REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

SERVICE RESOURCES, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 10158

Members:

BACORRO-VILLENA, *and*
CUI-DAVID, *JJ.*

Promulgated:
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RESOLUTION

CUI-DAVID, J.:

This resolves the following:

1. Petitioner's *Motion for Reconsideration (On Decision dated January 9, 2023)* filed on January 26, 2023, *sans* respondent's comment despite notice; and

2. Respondent's *Motion for Reconsideration (Decision dated 9 January 2023)* filed through registered mail on January 31, 2023, with petitioner's *Comment (On Respondent's Motion for Reconsideration dated January 31, 2023)* filed on February 27, 2023.

Both parties seek reconsideration of this Court's Decision promulgated on January 9, 2023 (*assailed Decision*), the dispositive portion of which reads:

> **WHEREFORE**, premises considered, the instant Petition for Review is **PARTIALLY GRANTED.** Accordingly, respondent Commissioner of Internal Revenue is **ORDERED** to **REFUND** in favor of petitioner Service Resources, Inc., the reduced amount of **SEVEN MILLION ONE HUNDRED EIGHTY-SIX THOUSAND ONE HUNDRED SEVENTY-TWO PESOS AND EIGHTY-THREE CENTAVOS (₱7,186,172.83)**,

representing the latter's unutilized creditable income taxes withheld for taxable year 2017.

SO ORDERED.

In its *motion*, petitioner submits the following ground for reconsideration:

> **This Honorable Court erred in disallowing the CWTs in the amount of ₱16,874,956.31 from prior years and the amount of ₱386,201.62 of CWT for TY 2017.**

Petitioner avers that in the assailed Decision, the Court disallowed the amount of ₱16,874,956.31 due to the following reasons:

a. The BIR Form No. 2307 has incorrect TIN or without the TIN of petitioner indicated therein;

b. The BIR Form No. 2307 was issued without the address of petitioner indicated therein;

c. The BIR Form No. 2307 was not issued in Petitioner's name;

d. The BIR Form No. 2307 was issued without the signature of the payor's authorized signatory;

e. The BIR Form No. 2307 has an incorrect TIN of petitioner and without the address of petitioner indicated therein;

f. The BIR Form No. 2307 has an incorrect TIN of petitioner and without the signature of the payor's authorized signatory; and

g. The BIR Form No. 2307 was issued without the address of petitioner and the signature of the payor's authorized signatory.

The Court likewise disallowed creditable withholding taxes (CWTs) amounting to ₱386,201.62 because:

a. The BIR Form No. 2307 indicated a period outside taxable year (TY) 2017; and

b. The BIR Form No. 2307 has incorrect TIN of petitioner.

Petitioner disagrees with the above findings of the Court. According to petitioner, one of the requirements for the grant of claim for refund of creditable withholding tax is the fact that the 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. Petitioner adds that for purposes of a claim for refund or tax credit of creditable income tax, the claim shall only be given due course when the income and withholding tax are established by a copy of the withholding tax statement of the Bureau of Internal Revenue (BIR) Form No. 2307 issued by the income payor to the recipient payee. Invoking the case of *Banco Filipino Savings and Mortgage Bank vs. Court of Appeals*,[1] petitioner submits that it has successfully established and proven the fact of withholding of its excess CWTs in the taxable year (TY) 2017 and prior year's excess tax credits through the BIR Form No. 2307 submitted, which contained all the details mentioned above: (a) name of the payor; (b) the income payment basis; (c) the amount of the income tax withheld; and (d) the nature of the tax paid. Hence, for petitioner, the Court erred in disallowing the CWTs in the amount of ₱16,874,956.31 from prior years and the amount of ₱386,201.62 of CWT in TY 2017 due to the reasons as stated above.

Despite due notice, respondent failed to register his comment/opposition to petitioner's *motion.*

On the other hand, respondent submits the following ground in asking for a reconsideration of the assailed Decision:

> **The Honorable Court has prematurely assumed jurisdiction on respondent's (*sic*) judicial claim for a tax refund of its alleged unutilized creditable withholding taxes (CWT) for taxable year 2017.**

Respondent claims that petitioner prematurely filed its Petition for Review before the Court without allowing the BIR to act on its administrative claim for refund. According to respondent, this violates the doctrine of exhaustion of administrative remedies, which mandates that whenever an available administrative remedy is provided by law, no judicial

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[1] 548 Phil. 32 (2007).

recourse can be made until all such remedies have been availed of and exhausted.

In rejecting respondent's assertion, petitioner points out that respondent's argument in his motion is a mere rehash of the argument raised in his Answer dated February 4, 2020, which the Court had already discussed and passed upon in the Decision sought to be reconsidered.

Nevertheless, petitioner submits that the filing of its *Petition* was not premature. According to petitioner, the refund or credit of erroneously or illegally received taxes must be administratively and judicially filed within two years after payment of the tax under Section 204(C) and Section 229 of the Tax Code. As explained by the Supreme Court in *Gibbs vs. Commissioner of Internal Revenue*,[2] if the Commissioner of Internal Revenue (CIR) takes time to decide the claim, and the period of two years is about to end, the suit or proceeding for a refund must be started in the Court of Tax Appeals (CTA) before the end of the two years even without the decision of the CIR.

Petitioner avers that it filed its final adjustment return or Annual Income Tax Return (ITR) for the taxable year 2017 on April 14, 2018. Counting two (2) years from April 14, 2018, it had until April 14, 2020, to file its administrative and judicial claims for refund. Since it filed its administrative claim for refund on September 27, 2018, and the CIR issued no decision on the said claim despite the lapse of almost a year and a half, the filing of its judicial claim on September 3, 2019, or before the lapse of the two years, is not premature.

