REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

En Banc

ZUELLIG PHARMA CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB NO. 1793
(CTA Case No. 8801)

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COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus -

ZUELLIG PHARMA CORPORATION,
Respondent.

CTA EB NO. 1794
(CTA Case No. 8801)

Present:

DEL ROSARIO, *PJ*,
CASTAÑEDA, JR.,
UY,
FABON-VICTORINO,
MINDARO-GRULLA,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA, *and*
MODESTO-SAN PEDRO, *JJ.*

Promulgated:
OCT 0 1 2019 4:10 pm

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DECISION

RINGPIS-LIBAN, *J.*:

Before the Court *En Banc* are consolidated[1] Petitions for Review separately filed by the Zuellig Pharma Corporation (Zuellig), petitioner in CTA EB No.

[1] CTA EB 1794 was consolidated with CTA EB 1793, the case bearing the lowest docket number per Minute Resolution issued on March 14, 2018.

1793 *(Zuellig Pharma Corporation v. Commissioner of Internal Revenue),* and by the Commissioner of Internal Revenue (CIR), petitioner in CTA EB No. 1369 *(Commissioner of Internal Revenue Inc. v. Zuellig Pharma Corporation).*

In CTA EB No. 1793, petitioner Zuellig seeks to modify and set aside the Decision dated September 5, 2017[2] (assailed Decision) and the Resolution dated February 1, 2018[3] (assailed Resolution) promulgated by the Second Division of this Court insofar as it denied the remaining amount of ₱343,274,717.09 of Zuellig's claim for Creditable Withholding Taxes (CWT) refund for Calendar Year (CY) 2011. Zuellig prays that another judgment be granted ordering the CIR to refund or issue a Tax Credit Certificate (TCC) in the amount of ₱477,269,935.23 representing Zuellig's excess and unutilized CWT for CY 2011.

On the other hand, in CTA EB No. 1794, petitioner CIR seeks to set aside the assailed Decision and assailed Resolution and prays that another decision be rendered denying the entire claim for refund.[4]

The Parties

Zuellig, petitioner in CTA EB No. 1793, is a corporation duly organized and existing under the laws of the Republic of the Philippines, with principal place of business at Km. 14 West Service Road, South Superhighway corner Edison Avenue, Barangay Sun Valley, Paranaque City.[5] It is a registered taxpayer with the Bureau of Internal Revenue (BIR), Large Taxpayer Service, with Taxpayer Identification No. (TIN) 000-172-443-000.[6]

Zuellig is primarily engaged in the business of manufacturing, preparing, compounding, processing, packaging, buying and selling at wholesale and retail, importing and exporting, and otherwise dealing in all kinds of drugs, chemicals, patent, proprietary and other medicines, biological products, oils, dyestuffs, perfumeries, toilet and fancy articles, fancy goods, cosmetics, druggists, sundries, soaps, veterinary products and generally dealing in goods, wares, merchandise and personal property of every kind.[7]

The CIR, petitioner in CTA EB No. 1794, is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR), 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 claims for refund of or issuance of TCC for overpaid or erroneously paid or collected internal revenue taxes,

[2] *Rollo,* CTA EB 1973, pp. 33-64.
[3] *Id.,* pp. 65-72.
[4] *Rollo,* CTA EB 1794, p. 5.
[5] Docket, p. 289, Joint Stipulation of Facts and Issues (JSFI), par. 1.
[6] *Id.,* p. 290; JFSI, par. 4, Exhibit "P-2".
[7] *Id.,* p. 290, JFSI, par. 3, Exhibit "P-1".

including excess and unutilized CWT, with office at the 5th Floor, BIR National Office Building, Agham Road, Diliman, Quezon City.[8]

The Facts[9]

On April 16, 2012, Zuellig filed its Annual Income Tax Return (ITR)[10] for CY 2011 with the BIR, through the Electronic Filing and Payment System (eFPS).

Zuellig then manually filed on April 30, 2012, its Annual ITR[11] for CY 2011 with the BIR, Large Taxpayers Assistance Division I together with a copy of its audited financial statements[12] for the year ended December 31, 2011.

On June 13, 2013, Zuellig filed with the BIR, through eFPS, its Amended Annual ITR[13] for CY 2011 using the new BIR Form No. 1702.

