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

## SECOND DIVISION

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| **AYALA CORPORATION,** Petitioner, | **CTA CASE NO. 8629** |
| | **Members:** |
| **- versus -** | **CASTAÑEDA, JR.,** *Chairperson,* **CASANOVA,** *and* **COTANGCO-MANALASTAS,** ***JJ.*** |
| **COMMISSIONER OF INTERNAL REVENUE,** Respondent. | **Promulgated:** MAR 1 1 2016 1:30 p.m. |

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# AMENDED DECISION

**CASANOVA, *J.*:**

Submitted before this Court are the following:

1. Petitioner's **Motion for Partial Reconsideration** filed on October 23, 2015, with respondent's **Comment/Opposition (Re: Motion for Partial Reconsideration of the Decision dated 2 October 2015)** filed on November 16, 2015; and

2. respondent's **Motion for Partial Reconsideration (Re: Decision dated 2 October 2015)** filed on October 23, 2015, with petitioner's **Opposition** filed on December 11, 2015.

On October 2, 2015, this Court promulgated its Decision in the instant case, the *fallo* of which reads as follows:

> "**WHEREFORE,** premises considered, the instant Petition for Review is **PARTIALLY GRANTED** in the reduced amount of **₱67,742,758.85** representing

petitioner's unutilized excess creditable withholding taxes for CYs 2010 and 2011.

**SO ORDERED.**"

Aggrieved, the parties filed their respective Motions seeking the reconsideration of the above Decision.

In its Motion, petitioner argues that this Court erred in disallowing the amount of ₱58,828,478.62 in its claim for the issuance of Tax Credit Certificate (TCC). It clarifies that the reason why the income payments per schedules of creditable taxes withheld do not tally with the income indicated in the summaries of rental income, directors' fees, other income, proceeds from sale-land and other various accounts for calendar years (CYs) 2010 and 2011 can be fully explained by cross-referencing it with other documentary exhibits forming part of the independent certified public accountant (ICPA) report and through the judicial affidavit dated January 8, 2014 by the court-commissioned ICPA Ms. Milagros F. Padernal. Thus, petitioner prays that the portion of the Decision disallowing the amount of ₱58,828,478.62 be reversed and a new one be rendered, ordering respondent to issue a TCC to petitioner in the total amount of ₱127,103,140.40.

On the other hand, respondent, in her Motion, asserts that, as concluded in the Decision dated October 2, 2015, petitioner is not entitled to refund the amount of ₱67,742,758.85 for its failure to substantiate its claim of unutilized excess creditable withholding taxes (CWT) for CYs 2010 and 2011.

After considering the arguments advanced by the parties in their respective Motions, this Court finds partial merit in petitioner's Motion for Partial Reconsideration, while, on the other hand, finds no merit in respondent's Motion for Partial Reconsideration. This Court will discuss each Motion accordingly.

**Petitioner's Motion for Partial Reconsideration**

To clearly ascertain the reconciliation of the disallowed claim of ₱58,828,478.62, petitioner prepared a detailed list of explanations for each disallowance with cross-reference to relevant documentary exhibits. The said Summary of Explanations for each disallowance was attached to petitioner's Motion as Annex "A".

Guided by the aforesaid Summary of Explanations, this Court was able to determine that the income of ₱198,405,300.25 formed part of the taxable income reported in petitioner's Annual Income Tax Returns for CYs 2010 and 2011. Thus, the corresponding CWT in the amount of ₱29,439,987.63, as detailed below, shall be refunded to petitioner, in addition to the amount of ₱67,742,758.85 which was previously granted in the assailed Decision:

| Exhibit | Taxable Quarter | Payor | Income Payment | Income Tax Withheld |
|---|---|---|---|---|
| CY 2010 | | | | |
| P-17-92 | 4th | Bank of the Philippine Islands | ₱ 23,000,000.00 | ₱ 3,450,000.00 |
| P-17-97 | 1st | Globe Telecom Inc. | 29,411,764.67 | 4,411,764.70 |
| P-17-98 | 1st | Globe Telecom Inc. | 11,764,705.88 | 1,764,705.88 |
| P-17-99 | 3rd | Globe Telecom Inc. | 129,464.29 | 2,589.29 |
| P-17-101 | 4th | Globe Telecom Inc. | 27,058,823.53 | 4,058,823.53 |
| P-17-111 | 4th | Integrated Microelectronics Inc. | 67,500.00 | 10,125.00 |
| P-17-112 | 4th | Integrated Microelectronics Inc. | 6,500,000.00 | 975,000.00 |
| P-17-113 | 4th | Integrated Microelectronics Inc. | 12,370,976.00 | 1,855,646.40 |
| P-17-117 | 4th | Manila Execon Group Inc. | 32,000.00 | 640.00 |
| P-17-81 | 2nd | Manila Water Company | 27,225,000.00 | 4,083,750.00 |
| P-17-126 | 3rd | Microbase Incorporated | 89,600.00 | 1,600.00 |
| P-17-141 | 2nd | Ayala Systems Technology Inc. | 5,079.00 | 101.58 |
| P-17-144 | 2nd | Bank of the Philippine Islands | 66,363.60 | 663.64 |
| P-17-160 | 2nd | Globe Telecom Inc. | 53,571.43 | 1,071.43 |
| | | *Subtotal - CY 2010* | *₱ 137,774,848.40* | *₱ 20,616,481.45* |
| CY 2011 | | | | |
| P-17-197 | 3rd | Isuzu Cebu Inc. Mandaue Branch | ₱ 986,224.40 | ₱ 49,311.22 |
| P-17-198 | 4th | Isuzu Cebu Inc. Mandaue Branch | 610,070.00 | 30,503.50 |
| P-17-199 | 4th | Isuzu Cebu Inc. Mandaue Branch | 1,042,342.00 | 52,117.10 |
| P-17-269 | 4th | Bank of the Philippine Islands | 23,000,000.00 | 3,450,000.00 |
| P-17-277 | 4th | Globe Telecom Inc. | 34,936,446.53 | 5,240,466.98 |
| P-17-285 | 1st | Makati Development Corporation | 27,000.00 | 540.00 |
| P-17-260 | 4th | Manila Water Company | 18,900.00 | 378.00 |
| P-17-319 | 3rd | Quadriver Energy Corporation | 9,468.92 | 189.38 |
| | | *Subtotal - CY 2011* | *₱ 60,630,451.85* | *₱ 8,823,506.18* |
| **Grand Total** | | | **₱ 198,405,300.25** | **₱ 29,439,987.63** |

However, the initial denial of petitioner's claim in the amount of ₱29,388,490.99 shall be upheld due to the reasons stated below:

| Exhibit | Taxable Quarter | Payor | Income Payment | Disallowed CWT |
|---|---|---|---|---|
| CY 2010 | | | | |
| The income payment allegedly includes head office's/branches' rentals and other adjustments. No documents were submitted by petitioner to support the adjustments. | | | | |
| P-17-6 | 2nd | Honda Cars Alabang | 5,356,756.20 | 267,837.82 |
| P-17-9 | 1st | Honda Cars Makati Incorporated | 44,450,604.40 | 2,222,530.23 |
| The income payment allegedly includes/excludes the effect of foreign exchange (FX) gain/loss but no documents were submitted by petitioner to corroborate the said gain/loss. | | | | |
| P-17-110 | 3rd | Integrated Microelectronics Inc. | 956,340.00 | 143,451.00 |
| P-17-80 | 1st | Manila Water Company | 28,455,624.12 | 4,268,343.62 |
| P-17-81 | 2nd | Manila Water Company | 28,785,572.73 | 4,317,835.91 |
| P-17-122 | 4th | Manila Water Company | 27,683,445.13 | 4,152,516.77 |
| The payor allegedly included the CWT as income payment per BIR Form No. 2307 but no documents were submitted by petitioner to corroborate the erroneous inclusion. | | | | |
| P-17-145 | 2nd | Bank of the Philippine Islands | 61,224.49 | 1,224.49 |
| The payor allegedly omitted interest income in the BIR Form No. 2307 as issued to petitioner but no documents were submitted by petitioner to corroborate such omission. | | | | |
| P-17-150 | 2nd | BPI Rental Corporation | 2,357,000.00 | 47,500.00 |
| | | *Subtotal - CY 2010* | *138,106,567.07* | *15,421,239.84* |
| CY 2011 | | | | |
| The income payment allegedly includes/excludes the effect of FX gain/loss but no documents were submitted by petitioner to corroborate the said gain/loss. | | | | |
| P-17-283 | 4th | Integrated Microelectronics Inc. | 18,590,352.00 | 2,788,552.80 |
| P-17-286 | 1st | Manila Water Company | 18,722,500.00 | 2,722,500.00 |
| P-17-288 | 2nd | Manila Water Company | 27,747,374.47 | 4,162,106.17 |
| P-17-291 | 4th | Manila Water Company | 28,468,794.80 | 4,270,319.22 |
| P-17-277 | 4th | Globe Telecom Inc. | 812,250.00 | 16,245.00 |
| P-17-317 | 4th | Honda Cars Makati Incorporated | 264,900.00 | 5,298.00 |
| The income payment represents proceeds from sale of land that was included in the petitioner's claim, which was not recorded in the GL in 2011. | | | | |
| P-17-305 | 3rd | Alexander Cordero | 37,166.00 | 2,229.96 |
| | | *Subtotal - CY 2011* | *94,643,337.27* | *13,967,251.15* |
| **Grand Total** | | | **₱ 232,749,904.34** | **₱ 29,388,490.99** |

Henceforth, this Court finds petitioner entitled to the additional amount of ₱29,439,987.63, representing its excess CWT for CYs 2010 and 2011.

## Respondent's Motion for Partial Reconsideration

Respondent primarily argues that petitioner's failure to present the various payors/withholding agents to prove the fact of withholding and subsequent remittance of the taxes to the Bureau of Internal Revenue (BIR) is fatal to the petitioner's claim for refund.

Respondent's argument is untenable.

This Court has consistently ruled that the Certificates of Creditable Tax Withheld at Source (BIR Form No. 2307) issued by withholding agents are *prima facie* proof of actual payment of CWT by the payee-taxpayer to the government, with no further need to present the various payors and withholding agents in order to establish the fact of withholding and remittances made.[1] In fact the Supreme Court, in the case of Commissioner of Internal Revenue vs. Philippine National Bank[2], affirmed the same ruling which was elaborately discussed by the Court of Tax Appeals *En Banc* in its Decision[3], thus:

> "The fact of withholding is sufficiently established by a document known as CWT certificate, or specifically denominated as, 'BIR Form 2307'[4] issued by the payor primarily attesting the amount of taxes withheld from the income payments received by the payee which in this case is PNB, without the need of presenting the testimonial evidence of the person who made entries therein. The Supreme Court made this pronouncement in the case of *Banco Filipino Savings and Mortgage Bank vs. Court of Appeals, Court of Tax Appeals and Commissioner of Internal Revenue*[5] citing the case of *Far East Bank and Trust Company vs. Court of Appeals*[6] and holding that:
>
> > 'In fine, the document which may be accepted as evidence of the third condition, that is 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.

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[1] Commissioner of Internal Revenue vs. Sonoma Services, Inc., CTA EB No. 1163 (CTA Case No. 8458), April 21, 2015
[2] G.R. No. 180290, September 29, 2014
[3] CTA EB No. 285 (CTA Case No. 6652), October 1, 2007
[4] Formerly BIR Form 1743-750
[5] G.R. No. 155682, March 27, 2007
[6] G.R. No. 129130, December 9, 2005

