REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-versus-

SONOMA SERVICES, INC.,
Respondent.

CTA EB NO. 1691
(CTA CASE NO. 9026)

Present:
Del Rosario, *P.J.,*
Castañeda, Jr.,
Uy,
Fabon-Victorino,
Mindaro-Grulla,
Ringpis-Liban, *and*
Manahan, *JJ.*

Promulgated:

JAN 14 2019 3:16 p.m.

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DECISION

RINGPIS-LIBAN, J.

Before the Court *En Banc* is a Petition for Review[1] appealing the Decision of the Second Division of this Court (Court in Division), promulgated on April 5, 2017 in CTA Case No. 9026 entitled, *"Sonoma Services, Inc. vs. Commissioner of Internal Revenue,"* the dispositive portion thereof reads:

> "**WHEREFORE,** premises considered, the instant Petition for Review is **GRANTED**. Accordingly, respondent is **ORDERED** to **REFUND** in favor of petitioner the amount of

[1] Rollo, CTA EB No. 1691, pp. 5-10, with annexes.

P4,880,190.40 representing its excess and unutilized creditable withholding taxes for CY ended December 31, 2012.

SO ORDERED."

and the Resolution dated July 6, 2017, the dispositive portion thereof reads:

"**WHEREFORE,** premises considered, respondent's **Motion for Reconsideration (of the Decision dated 5 April 2017)** is **DENIED** for lack of merit.

SO ORDERED."

THE FACTS

The relevant antecedents stated in the assailed Decision[2] are as follows:

Petitioner[3] is a corporation duly organized and existing under the laws of the Republic of the Philippines, with principal office at the 35th Floor, Tower One & Exchange Plaza, Ayala Triangle, Ayala Avenue, Makati City.

Petitioner is a registered taxpayer of the Bureau of Internal Revenue (BIR), Revenue Region No. 8, Revenue District Office (RDO) No. 50, with Taxpayer Identification Number 220-868-954-000.

Respondent,[4] on the other hand, is the duly appointed Commissioner of Internal Revenue vested with authority to carry out all the functions, duties and responsibilities of said office, including, *inter alia*, the power to decide, approve, and grant refunds and/or tax credits of overpaid and erroneously paid or collected internal revenue taxes.

Petitioner filed its Annual Income Tax Return (ITR) for CY 2012 with the BIR, through the Electronic Filing and Payment System (EFPS), on April 13, 2013, indicating therein its option to claim for refund its excess and unutilized CWT for CY 2012.

[2] Rollo, CTA EB No. 1691, pp. 16-28.
[3] Respondent Sonoma Services, Inc. in this Petition for Review.
[4] Petitioner Commissioner of Internal Revenue in this case.

On September 11, 2014, petitioner filed with the BIR, RDO No. 50 an administrative claim for refund of excess and unutilized CWT for CY 2012 in the amount of ₱4,880,190.40.

To date, respondent has neither approved nor denied petitioner's administrative claim for refund of excess and unutilized CWT for CY 2012. Hence, the instant Petition for Review filed on April 10, 2015.

In his Answer, filed on June 11, 2015 by registered mail, respondent raised the following special and affirmative defenses:

'3. Respondent reiterates and repleads the preceding paragraphs of the answer as part of her Special and Affirmative Defenses;

4. Petitioner's claim for refund is still subject to investigation by the Bureau of Internal Revenue;

5. Petitioner failed to demonstrate that the tax, which is the subject of this case, was erroneously or illegally collected;

6. It is explicitly stated under Section 76 of the NIRC of 1007 *(sic),* as amended, that once a taxpayer chooses the option to carry-over, it shall be irrevocable for that taxable period and no application for a tax refund or tax credit certificate shall then be allowed **(Philam Asset Management, Inc. vs. Commissioner of Internal Revenue, G.R. Nos. 156637/162004, December 14, 2005).** Petitioner, therefore, must proved *(sic)* that it did not carry-over its 2012 alleged unutilized creditable withholding taxes to the succeeding taxable quarters/years, otherwise, petitioner is precluded from claiming a cash refund or for issuance of tax credit certificate its excess tax credit for taxable year 2012;

7. Taxes paid and collected are presumed to be made in accordance with the laws and regulations, hence, not refundable;

8. In an action for tax credit or refund, the burden is upon the taxpayer to prove that he is entitled thereto, and failure to discharge the said burden is fatal to the claim **(Emmanuel & Zenaida Aguilar v. Commissioner, CA- G.R. No. SP. 16432, March 30, 1990 cited in Aban, Law of Basic Taxation in the Philippines, 1st Edition, p. 206)**;

9. It is incumbent upon petitioner to show that it has complied with the provision of Section 76 in relation to Section 204 and 229 of the 1997 Tax Code, as amended, including Revenue Regulations No. 2-98, as amended.

