REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

GLOBAL ENERGY SUPPLY CORPORATION, Petitioner,	**CTA CASE NO. 10501**
	Members:
- versus -	**BACORRO-VILLENA,** *Acting Chairperson, and* **CUI-DAVID,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: NOV 15 2024 3:35 pm

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RESOLUTION

***BACORRO-VILLENA, J.*:**

For the Court's resolution are the following:

1. Petitioner Global Energy Supply Corporation's (**petitioner**'s/**GESC**'s) "Motion for Partial Reconsideration [of Decision dated May 3, 2024]"[1] (**MPR**), filed *via* registered mail on 24 May 2024[2], with respondent Commissioner of Internal Revenue's (**respondent**'s/**CIR**'s) "Opposition (Re: Motion for Partial Reconsideration of the Decision dated 3 May 2024)"[3] (**respondent's Opposition**), filed *via* registered mail on 10 June 2024[4]; and,

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1 Division Docket, Volume II, pp. 582-590.
2 Received by the Court on 24 May 2024.
3 Division Docket, Volume II, pp. 594-597.
4 Received by the Court on 10 June 2024.

2. Respondent's "Motion for Partial Reconsideration (Re: Decision promulgated 3 May 2024)"[5], filed *via* registered mail on 23 May 2024[6], with petitioner's "Opposition (To Respondent's Motion for [Partial] Reconsideration dated May 14, 2024)"[7] (**petitioner's Opposition**), filed on 11 June 2024.

Both MPRs assail the Court's Decision[8] promulgated on 03 May 2024 (**assailed Decision**). The dispositive portion thereof reads:

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> **WHEREFORE**, the foregoing premises considered, the Petition for Review filed by petitioner Global Energy Supply Corporation on 17 May 2021 is **PARTIALLY GRANTED**. Accordingly, respondent Commissioner of Internal Revenue is hereby **ORDERED TO REFUND TO OR ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner Global Energy Supply Corporation in the reduced amount of **₱50,772,202.58**, representing unutilized creditable withholding taxes for taxable year 2018.
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> **SO ORDERED.**
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> ...

Petitioner asks the Court to reconsider the items excluded from its original claimed amount for refund of unutilized creditable withholding taxes (**CWTs**) for taxable year (**TY**) 2018 totaling ₱2,599,541.66, namely: (a) CWTs that cannot be traced to its General Ledger (**GL**) nor Annual Income Tax Return (**ITR**) amounting to ₱1,206,584.42; and, (b) CWTs already claimed in TY 2017 amounting to ₱1,392,957.24. In the assailed Decision, the Court granted a partial refund of ₱50,772,202.58 out of petitioner's original ₱53,371,744.24 total claim.

Contrary to the Court's observations, petitioner asserts that the income payments that correspond to the CWTs amounting to ₱1,206,584.42 were properly recorded in petitioner's GLs. Petitioner revisits the findings shared by the Court-commissioned Independent Certified Public Accountant (**ICPA**) who set forth in his Report that he was able to "match most of the income reflected in the Summary of

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5 Division Docket, Volume II, pp. 571-580.
6 Received by the Court on 23 May 2024.
7 Division Docket, Volume II, pp. 599-608.
8 Id., pp. 542-569.

CWTs under Annex A with the 2018 reported revenues of the Company in its 2018 GL".

As to the remaining ₱1,392,957.24, petitioner avers that the same pertains to tax withheld from a single income payment from Cebu Mitsumi, Inc. According to petitioner, it claimed two distinct CWT Certificates bearing the same payor and amount, but for different TYs (*i.e.*, TY 2017 and TY 2018). It insists that though they were of similar amounts, the CWT being claimed in 2018 is different from that previously claimed in 2017.

In opposition, respondent points to the pertinent portions of the assailed Decision, which demonstrated that the above amounts in question were either not reliably traced to petitioner's GL, or appeared to have been already claimed in a prior TY. Respondent emphasizes that petitioner, as the claimant, bears the burden of proving the factual basis of its claim for tax credit or refund.

On the other hand, respondent questions petitioner's entitlement to the amount partially refunded. He or she asks the Court to instead reverse and set aside the assailed Decision and render a new one, denying petitioner's entire claim.

Expressing his further disagreement with the assailed Decision, respondent, in his or her MPR, cites Revenue Memorandum Order (**RMO**) No. 53-98[9] and Revenue Regulations (**RR**) No. 2-2006[10], pointing out that petitioner had not sufficiently proven that it is entitled to its claim for refund of unutilized CWTs for TY 2018. According to respondent, petitioner failed to fully comply with the prescribed checklist of requirements for a CWT refund claim as enumerated in the RMO.

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9 Checklist of Documents to be Submitted by a Taxpayer upon Audit of his Tax Liabilities as well as of the Mandatory Reporting Requirements to be Prepared by a Revenue Officer, all of which comprise a Complete Tax Docket.

10 Mandatory Attachments of the Summary Alphalist of Withholding Agents of Income Payments Subjected to Tax Withheld at Source (SAWT) to Tax Returns with Claimed Tax Credits due to Creditable Tax Withheld At Source and of the Monthly Alphalist of Payees (MAP) Whose Income Received Have Been Subjected to Withholding Tax to the Withholding Tax Remittance Return Filed by the Withholding Agent/Payor of Income Payments.

Moreover, respondent argues that it is mandatory for petitioner, as the claimant, to prove actual remittance of the alleged withheld taxes to the Bureau of Internal Revenue (**BIR**). Respondent insists that petitioner should have presented evidence for this purpose.