In both its manually and electronically-filed Annual ITRs[14] for CY 2011, Zuellig indicated its option to claim for refund its excess and unutilized CWT for CY 2011.

On April 13, 2012, Zuellig filed a letter[15] with the CIR signifying its intent to claim for refund its excess and unutilized CWT for CY 2011.

Thereafter, on February 28, 2014, Zuellig submitted a letter[16] dated February 12, 2014 to the BIR-Large Taxpayers Services Division (BIR-LTS), expounding on the legal and factual bases of its claim for refund.

On April 1, 2014, Zuellig filed with the BIR-LTS, an Application for Tax Credits/Refunds (BIR Form No. 1914)[17], praying for the refund of its excess and unutilized CWT for CY 2011 in the amount of ₱477,269,935.23.

The CIR failed to act on Zuellig's administrative claim for refund. As a result thereof, Zuellig filed a Petition for Review with the CTA on April 11,

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[8] *Id.*, p. 289, JSFI, par. 2.
[9] As found by the Second Division and as culled from the records of the case.
[10] Exhibit "P-3".
[11] Exhibit "P-4".
[12] Exhibit "P-5".
[13] Exhibit "P-6".
[14] Exhibits "P-3", "P-4", and "P-6".
[15] Exhibit "P-10".
[16] Exhibit "P-11".
[17] Exhibit "P-12".

2014.

Within the extended time granted by the Court in Division[18], the CIR filed his Answer[19] on June 6, 2014. He argued that the claim for refund or issuance of TCC is still subject to administrative routinary investigation/examination and taxes collected are presumed to have been made in accordance with law; that the burden of proof is on the taxpayer to establish its right to claim for refund; that the amount of ₱477,269,935.23 being claimed by Zuellig as excess and unutilized CTW for CY 2011 is not properly documented; that Zuellig has not averred that it complied with the required submission of supporting documents to justify its claim for refund; that the administrative claim is pro-forma as Zuellig has not proven compliance with the prescribed checklist of requirements to be submitted pursuant to Revenue Memorandum Order (RMO) No. 53-98 and Revenue Regulations (RR) No. 2-2006 as regards the mandatory submission of the Summary Alphalist of Withholding Agents of Income Payments (SAWT); that Zuellig has not proven that it fully complied with the requisites to sustain a claim for refund; and that Zuellig did not indicate its choice to be refunded, as opposed to carrying over its excess CWT in the succeeding taxable years, in its AITR for 2011.

The pre-trial conference was held on July 17, 2014.[20] The CIR filed his Pre-Trial Brief[21] on July 3, 2014 while Zuellig filed its Pre-Trial Brief[22] on September 8, 2014.

The parties' Joint Stipulation of Facts and Issues[23] filed on September 29, 2014 was approved and adopted by the Court in Division in the Pre-Trial Order dated October 8, 2014[24].

Upon motion[25] of Zuellig, the Court in Division commissioned Ms. Katherine O. Constantino as the Independent Certified Public Accountant (ICPA).

Zuellig presented the following witnesses in support of its claim for refund: Mr. Joel R. Ducut[26], Zuellig's Assistant Corporate Controller; and

[18] *Id.* at Note 5, p. 98, Order dated May 6, 2014.
[19] *Id.*, pp. 99-106.
[20] *Id.*, p. 108, Notice of Pre-Trial Conference.
[21] *Id.*, pp. 109-113.
[22] *Id.*, pp. 265-276.
[23] *Id.*, pp. 289-296.
[24] *Id.*, pp. 299-303.
[25] *Id.*, pp. 304-307.
[26] *Id.*, pp. 252-262 and 371-473, Exhibit "P-17", Sworn Statement of Mr. Joel R. Ducut to Questions Propounded by Atty. Gelina Rose E. Recio, and Supplemental Sworn Statement of Mr. Joel R. Ducut to Questions Propounded by Atty. Gelina Rose E. Recio; p. 321 and 657, Minutes of the Hearing dated October 20, 2014 and April 13, 2015, respectively.

Ms. Katherine O. Constantino[27], the ICPA.

Zuellig filed its Formal Offer of Evidence[28] on May 13, 2015, which was resolved by the Court in Division in a Resolution dated September 15, 2015.[29]

On October 5, 2015, Zuellig filed a Motion for Reconsideration with Motion to Admit[30], which was partially granted by the Court in Division in the Resolution[31] dated April 14, 2016.

Thereafter, the CIR presented his lone witness, Revenue Officer (RO) Ma. Theresa L. Espino.[32]

The CIR filed his Formal Offer of Documentary Evidence[33] on June 24, 2016. In the Resolution[34] dated June 28, 2016, the Court in Division admitted all of the CIR's evidence.

On July 11, 2016, the CIR filed a Manifestation[35] which stated that he was adopting his Answer dated June 5, 2014 as his Memorandum.

Zuellig, on the other hand, filed its Memorandum[36] on August 30, 2016. The case was deemed submitted for decision in the Resolution[37] dated September 6, 2016.

On September 5, 2017, the Court in Division promulgated the assailed Decision, the dispositive portion of which reads, as follows:

> "**WHEREFORE,** premises considered, the instant Petition for Review is **PARTIALLY GRANTED.** Accordingly, respondent is **ORDERED to REFUND** in favor of petitioner the amount of ₱133,995,218.14, representing its excess and unutilized creditable withholding taxes for CY ending December 31, 2011.

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[27] *Id.*, pp. 351-366, Sworn Statement of Ms. Katherine O. Constantino to Questions Propounded by Atty. Gelina Rose E. Recio, Exhibit "P-6"; p. 367, Minutes of the Hearing dated March 18, 2015.
[28] *Id.*, pp. 662-680.
[29] *Id.*, pp. 830-879.
[30] *Id.*, pp. 882-893.
[31] *Id.*, pp. 1018-1048.
[32] *Id.*, pp. 819-824, Judicial Affidavit of Revenue Officer Ma. Theresa L. Espino, Exhibit "R-9"; p. 1050, Minutes of the Hearing dated May 11, 2016.
[33] *Id.*, p.1053-1060.
[34] *Id.*, pp. 1070-1071.
[35] *Id.*, pp. 1072-1075.
[36] *Id.*, pp. 1085-1111.
[37] *Id.*, p. 1112.

SO ORDERED."[38]

On September 20, 2017, the CIR filed his Motion for Partial Reconsideration (Re: Decision promulgated 5 September 2017 praying for partial reconsideration of the Assailed Decision, to which Zuellig filed its Comment (Re: Motion for Partial Reconsideration dated September 20, 2017) on November 3, 2017.

On September 20, 2017 also, Zuellig filed its Motion for Reconsideration (Re: Decision dated September 05, 2017), to which the CIR filed his Opposition (Re: Motion for Reconsideration) on October 20, 2017.

On February 1, 2018, the Court in Division issued the Assailed Resolution denying the motion for lack of merit.[39]

On February 26, 2018, the CIR filed its appeal via Petition for Review, docketed as CTA EB No. 1794.[40]

Within an extended period granted by the Court *en banc*[41], Zuellig filed its appeal via Petition for Review on March 12, 2018, docketed as CTA EB No. 1793.

On March 14, 2018, the Petition of the CIR in CTA EB No. 1794 was consolidated with the Petition of Zuellig in CTA EB No. 1793, the case bearing the lower docket number, *via* Minute Resolution.[42]

In a Resolution issued on April 10, 2018, Zuellig was ordered to submit an original copy of the Secretary's Certificate attached to the Verification and Certification of Non-Forum Shopping in its Petition and to file its Comment on the CIR's Petition.[43]

On April 30, 2018, Zuellig filed its Compliance thereto.[44]

Within an extended period granted by the Court *en banc*[45], Zuellig filed its Comment (Re: Petition for Review dated February 23, 2018).[46]

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[38] *Id.* at Note 2, p. 63.
[39] *Id.* at Note 3.
[40] *Id.* at Note 4, pp. 1-10, with Annexes at pp. 11-53.
[41] *Id.* at Note 2, p. 6.
[42] *Id.*, p. 73.
[43] *Id.*, pp. 75-77.
[44] *Id.*, pp. 78-84.
[45] *Id.*, p. 88.
[46] *Id.*, pp. 89-97.

In a Resolution dated June 19, 2018[47], the Court *en banc* noted Zuellig's Compliance and ordered the CIR to file his Comment on Zuellig's Petition for Review.