THE COURT'S RULING

Both *motions* must fail.

***Petitioner's Motion for Reconsideration*:**

In its *motion*, petitioner maintains that it has successfully established and proven the fact of withholding of its excess CWTs for TY 2017 and prior years through the submitted BIR Form No. 2307 and asserts that the Court erred in disallowing

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[2] G.R. No. L-13453, February 29, 1960.

the prior years' CWTs in the amount of ₱16,874,956.31 and the 2017 CWT in the amount of ₱386,201.62, due to the reasons stated.

The Court is not convinced.

It must be stressed that a tax refund or credit claim, like a claim for tax exemption, is construed strictly against the taxpayer.[3] The claimant has the burden of proof to establish the factual basis of his or her claim for a tax refund or credit.[4]

Section 2.58.3(B) of Revenue Regulations No. 2-98 states:

> SEC. 2.58.3. *Claim for Tax Credit or Refund.* —
>
> xxx xxx xxx
>
> (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 established by a <u>copy of the withholding tax statement duly issued</u> by the payor to the payee showing the amount paid and the amount of tax withheld therefrom**. (*Emphasis supplied*).

The rule is that "the fact of withholding is established by a copy of the withholding tax statement duly issued by the payor to the payee."[5] Thus, insofar as the CWT certificates that were not signed by the payor or payor's authorized representative/s, not under petitioner's registered name, and where petitioner's address was not indicated, they should be denied for they were not issued in accordance with the said rule.

Concerning the CWT certificates where the payee's Taxpayer Identification Number (TIN) indicated in the certificate was not petitioner's, or that no payee's TIN was indicated, denial of refund or tax credit claim is also proper, in light of the Court's consistent pronouncements in *Zuellig Pharma Corporation vs. Commissioner of Internal Revenue*,[6]

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[3] *Silicon Philippines, Inc. (formerly Intel Philippines Manufacturing, Inc.) vs. Commissioner of Internal Revenue*, G.R. Nos. 184360 & 184361, and 184384, February 19, 2014.
[4] *Citibank, N.A. vs. Court of Appeals*, G.R. No. 107434, October 10, 1997.
[5] Section 2.58.3 (B) of RR No. 2-98, as amended.
[6] CTA *EB* Nos. 1793 and 1794, October 1, 2019.

citing *Commissioner of Internal Revenue vs. Philippine Bank of Communications,*[7] *viz.*:

> **This Court has previously discussed why CWT certificates without the claimant's TIN are properly disallowed**. In the case of Commissioner of Internal Revenue vs. Philippine Bank of Communication, the Court en banc declared:
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> ". . . [A] claim for tax refund or credit, like a claim for tax exemption, is construed strictly against the taxpayer. **It must be kept in mind that the TIN serves as identification of taxpayers in relation to their payment with the BIR. Absent this, even with the taxpayer's name, it cannot be verified if indeed the taxpayer paid the correct amount to the government**. Well entrenched in our jurisprudence is that tax refunds are in the nature of tax exemptions. As such, they are regarded as in derogation of sovereign authority and to be construed *strictissimi juris* against the person or entity claiming the exemption. Accordingly, the claimant has the burden of proof to establish the factual basis of his or her claim for tax credit or refund.
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> **Thus, the certificates with corrections not properly countersigned and with incomplete details, such as absence of PBCom's TIN, are properly disallowed**. (*Citations omitted; Boldfacing supplied*)

Thus, the Court aptly disallowed petitioner's CWT Certificates with incorrect or missing TIN of petitioner.

As regards the lone CWT certificate issued outside the period in question, the same was correctly disallowed.

It cannot be overemphasized that a taxpayer-claimant in a refund or tax credit claim must not only prove entitlement to the claim but also compliance with all the documentary and evidentiary requirements.[8] The burden is on the taxpayer-claimant to prove its entitlement to the refund.[9] Indeed, CWTs that are complete in relevant details may be regarded as prima facie true and correct and may be taken at face value. However, by submitting incomplete or inaccurate data or information in the certificates of CWT, petitioner demonstrates

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[7] CTA *EB* Nos. 1421 and 1423, May 23, 2017.
[8] *Eastern Telecommunications Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 183531, March 25, 2015.
[9] *Commissioner of Internal Revenue vs. Far East Bank & Trust Company (now Bank of the Philippine Islands)*, G. R. No. 173854, March 15, 2010.

its failure to exercise ordinary diligence and prudence in proving its claim. Conversely, the correct certificates of CWT (complete in form and details), which are indispensable to its claim for refund, should have been presented by petitioner during the trial since it has the binding duty to prove every minute aspect of its claim for refund.

***Respondent's Motion for Reconsideration*:**

In asking for the reversal of the Decision dated January 9, 2023, and eventually, the dismissal of petitioner's Petition for Review, respondent reiterates his contention that the instant *Petition for Review* was prematurely filed.

Respondent's contention has already been addressed, considered, and rejected in the Decision sought to be reconsidered. The Court, therefore, finds no cogent reason to modify, much more, reverse the assailed Decision dated January 9, 2023.

WHEREFORE, premises considered, petitioner's and respondent's *Motions for Reconsideration* are **DENIED** for lack of merit.

SO ORDERED.

LANEE S. CUI-DAVID
Associate Justice

I CONCUR:

JEAN MARIE A. BACORRO-VILLENA
Associate Justice