10. Claims for refund are construed against the claimant, the same partake the nature of exemption from taxation **(Commissioner of Internal Revenue vs. Ledesma, 31 SCRA 95)** and as such, they are looked upon with disfavor. **(Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 121.'**

In the Joint Stipulation of Facts and Issues[5], the parties agreed that the main issue to be resolved by the Court in Division was "Whether or not petitioner is entitled to its claim for refund of or issuance of tax credit certificate for its excess and unutilized CWT for CY 2012 in the amount of PHP4,880,190.40." The parties also agreed on the following sub-issues:

1. Whether or not petitioner's excess and unutilized CWT for CY 2012 in the amount of Php4,880,190.40 are duly substantiated by documentary evidence.
2. Whether or not the income from which the CWTs being claimed for refund were withheld was reported as part of the revenue declared in petitioner's Annual ITR.
3. Whether or not petitioner exercised the option to carry over its excess and unutilized CWT for CY 2012 to the succeeding taxable periods.
4. Whether or not petitioner filed its administrative and judicial claims for refund of excess and unutilized CWT for CY 2012 within the two-year prescriptive period provided under Sections 204 (C) and 229, National Internal Revenue Code of 1997 (the "Tax Code").

After trial on the merits and upon petitioner's submission of memorandum, the case was submitted for decision on July 20, 2016.[6]

On April 5, 2017, the Court in Division rendered the questioned Decision. On July 6, 2017, the Court in Division issued the assailed Resolution.

Aggrieved, petitioner CIR filed before the Court *En Banc* the instant Petition for Review.

[5] Filed by the parties on August 26, 2016.
[6] Resolution dated July 20, 2016.

On September 19, 2017, the Court *En Banc* issued a Resolution[7] ordering respondent Sonoma to file its Comment on the Petition for Review, within ten (10) days from notice.

On October 16, 2017, Sonoma filed its Comment (to Petition for Review).[8]

On November 29, 2017, the Court *En Banc* issued a Resolution[9] which gave due course to the Petition for Review and ordered the parties to file their respective memoranda within thirty (30) days from notice.

On February 26, 2018, Sonoma filed its "Memorandum."[10] On February 27, 2018, the Judicial Records Division of this Court issued a Records Verification Report stating that petitioner failed to file his memorandum.[11] Hence, on March 19, 2018, the Court *En Banc* issued a Resolution submitting this case for decision.[12]

ISSUE

The main issue in this case is whether or not the Court in Division erred in finding that Sonoma is entitled to a refund or issuance of a tax credit certificate in the amount of Four Million, Eight Hundred Eighty Thousand One Hundred Ninety Pesos and Forty Centavos (₱4,880,190.40), representing Sonoma's unutilized and excess creditable withholding taxes for calendar year ended December 31, 2012.

ARGUMENTS

The CIR argues that the evidence presented by Sonoma does not constitute conclusive evidence of payment and remittance to the BIR of the taxes withheld; that the best evidence of remittance is the certification from the BIR's Revenue Accounting Division as to the fact of remittance of the tax withheld; that Sonoma failed to present the various payors and withholding agents in order to establish the fact of withholding and remittances made; and that tax refunds are in the nature of tax exemption, hence, they are regarded as derogation of sovereign authority and are to be construed *strictissimi juris* against the person or entity claiming the exemption.

[7] Ibid. pp. 40-41.
[8] Ibid. pp. 44-57.
[9] Ibid. pp. 115-116.
[10] Ibid. pp. 68-87.
[11] Ibid, p. 87.
[12] Ibid, pp. 89-90.

On the other hand, Sonoma avers that there is no law, jurisprudence or administrative regulation that requires the submission of a certification from the BIR, Revenue Accounting Division (RAD) as proof of the existence and validity of CWTs; that pursuant to Revenue Regulations (RR) No. 2-98, the Certificate of Creditable Tax Withheld at Source (BIR Form No. 2307) showing the amount of income payments made and the amount of taxes withheld therefrom constitutes sufficient evidence of the existence and validity of the income recipient's CWT; and that the rule that "claims for refund of overpaid taxes are construed *strictissimi juris* against the taxpayer" does not apply to claims for refund of overpaid or erroneously paid taxes, such as this case.