> At the time material to this case, the requisite information regarding withholding taxes from the sale of acquired assets can be found in BIR Form No. 1743.1. As described in Section 6 Revenue Regulations No. 6-85, BIR Form No. 1743.1 is a written statement issued by the payor as withholding agent showing the income or other payments made by the said withholding agent during a quarter or year and the amount of the tax deducted and withheld therefrom. It readily identifies the payor, the income payment and the tax withheld. It is complete in the relevant details which would aid the courts in the evaluation of any claim for refund of creditable withholding taxes. (Underscoring Ours for emphasis).[7]'

The figures appearing in the *CWT* certificates should be taken at face value since these documents are executed under the penalties of perjury, pursuant to Section 267 of the 1997 NIRC, as amended, reading:

> 'SEC. 267. *Declaration under Penalties of Perjury.*- Any declaration, return, and other statements required under this Code, shall, in lieu of an oath, contain a written statement that they are made under the penalties of perjury. Any person who willfully files a declaration, return or statement containing information which is not true and correct as to every material matter shall, upon conviction, be subject to the penalties prescribed for perjury under the Revised Penal Code.'

The Commissioner is in no position to assail the authenticity of the *CWT* certificates due to PNB's alleged failure to submit the same before the administrative level since he could have easily directed the claimant to furnish copies of these documents, if the refund applied for casts him any doubt.

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[7] Banco Filipino Savings and Mortgage Bank vs. Court of Appeals, Court of Tax Appeals and Commissioner of Internal Revenue, *supra*

In the same manner, proofs of actual remittance of income taxes withheld cannot be given any significant weight by this Court. Nowhere is it stated in the law or in any rules that any information concerning actual remittance is required in a claim for refund of excess creditable withholding taxes. To be entitled to a refund of unutilized creditable withholding taxes, the following requirements must be satisfied, to wit: 1) the claim is filed with the Commissioner within the two year period from the date of payment of the tax; 2) it is shown on the return of the recipient that the income payment received was declared as part of the gross income; and 3) the fact of withholding is established by a copy of a statement duly issued by the payor to the payee showing the amount paid and the amount of the tax withheld therefrom.

Finally, the claimant must be able to prove that it did not opt to carry-over and credit the excess income tax to the taxable quarters of the succeeding taxable years, in accordance with Section 76 of the 1997 NIRC, as amended which provides:

> '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:
>
> (A) Pay the balance of tax still due; or
> (B) Carry-over the excess credit; or
> (c) Be credited or refunded with the excess amount paid, as the case may be.
>
> In case the corporation is entitled to a tax credit or refund of the excess estimated quarterly income taxes paid, the excess amount shown on its final adjustment return may be carried over and credited against the estimated quarterly income tax liabilities for the taxable quarters of the succeeding taxable years. Once

> the option to carry-over and apply the excess quarterly income tax against income tax due for the taxable quarters of the succeeding taxable years has been made, such option shall be considered irrevocable for that taxable period and no application for cash refund or issuance of a tax credit certificate shall be allowed therefore.'
>
> Indubitably, a payee's claim for refund of unutilized creditable withholding taxes is not conditioned upon the existence of proof of actual remittance by the payor/withholding agent to the BIR."

**WHEREFORE**, premises considered, petitioner's Motion for Partial Reconsideration is **PARTIALLY GRANTED**. Accordingly, the Decision promulgated on October 2, 2015 is hereby **MODIFIED** as follows: respondent is hereby **ORDERED** to issue a tax credit certificate in favor of petitioner in the total amount of **₱97,182,746.48**, representing its unutilized excess CWT for CYs 2010 and 2011.

Respondent's Motion for Partial Reconsideration (Re: Decision dated 2 October 2015) is **DENIED** for lack of merit.

**SO ORDERED.**

**CAESAR A. CASANOVA**
Associate Justice

We Concur:

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

*(On Official Business)*
**AMELIA R. COTANGCO-MANALASTAS**
Associate Justice

## ATTESTATION

I attest that the conclusions in the above amended Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

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

## CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson's Attestation, it is hereby certified that the conclusions in the above amended Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

**ROMAN G. DEL ROSARIO**
Presiding Justice