The CIR failed to file his Comment despite due notice.[48]

On August 16, 2018, the Court *en banc* issued a Resolution giving due course to both Petitions and directing the parties to simultaneously submit their respective memoranda.[49]

On August 23, 2018, the CIR filed a Manifestation stating that he was adopting his arguments in his Petition as his Memorandum[50] which was noted by the Court *en banc.*[51] On the other hand, Zuellig filed its Memorandum on September 21, 2018.[52]

On October 9, 2018, the Court *en banc* issued a Resolution submitting the consolidated cases for decision.[53]

The Assignments of Errors

In CTA EB No. 1793, petitioner Zuellig argues that the Court in Division gravely erred in denying a substantial amount of Zuellig's total claim for refund of excess and unutilized CWT for CY 2011 on the grounds that: a) Zuellig's excess and unutilized CWT for CY 2011 are duly substantiated by evidence; b) failure of the CIR to contest the admissibility of prior year's ITR is an admission of the validity of these documents, including the correctness of its prior year's excess credits; and c) Zuellig has proven, by a preponderance of evidence, its entitlement to the entire amount of its claimed refund.

In CTA EB No. 1794, the CIR claims that the Court in Division erred in ruling that Zuellig is entitled to the refund of its unutilized excess CWT for CY 2011 in the reduced amount of ₱133,995,218.14 despite no evidence of actual remittance to the BIR.

The Arguments of the Parties

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[47] *Id.*, pp. 99-101.
[48] *Id.*, p. 102.
[49] *Id.*, pp. 104-106.
[50] *Id.*, pp. 107-110.
[51] *Id.*, p. 111.
[52] *Id.*, pp. 112-134.
[53] *Id.*, pp. 136-137.

Zuellig argues that its excess and unutilized CWT for CY 2011 are duly substantiated by evidence. Specifically, the Court in Division erred in disallowing ₱10,144,896.40 for being supported by CWT certificates with incorrect Tax Identification Number (TIN) because TIN in the CWT certificates is not indispensable in proving the fact of withholding. According to Zuellig, as long as the name and address and the amount of CWT withheld by the payor are indicated therein, the certificates presented should be deemed sufficient to prove the fact of withholding.

Zuellig further argues that the Court in Division's disallowance of ₱23,211,769.78 due to unverified sales of goods and services in the amounts of ₱969,074,728.83 and ₱618,630,611.38 was in error because the ITR, coupled with the CWT certificates, constitute sufficient proof that the income payments to which the CWT certificates are attributable to were declared as part of Zuellig's gross income. The tax returns reflecting the income payments in the withholding certificates, the detailed general ledger, audited financial statements, and reconciliation schedules are sufficient evidence to prove that the income payments related to the claimed CWT are traceable.

Zuellig further argues that its ITRs reveal the amount of its prior year's excess tax credits and since these ITRs are presumed correct, having been made under the penalty of perjury, it has proven its CWT credits from 2003 to 2010. Since the CIR failed to assess Zuellig for deficiency taxes for CY 2003 to 2009, his failure to question the validity of the claimed CWTs should be deemed as his acquiescence on the validity of such amounts.

Lastly, Zuellig claims that it has proved, by preponderant evidence, its entitlement to its claim for refund. As the case is civil in nature, the quantum of evidence required to sustain its claim is a mere preponderance of evidence and that the evidence it has presented complies with this.

On the other hand, the CIR argues that Zuellig must prove actual remittance to the BIR of the alleged withheld taxes to prove that it is entitled to a refund of unutilized excess creditable withholding tax for calendar year 2011 in the reduced amount of ₱133,995,218.14. Since Zuellig failed to prove that the alleged withheld taxes came to the hands of the BIR, the CIR argues that the assailed Decision is in error. Claims for refund should be construed *strictissimi juris* against the claimant and Zuellig is not exempt from the said principle.

<u>The Ruling of the Court</u>

In ascertaining the merits of these two Petitions before us, *We* are guided by two well-entrenched principles. The first is that since under Section 8 of RA No. 1125, the CTA is categorically described as a court of record, cases filed before the Court of Tax Appeals are litigated *de novo*, and the claimant should prove every minute aspect of its case.[54] The second is 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.[55] As always, the appreciation of these pieces of evidence lies within the sound discretion of the court.

Zuellig's Petition for Review

On Zuellig's first ground in its bid to modify the assailed Decision, the Court *en banc* finds that the Court in Division committed no error in disallowing Zuellig's CWT in the amount of ₱10,144,896.40 for being supported by CWT certificates with incorrect Tax Identification Number (TIN).

Zuellig cited *Banco Filipino Savings and Mortgage Bank vs. Court of Appeals*[56] (*Banco Filipino* case) when it claimed that "only the following are indispensable in proving the fact of withholding: a) the document issued to the payee must emanate from the payor itself; b) it must indicate the name of the payor; c) it must indicate the income payment which is the basis of the tax withheld; d) it must reflect the amount of the tax withheld; and e) it must state the nature of the tax paid."[57] This is its basis in concluding that its TIN is not indispensable in proving the fact of withholding.

In *Banco Filipino*, the Supreme Court did, in fact, state the following:

> "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."

However, this pronouncement must be taken into context. In *Banco Filipino*, the Court denied the portion of Banco Filipino's claim for refund which was not covered by CWT certificates, but instead was covered merely by a Certificate of Income Tax Withheld on Compensation or BIR Form No. W-2 and the Monthly Remittance Return of Income Taxes Withheld under BIR Form No. 1743W. Ergo, as opposed to other documents submitted by Banco Filipino,

[54] *Commissioner of Internal Revenue v. Philippine National Bank*, G.R. No. 180290, September 29,2014
[55] *Dizon vs. Court of Tax Appeals, et al.*, G.R. No. 140944, April 30, 2008; *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue*, G.R. No. 145526, March 16, 2007; and *Commissioner of Internal Revenue vs. Manila Mining Corporation*, G.R. No. 153204, August 31, 2005.
[56] G.R. No. 155682, March 27, 2007.
[57] *Id.* at Note 1, p. 13.

the Supreme Court clarified that the CWT certificates themselves are what may be accepted as evidence of the third condition, and goes on to enumerate what a CWT certificate ordinarily contains. There is nothing in *Banco Filipino* that declares that the elements enumerated are **exclusively** and **solely** indispensable in proving the fact of withholding. Identifying the claimant with the proper and correct TIN in the CWT Certificate is indispensable and fundamental because it answers the question, *"On whose behalf was the CWT remitted to the government by the payor?"* that the lack of emphasis thereof in the *Banco Filipino* case does not diminish its importance.

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*[58], the Court *en banc* declared:

> "x x x [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.
>
> **Thus, the certificates with corrections not properly countersigned and with incomplete details, such as absence of PBCom's TIN, are properly disallowed."** *(Emphasis supplied)*

Thus, *We* uphold the Court in Division's ruling to disallow petitioner's CWT in the amount of ₱10,144,896.40 for being supported by CWT certificates with incorrect TIN.

Likewise, *We* find that the Court in Division's disallowance of ₱23,211,769.78 due to unverified sales of goods and services in the amounts of ₱969,074,728.83 and ₱618,630,611.38 proper.

Records of the case show that the income payments related to the claimed CWT could be traced and verified in the sales register and general ledger (GL), except for sales of goods and services in the amounts of ₱969,074,728.83 and

[58] CTA EB Case Nos. 1421 & 1423, May 23, 2017.

₱618,630,611.38 which the ICPA could not trace. Hence, Zuellig's claimed CWT in the amounts of ₱10,121,236.91 and ₱13,090,532.87 related to the unverified sales of goods and services was properly disallowed as, for sale of goods, there was either no corresponding record in the sales register for certain income payments or the income payment per sales register was less than the income payment reflected in the CWT certificates, and, for sale of services, the income payment per sales register was less than the income payment reflected in the CWT certificates. It cannot be stressed enough that reporting revenues related to the CWT refund is critical in order to substantiate the claim.

Zuellig also questions the Court in Division's disallowance of its prior year's excess tax credits for its failure to present the necessary CWT certificates from prior years 2003-2010.