RULING OF THE COURT *EN BANC*

The Petition for Review before the Court in Division was anchored on Sonoma's claim for tax refund pursuant to Sections 58 (D), 76, 204 (c) and 229 of the NIRC of 1997, as amended.

> "***Section 58. Returns and Payment of Taxes Withheld at Source.-***
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> ***xxx xxx xxx***
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> ***(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; if the income tax collected at source is less than the tax due on his return, the difference shall be paid in accordance with the provisions of Section 56.
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> All taxes withheld pursuant to the provisions of this Code and its implementing rules and regulations are hereby considered trust funds and shall be maintained in a separate account and not commingled with any other funds of the withholding agent."
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> "***Section 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 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:
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> (a) Pay the balance of the 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."

"***Section 204. Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.*** - The Commissioner may-

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(C) Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two (2) years after the payment of the tax or penalty: *Provided, however,* That a return filed showing an overpayment shall be considered as a written claim for credit or refund."

"***Section 229. Recovery of Tax Erroneously or Illegally Collected.***- No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or to any penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.

> In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment: Provided, however, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid."

A taxpayer must establish the following requirements before a claim for tax credit or refund of creditable withholding tax will be granted:

1) The claim must be filed within the two-year prescriptive period as provided under Sections 204 (C) and 229 of the NIRC of 1997, as amended;
2) The fact of withholding must be 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; and
3) The income upon which the taxes were withheld must be included in the return of the recipient.[13]

Timeliness of the Petition

On April 13, 2013, Sonoma filed its Annual Income Tax Return (ITR) for Calendar Year 2012.[14] On September 11, 2014, Sonoma filed its administrative claim for refund before the BIR.[15] The CIR failed to act on the Sonoma's administrative claim, hence on April 10, 2015, Sonoma filed a Petition for Review before the Court in Division.[16] Thus, the filing of the administrative claim for refund before the BIR and the Petition for Review before the Court in Division both fell within the prescriptive period allowed by law.

On April 6, 2017, the CIR received a copy of the Court in Division's Decision. Then, within the period to file an appeal, the CIR filed a Motion for Reconsideration,[17] which was eventually denied by the Court in Division in its Resolution dated July 6, 2017.[18] The said Resolution was received by the CIR on July 11, 2017. On July 26, 2017, the CIR filed before the Court *En Banc* an extension of fifteen (15) days or until August 10, 2017 within which to file the

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[13] Section 2.58, Revenue Regulations No. 2-98, as amended; *Citibank N.A. vs. Court of Appeals, et al.,* G.R. No. 107434, October 10, 1997; *ACCRA Investments Corporation vs. The Honorable Court of Appeals*, et al., G.R. No. 96322, December 20, 1991.
[14] Exhibit "P-1."
[15] Paragraph 7 of the parties' Joint Stipulations of Facts and Issues, Docket, CTA Case No. 9026, p. 209.
[16] Docket, CTA Case No. 9026, pp.12-19, with Annexes.
[17] Ibid., pp. 821-824.
[18] Ibid., pp. 846-849.

instant Petition for Review.[19] On August 7, 2017, the Court *En Banc* issued a Minute Resolution[20] granting the CIR's motion.

On August 2, 2017, the CIR filed by registered mail the instant Petition for Review. Hence, this Petition for Review was timely filed.

The Court *En Banc* shall now proceed to determine the merits of the Petition for Review.

After a careful review of the CIR's arguments and the records of the case, the Court *En Banc* finds no reason to reverse the assailed Decision and Resolution of the Court in Division. The records of the case show that the Court in Division had fully and exhaustively resolved the issues raised in the petition. The Court *En Banc* notes that the arguments presented herein are a mere rehash, in fact, quoted verbatim, of the arguments offered by the CIR in his Motion for Reconsideration before the Court in Division. Nonetheless, the Court *En Banc* shall pass upon petitioner's arguments.

The taxpayer does not have to prove actual remittance of the taxes to the BIR

The CIR insists that the certificates of creditable tax withheld do not constitute conclusive evidence of payment and remittance to the BIR and that the testimonies of the various payors and withholding agents are required to prove remittance.

The Court *En Banc* does not agree with the CIR.

