REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

ZUELLIG PHARMA CORPORATION, Petitioner,	**CTA CASE NO. 8801**
	Members:
- versus -	**CASTAÑEDA, JR.,** *Chairperson,* **CASANOVA, ,** *and* **MANAHAN,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: FEB 01 2018 4:15 pm

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RESOLUTION

CASANOVA, *J.*:

For resolution are the following:

1. respondent's **Motion for Partial Reconsideration (Re: Decision promulgated 5 September 2017)**, filed on September 20, 2017, with petitioner's **Comment (Re: Motion for Partial Reconsideration dated September 20, 2017),** filed on November 3, 2017; and

2. petitioner's **Motion for Reconsideration (Re: Decision dated September 05, 2017)**, filed on September 20, 2017, with respondent's **Opposition (Re: Motion for Reconsideration)**, filed on October 20, 2017.

Both parties seek reconsideration of the Court's Decision (assailed Decision)[1] promulgated on September 5, 2017, the dispositive portion of which reads:

[1] Docket (Vol. II), pp. 1120-1151.

"**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.

SO ORDERED."

Respondent's Motion for Partial Reconsideration

Respondent moves for the partial reconsideration of the assailed Decision on the ground that the Court erred in ruling that petitioner sufficiently proved 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.

According to respondent, the law and the Bureau of Internal Revenue (BIR) issuances provide that in order for any claim for refund to prosper, it is incumbent upon the claimant to prove actual remittance of the alleged withheld taxes to the BIR. As petitioner failed to prove that the alleged withheld taxes came to the hands of the BIR, respondent alleges that petitioner is not entitled to any refund.

Petitioner, opposes respondent's motion and argues that the sole ground relied upon by respondent in his motion is patently devoid of merit. It submits that the law, regulations, and jurisprudence only require that the fact of withholding be established by a copy of the statement duly issued by the payor to the payee, showing the amount paid and the amount of tax withheld therefrom.

Respondent's Motion for Partial Reconsideration is bereft of merit.

It must be emphasized that in the case of *Commissioner of Internal Revenue vs. Philippine National Bank*[2], 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 Code, as amended, it is the payor-

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

withholding agent, and not the payee-refund claimant, who is vested with the responsibility of withholding and remitting income taxes".

This was extensively discussed by the Supreme Court in the case of *Commissioner of Internal Revenue vs. Asian Transmission Corporation*[3], citing the decision of this Court sitting *En Banc* as follows:

> "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 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*)

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

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 the fact that taxes are withheld.[4]

In the case of *Commissioner of Internal Revenue vs. Team [Philippines] Operations Corporation [formerly Mirant (Phils) Operations Corporation]*[5], the Supreme Court explained 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.

Considering the foregoing, the Court finds no merit in respondent's Motion for Partial Reconsideration.

Petitioner's Motion for Reconsideration

In its motion, petitioner submits that the Court erred in denying the substantial amount of its total claim for refund of excess and unutilized CWT for CY 2011 on the basis of the following:

1. Petitioner's excess and unutilized CWT for CY 2011 are duly substantiated by evidence;

2. Failure of respondent to contest the admissibility of prior year's ITR is an admission of the validity of these documents, including the correctness of prior year's excess credits; and

3. Petitioner has proven, by preponderance of evidence, its entitlement to the entire amount of its claimed refund.

Respondent, in his Opposition, contends that the Court should not give credence to petitioner's contention that failure of respondent to contest the admissibility of prior year's Income Tax Return is an admission of the validity of these documents including the correctness of prior year's excess credit. Respondent argues that it is

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

[5] G.R. No. 179260, April 2, 2014.

incumbent upon petitioner to prove that it is entitled to the refund sought.

Petitioner's Motion for Reconsideration is, likewise, bereft of merit.

It must be stressed that a claim for tax refund or credit, like a claim for tax exemption, is construed strictly against the taxpayer.[6] The claimant has the burden of proof to establish the factual basis of his or her claim for tax credit or refund.[7]

In this case, petitioner has not proven its entitlement to the entire amount of its claimed refund. As discussed in the assailed Decision, petitioner sufficiently proved that it is entitled to a refund of unutilized excess CWT for CY 2011 but in the reduced amount of ₱133,995,218.14.

Petitioner argues that the Court erred in disallowing the CWT certificates with incorrect TIN. The Court cannot give credence to petitioner's contention that its TIN is not indispensable in proving the fact of withholding.