In ascertaining the amount of unutilized excess CWT for CY 2011 that Zuellig was entitled to be refunded in the total amount of ₱133,995,218.14, the Court in Division found, as follows:

> A perusal of petitioner's Amended Income Tax Return (AITR)[59] for CY 2011 filed on June 13, 2013 shows that petitioner had income tax credits in the total amount of ₱l,084,014,135.33[60] consisting of the prior year's excess credits other than the Minimum Corporate Income Tax (MCIT) in the amount of P606,744,200.10[61] and creditable withholding taxes accumulated during the four (4) quarters of CY 2011 in the aggregate amount of ₱477,269,935.23[62], to wit:

Prior Year's Excess Credits other than **MCIT**		₱ 606,744,200.10
Creditable Tax Withheld for the First Three Quarters	₱ 269,508,749.26	
Creditable Tax Withheld for the Fourth Quarter	207,761,185.97	477,269,935.23
Total Tax Credits		**₱ 1,084,014,135.33**

> Petitioner claims that its 2011 income tax due in the amount of ₱286,241,875.50[63] was paid using a portion of its prior year's excess credits of ₱606,744,200.10 leaving the prior year's excess credits in the amount of ₱320,502,324.60 (₱606,744,200.10 less ₱286,241,875.50) and creditable taxes withheld during the year

[59] Exhibit "P-6".
[60] Exhibit "P-6", line 33R.
[61] Exhibit "P-6", line 33A.
[62] Exhibit "P-6", lines 33F and 33H.
[63] Exhibit "P-6", line 32.

2011 in the amount of ₱477,269,935.23 totaling ₱797,772,259.83[64] unutilized as of December 31, 2011, as shown:

Income Tax Due	₱ 286,241,875.50
Less: Prior Year's Excess Credits	606,744,200.10
Balance of Prior Year's Excess Credits	₱ 320,502,324.60
Add: Creditable Taxes Withheld - 2011	477,269,935.23
Excess Creditable Taxes Withheld as of December 31, 2011	**₱ 797,772,259.83**

As indicated in the table above, Zuellig's claimed prior year's excess credits of ₱606,744,200.10 arose from the years 2003 to 2010. To prove the existence thereof, Zuellig submitted CWT certificates pertaining only to taxable year 2010 in the total amount of ₱436,033,691.27 which was accounted for by the ICPA. To prove the existence of the prior year's excess credits for the years 2003 to 2010, Zuellig opted to present its ITRs instead of the relevant CWT certificates, ratiocinating thus:

> "30. Moreover, the CWT certificates were not absent *per se.* In the interest of time and preservation of the Court's resources, petitioner deemed it sufficient to provide the CTA-Division with its ITRs instead of presenting all of the prior year's CWT certificates from 2003 to 2010, which are almost impossible to retrieve."[65]

Zuellig contends that since its ITRs reveal the amount of its prior year's excess tax credits and are presumed correct, having been made under the penalty of perjury, it has proven its CWT credits from 2003 to 2010.

This Court cannot subscribe to Zuellig's arguments.

We have previously ruled in the case of *Commissioner of Internal Revenue vs. Nissan Motor Phils., Inc.*[66], that there was a need for petitioner Nissan Motor Phils. Inc. to substantiate its prior year's excess credit because it formed part of its claimed income tax overpayment reflected in its final adjustment return.

More importantly, in *Commissioner of Internal Revenue vs. Philippine National Bank*[67], the Supreme Court had occasion to discuss the evidentiary value and weight of the CWT certificates themselves, thus:

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[64] Exhibit "P-6", line 34B.
[65] *Id.* at Note 1, p. 17.
[66] CTA EB Case Nos. 137 & 139, October 6, 2006.
[67] G.R. No. 180290, September 29, 2014.

"The certificate of creditable tax withheld at source[68] is the competent proof to establish the fact that taxes are withheld.[69] 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.[70]

In Banco Filipino Savings and Mortgage Bank v. Court of Appeals,[71] this court declared that a certificate is complete in the relevant details that would aid the courts in the evaluation of any claim for refund of excess creditable withholding taxes:

x x x x x x x x x

Thus, upon presentation of a withholding tax certificate complete in its relevant details and with a written statement that it was made under the penalties of perjury, the burden of evidence then shifts to the Commissioner of Internal Revenue to prove that (1) the certificate is not complete; (2) it is false; or (3) it was not issued regularly." *(Emphasis supplied)*

To establish the fact that taxes are withheld, the best evidence thereof would be the CWT certificate or BIR Form No. 2307. The ITRs, therefore, would be in the nature of secondary evidence.

Section 3 of Rule 130 of the Revised Rules of Court, otherwise known as the "Best Evidence Rule" provides:

"**SECTION 3.** *Original document must be produced, exceptions.* — When the subject of inquiry is the contents of a document, no evidence shall be admissible other than the original document itself, except in the following cases:

(a) When the original has been lost or destroyed, or cannot

[68] Now BIR Form No. 2307.
[69] Sec. 10 of Revenue Regulation No. 6-85, as amended by Revenue Regulation No. 12-94 provides:

Sec. 10. Claim for Tax Credit or Refund. – (a) Claims for Tax Credit or Refund of income tax deducted and withheld on income payments shall be given due course only when it is shown on the return that the income payment received 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. (Emphasis supplied) Far East Bank and Trust Company v. Court of Appeals, 513 Phil. 148, 155 (2005) [Per J. Azcuna, First Division].
[70] *CIR v. Team (Philippines) Operations Corporation*, G.R. No. 179260, April 2, 2014; *CIR v. TeoM (Philippines) Operations Corporation*, G.R. No. 185728, October 16, 2013, 707 SCRA 467, 479; *CIR v. Mirant (Philippines) Operations, Corporation*, G.R. No. 171742, June 15, 2011, 652 SCRA 80, 98.
[71] *Id.* at Note 56.

be produced in court, without bad faith on the part of the offeror;

(b) When the original is in the custody or under the control of the party against whom the evidence is offered, and the latter fails to produce it after reasonable notice;

(c) When the original consists of numerous accounts or other documents which cannot be examined in court without great loss of time and the fact sought to be established from them is only the general result of the whole; and

(d) When the original is a public record in the custody of a public officer or is recorded in a public office." *(Emphasis supplied)*

The sections following the aforequoted section then detail the instances when secondary evidence may be presented and the procedure to be followed when the original document is unavailable [Sec. 5 cf: Sec. 3(a)], when original document is in adverse party's custody or control [Sec. 6 cf: Sec. 3(b)], and when original document is a public record [Sec. 7 cf: Sec. 3(d)]. Notably, only Sec. 3(c) pertaining to voluminous records that cannot be examined in court without great loss of time is not expounded on in the sections following the Best Evidence Rule precisely because this lies within the sound discretion of the Court. In other words, **it is the Court who decides whether or not the documents to be presented, however voluminous, is worth its time**. Only then, when such discretion has been exercised by the Court, may secondary evidence be presented, if the Court allows it. In fact, the reception of voluminous evidence is the reason why the Court allowed the commissioning of an ICPA in this case. Despite that, however, Zuellig's prior years' CWT certificates from 2003 to 2009 were not given to the ICPA for accounting and verification. That decision did not emanate from the Court's discretion, but rather, from the legal strategy of Zuellig's counsel and how, in their judgment, they could best present their client's case.

Zuellig also claims that the unsubmitted CWT certificates were "almost impossible to retrieve". If that were truly the case, based on the aforesaid provisions, the offeror of the secondary evidence is burdened to satisfactorily prove the predicates thereof, namely: (1) the execution or existence of the original; (2) the loss and destruction of the original or its non-production in court; and (3) the unavailability of the original is not due to bad faith on the part of the proponent/offeror. Proof of the due execution of the document and its subsequent loss would constitute the basis for the introduction of secondary evidence.[72]

[72] *Rogelio Dantis vs. Julio Maghinang,* Jr., G.R. No. 191696, April 10, 2013.

However, Zuellig failed to give ample justification for the Court in Division to consider secondary evidence, such as its ITRs, in this case. It did not establish first the existence of the relevant CWT certificates, prove the loss and destruction of the originals thereof, and neither did Zuellig attempt to show, either independently or during trial, that it gave notice to the BIR to produce these documents, in accordance with the relevant sections discussed.

Furthermore, as the Court in Division observed, Zuellig's ITRs are insufficient to prove petitioner's prior year's excess credits despite the absence of proof to the contrary. While the ITRs would, indeed, reveal the amount of Zuellig's prior year's excess credits, they do not, in any way, substantiate every minute aspect of each of the items composing the said amount. In presenting the ITRs alone, it is apparent that Zuellig's legal position is grounded on its interpretation and evaluation that it is not duty bound to prove every minute aspect of its case as jurisprudentially required.[73]

The requirement to substantiate prior year's excess CWT stems from the principle that a taxpayer must prove every minute aspect of the case by presenting, formally offering and submitting its evidence to the CTA.[74] Unfortunately for Zuellig, it failed to substantiate its prior year's excess tax credits which is necessary to determine its entitlement to refund of its excess and unutilized CWT for CY 2011.