Sections 2.58 and 2.58.3 of Revenue Regulations No. 2-98 which implemented Section 76 of the 1997 NIRC provide for the ways and means to establish the fact of withholding, thus:

> "Section 2.58. *Returns and Payment of Taxes Withheld at Source.* –
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> (A) xxx
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> (B) Withholding tax assessment for taxes withheld. – Every payor required to deduct and withhold taxes under these regulations shall furnish each payee, whether individual or corporate, with a withholding tax

[19] Rollo, CTA EB No. 1691, pp. 1-2.
[20] Ibid., p. 4.

assessment, using the prescribed form (BIR Form 1307) showing the income payments made and the amount of taxes withheld therefrom, for every month of the quarter within twenty (20) days, following the close of the taxable quarter employed by the payee in filing his/its quarterly income tax return. Upon request of the payee, however, the payor must furnish such statement to the payee simultaneously with the income payment. For final withholding taxes, the statement should be given to the payee on or before January 31, of the succeeding year.

xxx xxx xxx

Section 2.58.3. *Claim for Tax Credit or Refund.* – (A) The amount of creditable tax withheld shall be allowed as a tax credit against the income tax liability of the payee in the quarter of the taxable year in which income was earned or received.

(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 show that the income payment has been declared as part of the gross income and the fact of withholding is established by a copy of the withholding tax statement dully 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."

A perusal of the above-cited provisions shows that the taxpayer does not need to prove actual remittance of the taxes to the BIR. It is sufficient that the certificate of creditable tax withheld at source is presented in evidence to prove that taxes were indeed withheld.

As correctly ruled by the Court in Division in its Resolution:[21]

In *Commissioner of Internal Revenue vs. Philippine National Bank,*[22] the Supreme Court held that proof of actual remittance is not a condition to claim for a refund of unutilized tax credits. Under Sections 57 and 58 of the 1997 National Internal Revenue

[21] Resolution dated July 6, 2018, pp. 3-4.
[22] G.R. No. 180290, September 29, 2014.

Code, as amended, it is the payor-withholding agent, and not the payee-refund claimant, who is vested with the responsibility of withholding and remitting income taxes.

The reason for such ruling was extensively discussed in *Commissioner of Internal Revenue vs. Asian Transmission Corporation,*[23] where the Supreme Court, quoting the Court *En Banc's* explanation, 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 Sections 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 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 the 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)*

Moreover, it is not necessary for the person who executed and prepared the certificate of creditable tax withheld at source to be presented and to testify personally to prove the authenticity of the certificates. The certificate of creditable tax withheld at source is the competent proof to establish that taxes are withheld.[24]

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[23] G.R. No. 179617, January 19, 2011.

[24] *Commissioner of Internal revenue vs. Philippine National Bank*, G.R. No. 180290, September 29, 2014.

In *Commissioner of Internal Revenue vs. Team [Philippines] Operations Corporation [formerly Mirant (Phils.) Operations Corporation],*[25] the Supreme Court, adopting the findings of the Court in Division, as affirmed by the Court En Banc, explains that the certificate of creditable tax withheld at source were duly signed and prepared under penalties of perjury, the figures appearing therein are presumed to be true and correct. Thus, the testimony of the various agents/payors need not be presented to validate the authenticity of the certificates."

Well-settled in this jurisdiction is the fact that actions for tax refund, as in this case, are in the nature of a claim for exemption and the law is construed in *strictissimi juris* against the taxpayer. The pieces of evidence presented entitling a taxpayer to an exemption are also *strictissimi* scrutinized and must be duly proven.[26] In this case, Sonoma was able to prove that it is entitled to a refund or issuance of a tax credit certificate for its unutilized and excess creditable withholding taxes for calendar year 2012.

There being no new matters or issues raised in the Petition for Review before the Court *En Banc* and there being no reversible error committed by the Court in Division, hence, the Court *En Banc* finds no cogent reason to reverse the assailed Decision and Resolution.

WHEREFORE, premises considered, the Petition for Review is **DENIED for lack of merit.** Accordingly, the Decision dated April 5, 2017 and Resolution dated July 6, 2017 are hereby **AFFIRMED**.

SO ORDERED.

Ma. Belen S. L

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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

ERLINDA P. UY
Associate Justice

[25] G.R. No. 179260, April 2, 2014.
[26] *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue,* G.R. No. 159490, February 18, 2008.

ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
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