In the case of *Commissioner of Internal Revenue vs. Philippine Bank of Communications*[8], the Court *En Banc* discussed the importance of the TIN in the CWT certificates and that CWT certificates without claimant's TIN are properly disallowed, to wit:

> "xxx [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

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[6] *Silicon Philippines, Inc. (formerly Intel Philippines Manufacturing, Inc.) vs. Commissioner of Internal Revenue,* G.R. Nos. 184360 & 184361, and 184384, February 19, 2014.
[7] *Citibank, N.A. vs. Court of Appeals,* G.R. No. 107434, October 10, 1997.
[8] CTA EB Case Nos. 1421 & 1423, May 23, 2017.

> 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.**" (*Emphasis supplied*)

Thus, it was proper for the Court to disallow petitioner's CWT in the amount of ₱10,144,896.40 for being supported by CWT certificates with incorrect TIN.

The Court also finds no merit in petitioner's contention that the Court erred in disallowing petitioner's CWT on the basis of the alleged unverified sales. Likewise, the Court does not agree with petitioner's argument that its prior year's excess tax credits were duly substantiated based on the ITRs presented as evidence which remain uncontroverted by respondent.

To reiterate, 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 entitity claiming the exemption.[9] The pieces of evidence presented entitling a taxpayer to an exemption are also *strictissimi* scrutinized and must be duly proven.[10] Hence, an applicant for a claim for tax refund or tax credit must not only prove entitlement to the claim but also compliance with all the documentary and evidentiary requirements.[11]

Petitioner failed to prove that all of its income payments to which the CWT certificates are attributable to were declared as part of its gross income. As found in the assailed Decision, the ICPA was able to trace the income payments related to the claimed CWT to the sales register and GL, except for the following sales of goods in the amount of ₱969,074,728.83 and sales of services in the amount of ₱618,630,611.39. Consequently, it was proper for the Court to deny petitioner'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, respectively.

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[9] *Commissioner of Internal Revenue vs. S.C. Johnson and Son, Inc.,* G.R. No. 127105, June 25, 1999.

[10] *Kepco Philippines Corporation vs. Commissioner of Internal Revenue,* G.R. No. 179961, January 31, 2011.

[11] *Eastern Telecommunications Philippines, Inc. vs. Commissioner of Internal Revenue,* G.R. No. 183531, March 25, 2015.

Moreover, it was proper for the Court to disallow petitioner's prior year's excess tax credits for its failure to present the necessary CWT certificates from prior years 2003-2010. Petitioner failed to substantiate its prior year's excess tax credits which is necessary to determine petitioner's entitlement to refund of its excess and unutilized CWT for CY 2011.

It must be noted, in the case of *Commissioner of Internal Revenue vs. Nissan Motor Phils., Inc.*[12], the Court *En Banc* ruled 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.

Furthermore, the Court cannot give credence to petitioner's argument that its ITRs are sufficient to prove petitioner's prior year's excess credits in the absence of proof to the contrary. The ITRs would, indeed, reveal the amount of petitioner's prior year's excess credits. However, they do not, in any way, substantiate every minute aspect of each of the items composing the said amount.

Finally, there is no merit to petitioner's contention that failure of respondent to contest petitioner's ITRs constitutes an admission of the validity of these documents, including the correctness of prior year's excess credits.

In the case of *Commissioner of Internal Revenue vs. Far East Bank & Trust Company*[13], the Supreme Court ruled:

> "Entitlement to a tax refund is for the taxpayer to prove and not for the government to disprove.
>
> xxx xxx xxx
>
> Moreover, **the fact that the petitioner failed to present any evidence or to refute the evidence presented by respondent does not *ipso facto* entitle the respondent to a tax refund**. It is not the duty of the government to disprove a taxpayers claim for refund. Rather, **the burden of establishing the**

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[12] CTA EB Case Nos. 137 & 139, October 6, 2006.
[13] G.R. No. 173854, March 15, 2010.

> **factual basis of a claim for a refund rests on the taxpayer.**
>
> And while the petitioner has the power to make an examination of the returns and to assess the correct amount of tax, his failure to exercise such powers does not create a presumption in favor of the correctness of the returns. **The taxpayer must still present substantial evidence to prove his claim for refund. As we have said, there is no automatic grant of a tax refund.**" (*Emphasis supplied*)

Thus, the Court finds no merit in petitioner's Motion for Reconsideration.

In view of the foregoing, the Court finds no cogent reason to reverse or modify the assailed Decision promulgated on September 5, 2017.

WHEREFORE, premises considered, respondent's **Motion for Partial Reconsideration (Re: Decision promulgated 5 September 2017)** and petitioner's **Motion for Reconsideration (Re: Decision dated September 05, 2017)** are both **DENIED** for lack of merit.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

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

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice