTED**. Accordingly, (petitioner) is hereby **ORDERED TO REFUND OR TO ISSUE A TAX CREDIT CERTIFICATE** in the amount of **₱7,091,999.52** in favor of (respondent), representing the latter's excess and unutilized CWT for taxable year 2012.
>
> **SO ORDERED**.

The Court in Division found respondent to have successfully satisfied all the requisites for a CWT refund. Both its administrative and judicial claims for CWT refund were seasonably instituted on December 9, 2013 and April 10, 2015 respectively. The CWTs sought to be refunded were duly substantiated by relevant CWT Certificates (BIR Forms No. 2307). On top of that, the income payments from which the CWTs originated were *partially* reported in its AITRs in the amount of ₱677,555,047.37 (out of ₱696,467,977.31). However, since there were *unreported* income payments of ₱18,912,909.94,[13] the CWTs corresponding thereto amounting to ₱189,271.48 were disallowed. Thus, the Court in Division concluded that CWTs pertaining to the *reported* income payments in the sum of ₱7,091,999.52 must be refunded in favor of respondent.

On October 10, 2017, petitioner filed a Motion for Partial Reconsideration of the impugned Decision dated September 22, 2017, but was denied by the Court in

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[11] Exhibits P-12 and P-12-a.
[12] See Note 2.
[13] ₱ 696,467,977.31 less ₱ 677,555,047.37.

Division in the equally impugned Resolution[14] of January 31, 2018. Hence, this appeal.

Petitioner maintains that proof of actual remittance is a mandatory precondition for a CWT refund to prosper, invoking Revenue Regulations (RR) No. 2-98, side by side with RR No. 2-06. He theorizes that the directive to provide the BIR a summary alphalist of withholding agents of income payments subject to withholding tax (SAWT) indicates that the taxpayer, such as respondent, should adduce evidence that the CWT subject of the claim for refund was actually remitted to the BIR.

Petitioner also gives premium on the precept that tax refunds are in the nature of tax exemptions which must be strictly construed against the taxpayer like respondent. For its neglect to prove actual remittance of the subject CWTs, its refund claim must be totally rejected.

On the other hand,[15] respondent argues that it need not demonstrate the actual remittance of the CWTs sought to be refunded, claiming that what the law, implementing regulations, as well as jurisprudence only require the claimant to establish the fact of *withholding*, citing slew of cases[16] as bases. Moreover, the responsibility of remitting taxes withheld pertains to the income payor-withholding agent, and not with the income recipient such as respondent. By presenting numerous Certificates of Withholding (BIR Forms No. 2307), respondent believes that it has satisfactorily demonstrated the existence and validity of its CWTs subject of the present claim.

Further, the principle that tax refunds, like tax exemptions are to be strictly construed against the taxpayer is unavailing. Respondent explains that in overpayment of taxes, as obtaining in the present case, the controlling tenet

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[14] See Note 3.
[15] Comment dated April 20, 2018, *rollo,* pp. 43-55.
[16] *Citybank N.A. vs. Court of Appeals,* G.R. No. 107434, October 10, 1997; *Citytrust Finance Corporation vs. Commissioner of Internal Revenue,* CTA Case Nos. 4134 and 4046, promulgated November 11, 1991 and February 24, 1993 respectively; *FEB Investments, Inc. vs. Commissioner of Internal Revenue,* CTA Case No. 5353, August 22, 1997; *Oranbo Realty Corporation vs. Commissioner of Internal Revenue,* CTA Case No. 5335, July 24, 1998; *AP Industrial Corporation vs. Commissioner of Internal Revenue,* CTA Case No. 5360, January 20, 1999.

is the principle of *solutio indebitti* which repulses the unjust enrichment of one at the expense of another. Even granting that the doctrine of strict construction of tax exemption finds application, respondent argues that all the requisites for its entitlement to a CWT refund were duly proved and complied with as found by the Court in Division.

THE RULING OF THE COURT

The petition is bereft of merit.

Petitioner argues that respondent must prove actual remittance of the amounts withheld by its income payors-withholding agents to legally claim a CWT refund.

The argument is incredulous.

Section 58(A) of the NIRC, as amended, spells out the duties of a withholding agent. They are specifically mandated not only to withhold taxes due on income payments made to a taxpayer, but also to hold such monies in trust, and subsequently remit or pay the same to the government, thus:

> SEC. 58. Returns and Payment of Taxes Withheld at Source. -
>
> (A) Quarterly Returns and Payments of Taxes Withheld. - Taxes deducted and withheld under Section 57 by withholding agents shall be covered by a return and paid to, except in cases where the Commissioner otherwise permits, an authorized agent bank, Revenue District Officer, Collection Agent, or duly authorized Treasurer of the city or municipality where the withholding agent has his legal residence or principal place of business, or where the withholding agent is a corporation, where the principal office is located.
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> <u>The taxes deducted and withheld by the withholding agent shall be held as a special fund in trust for the government until paid to the collecting officers.</u>
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> xxx xxx xxx (emphasis supplied)

Section 58(B) and (C) of the same Code highlights the withholding agents' responsibility to *deduct and remit* taxes due on their income payments by requiring them to submit annual information return, as well as provide the recipients of income written statements containing: a) the amount of income paid; b) the details of the person to whom such payment was made; and c) the specific details of the sums they deducted and withheld, to wit:

> SEC. 58. Returns and Payment of Taxes Withheld at Source. –
>
> (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, 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,* simultaneously upon payment at the request of the payee, but not later than the twentieth (20th) day following the close of the quarter in the case of corporate payee, or not later than March 1 of the following year in the case of individual payee for creditable withholding taxes. xxx
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> (C) Annual Information Return. - Every withholding agent required to deduct and withhold taxes under Section 57 *shall submit to the Commissioner an annual information return containing the list of payees and income payments, amount of taxes withheld from each payee and such other pertinent information as may be required by the Commissioner.* xxx (italics supplied)

More importantly, the revenue issuance invoked by petitioner, RR No. 2-98, specifically paragraph (B), Section 2.58.3. thereof, explicitly confirms that proof of remittance of creditable taxes withheld lies with the payor-withholding agent and not with the income recipient, *viz.*:

> SECTION 2.58.3. *Claim for Tax Credit or Refund.* –
>
> (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 payments has been declared as part of the gross income and the fact of withholding is 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.
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> ***Proof of remittance is the responsibility of the withholding agent.*** (emphasis supplied)

Indeed, a withholding agents' bounden duty is to guarantee that the pertinent income taxes they withheld from the taxpayers are paid in favor of the government. On that account, proof of actual remittance thereof rests not with the income payee, but with the income payors-withholding agents. This position finds jurisprudential mooring in the case of *Commissioner of Internal Revenue vs. Asian Transmission Corporation*[17] where it was held that:

> x x x 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 not 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 remitting the taxes so 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. xxx

Consistent with the above ruling, respondent, being the income earner and payee of the CWTs, is neither decreed by law nor by pertinent rules and regulations to compulsorily demonstrate by evidence that the CWTs subject of the refund claim were remitted to the BIR for the duty is one fittingly attributable to its income payors-withholding agents. To subscribe with petitioner's reasoning would effectively place respondent the burden of establishing a legal obligation not properly pertaining to it. To repeat,

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[17] G.R. No. 179617, January 11, 2011.

respondent only needs to prove the fact of *withholding* and not the actual remittance to the BIR of the taxes withheld.

As to what evidence may be presented to establish the fact of *withholding*, Section 58(B)[18] 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 along with the amount of tax deducted and withheld therefrom. Such documents are embodied in the various Certificates of Creditable Tax Withheld at Source (BIR Form No. 2307) duly issued by respondent's income payors/withholding agents.[19] Since the foregoing certificates were duly signed and prepared under the penalties of perjury, the figures appearing therein are presumed to be true and correct,[20] and may be taken at their face value.[21]

A revisit of the record reveals that respondent presented numerous Certificates of Creditable Tax Withheld at Source (BIR Forms No. 2307)[22] comprising of CWTs in the aggregate amount of ₱7,281,271.00. However, a portion thereof in the amount of ₱189,271.48 must be disallowed as the income payments from which they emanated were not declared by respondent in its AITRs as decreed under Section 58(D)[23] of the NIRC, as amended, as implemented by Section 2.58.3 of RR No. 2-98, rendering the balance of ₱7,091,999.52 ripe for CWT refund.

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[18] See page 6 of this Decision.

[19] 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.

[20] See *Commissioner of Internal Revenue vs. TEAM [Philippines] Operations Corporation [Formerly Mirant (Phils) Operations Corporation]*, G.R. No. 179260, April 2, 2014.

[21] See *Philippine Airlines, Inc. (PAL) vs. Commissioner of Internal Revenue*, G.R. Nos. 206079-80, January 17, 2018.

[22] Exhibits P-17-1 to P-17-539.

[23] SEC. 58. Returns and Payment of Taxes Withheld at Source. –

xxx xxx xxx

(D) Income of Recipient. - Income upon which any creditable tax is required to be withheld at source under Section 57 shall be included in the return of its recipient but the excess of the amount of tax so withheld over the tax due on his return shall be refunded to him subject to the provisions of Section 204; xxx.

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.[24]

WHEREFORE, the Petition for Review dated February 20, 2018, filed by petitioner Commissioner of Internal Revenue is **DENIED**. The impugned Decision and Resolution dated September 22, 2017 and January 31, 2018 respectively, both rendered by the Court in Division are **AFFIRMED**.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

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[24] See *Commissioner of Internal Revenue vs. Mirant Pagbilao Corporation (Formerly Southern Energy Quezon, Inc.),* G.R. No. 172129, September 12, 2008.

We Concur:

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
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.

ROMAN G. DEL ROSARIO
Presiding Justice