Having determined the existence of Zuellig's substantiated prior year's excess credits to be in the amount of ₱436,033,691.27, the Court in Division went on to conclude that Zuellig is entitled to a refund of unutilized excess CWT for CY 2011 in the reduced amount of ₱133,995,218.14, thus:

> Based on the foregoing, only the amounts of ₱296,832,700.36 and ₱43,942,418.50 totaling ₱340,775,118.86 were properly supported by BIR Forms No. 2307. However, these CWT do not represent petitioner's excess CWT for CY 2010 since petitioner reflected in its AITR for the said year an income tax due of ₱337,760,187.90. Deducting this income tax due of ₱337,760,187.90 from the CWT of ₱340,775,118.86, yields to an amount of only ₱3,014,930.96 excess tax credits for CY 2010.
>
> As stated earlier, petitioner reflected in its 2011 AITR an income tax due of ₱286,241,875.50 which when offset against the prior year's (CY 2010) excess tax credits in the amount of

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[73] *Commissioner of Internal Revenue vs. Manila Mining Corporation*, G.R. No. 153204, August 31, 2005, *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue*, G.R. No. 145526, March 16, 2007, and *Dizon vs. Court of Tax Appeals, et al.*, G.R. No. 140944, April 30, 2008.
[74] G.R. No. 145526, March 16, 2007.

₱3,014,930.96, there still remains an income tax due of ₱283,226,944.54 which shall be deducted against the substantiated CWT of ₱417,222,162.68. Consequently, petitioner's unutilized excess CWT for CY 2011 amounted only to ₱133,995,218.14, computed as follows:

Income Tax Due for CY 2011	₱ 286,241,875.50
Less: Prior Year's (CY 2010) Excess Credits	3,014,930.96
Balance of Income Tax Due for CY 2011	₱ 283,226,944.54
Less: Properly Substantiated CWT for CY 2011	417,222,162.68
Refundable Excess CWT for CY 2011	**₱ 133,995,218.14**

It is apparent to the Court *en banc* that Zuellig has not proven its entitlement to its claim for refund. Moreover, Zuellig has presented no argument compelling enough to disturb the findings and conclusions of the Court in Division.

The CIR's Petition for Review

The CIR's argument that Zuellig must prove actual remittance to the BIR of the alleged withheld taxes to prove that it is entitled to a refund of unutilized excess creditable withholding tax must likewise fail.

In *Commissioner of Internal Revenue vs. Asian Transmission Corporation*[75], the Supreme Court, citing the Court *en banc*, discussed why proof of actual remittance of the withheld taxes is unnecessary in a claim for refund of unutilized excess CWT, thus:

> "x x x **[P]roof 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**

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

> **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.** 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. x x x *(Emphasis Supplied)*

This doctrine was again reiterated by the Supreme Court in *Commissioner of Internal Revenue vs. Philippine National Bank*[76] wherein it declared 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 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".

We uphold the Court in Division's adherence to this doctrine in the assailed Decision and Resolution.

Accordingly, for lack of compelling ground to merit the reversal of the assailed Decision and Resolution, the Court *en banc* upholds the assailed Decision and Resolution.

WHEREFORE, premises considered, the Petition for Review filed by Zuellig Pharma Corporation, docketed as CTA EB No. 1793, and the Petition for Review filed by the Commissioner of Internal Revenue, docketed as CTA EB No. 1794 are both **DENIED** for lack of merit. The assailed Decision dated September 5, 2017 and the Resolution dated February 1, 2018 of the Second Division in CTA Case No. 8801 are **AFFIRMED.**

SO ORDERED.

Ma. Belen S. L

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

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[76] G.R. No. 180290, September 29, 2014.

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA JR.
Associate Justice

ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA G. MODESTO- SAN PEDRO
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 cases were assigned to the writer of the opinion of this Court.

ROMAN G. DEL ROSARIO
Presiding Justice