Lastly, respondent emphasizes that tax refunds are in the nature of tax exemptions, which must be construed *strictissimi juris* against the taxpayer and liberally in favor of the taxing authority.

In reply to respondent's assertions, petitioner underscores that respondent essentially rehashed the arguments that were already raised in his or her Answer and Memorandum, both of which were already considered by the Court in writing the assailed Decision.

Petitioner echoes in agreement the pronouncements of this Court, which confirmed its entitlement to its refund claim. For petitioner, it had already met the pertinent requirements, then points out that the need to prove actual remittance to the BIR of the taxes withheld is not among them. Petitioner likewise highlights that the Court already ruled that the failure to submit complete supporting documents does not result in the outright denial of a refund claim.

We resolve.

PETITIONER'S MOTION FOR PARTIAL RECONSIDERATION (MPR)

In an effort to verify the ICPA's findings, the Court examined petitioner's billing statements (**BSs**)[11], official receipts (**ORs**)[12], and its Schedule of Total Revenues[13] for TY 2018. In correlating the aforementioned documents, the Court matched the income reflected in petitioner's Summary of CWTs with its 2017 and 2018 GLs through each relevant transaction's BS number.

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11 Exhibits "P-14" to "P-14-268", USB.
12 Exhibits "P-15" to "P-15-229", USB.
13 Annexes F and G of the ICPA Report, Exhibit "P-48", USB.

The procedures performed uncovered income payments of ₱19,849,243.60, with corresponding claimed CWTs of ₱758,954.62, which cannot be traced to the Summary of Total Revenues *per* 2017 and 2018 GLs[14], which tie-up with petitioner's 2017 and 2018 Annual ITRs.

Likewise, an income payment from SM Prime Holdings, Inc. (under BS No. 1908 spanning multiple Journal Entry numbers) totaling ₱22,381,489.98 could not be traced to petitioner's Summary of Total Revenues *per* its 2018 GL.[15] In consideration of the applicable 2% withholding rate, a further ₱447,629.80 of claimed untraceable CWTs (computed by multiplying the amount of income payment not traced to the 2018 GL with the applicable 2% rate) was observed.

Over petitioner's contention that the amounts flagged were correctly declared, the Court's findings disclosed otherwise, and We thus must disagree.

While the ICPA's words, as recited by petitioner, did not express in absolute terms that the amounts *per* GL line up with the amounts *per* Summary of CWTs, it is nonetheless worth underlining that the ICPA's findings do not bind the Court. The ICPA Report is a tool to aid the Court in resolving the case. While its contents are persuasive in nature, they are by no means conclusive. The determination of the merits or probative value of such report belongs to the Court, as provided in Section 3, Rule 13 of the Revised Rules of the Court of Tax Appeals (**RRCTA**):

> ...
> SEC. 3. *Findings of independent CPA.* — The submission by the independent CPA of pre-marked documentary exhibits shall be subject to verification and comparison with the original documents, the availability of which shall be the primary responsibility of the party possessing such documents and, secondarily, by the independent CPA. **The findings and conclusions of the independent CPA may be challenged by the parties and shall not be conclusive upon the Court, which may, in whole or in part, adopt such findings and conclusions subject to verification.**[16]
> ...

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14 Id.

15 Annexes F of the ICPA Report, Exhibit "P-48", id.

16 Emphasis supplied.

In determining the merit of a taxpayer's case, the Court can commission an ICPA, whose findings and conclusions shall not be conclusive upon the Court, which is free to either completely or partially adopt or disregard the findings of the ICPA after making its own verification and evaluation of the evidence on record. Stated alternatively, the Court still examines and verifies the documents audited or examined by the ICPA, then, in its sound discretion, may render judgment without fully relying on the ICPA report.

It thus follows that petitioner cannot assert that the ICPA's findings are sufficient to validate its claim since the final determination still rests upon the Court based on the evidence submitted by the parties. This does not, however, mean that the Court disregarded the ICPA Report. Certainly, the ICPA's findings were duly taken into account and were thoroughly examined by the Court in arriving at the conclusions made in the assailed Decision.

Indeed, as to the remaining ₱1,392,957.24 that petitioner scrutinizes in its MPR, the ICPA's findings were particularly illuminating. As the ICPA found when comparing petitioner's Summary of CWTs and its revenues *per* its TY 2018 GL, income payments amounting to ₱47,644,920.68 (with a corresponding ₱2,345,855.65 of CWTs withheld) did not match.[17] The ICPA, in examining further, discovered that the related revenues were actually reported in TY 2017.[18]

Relatedly, We had already spelled out in the assailed Decision that a timing difference between the actual reporting of the income and the actual withholding of the related tax credits would not bar a taxpayer from claiming the related tax credits, in accordance with the doctrine enunciated in *Commissioner of Internal Revenue v. Univation Motor Philippines, Inc. (formerly Nissan Motor Philippines, Inc.)*.[19]

The Court undertook to further validate petitioner's claim in alongside its supporting documentation, and concluded that, out of the ICPA's noted exceptions, a singular income payment from Cebu Mitsumi, Inc. amounting to ₱69,647,862.22 (with corresponding claimed CWTs of ₱1,392,957.24) appeared to have already been claimed by petitioner in its Annual ITR for TY 2017.

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17 ICPA Report, Exhibit "P-48", USB, pp. 9-10.
18 Id.
19 G.R. No. 231581, 10 April 2019.

While the Court acknowledges the distinct CWT Certificates (or BIR Form No. 2307) issued by Cebu Mitsumi, Inc.[20], the related income had not been conclusively matched in petitioner's records through its GL, Summary of Revenues, or through third-party documentation (such as BSs or ORs). It also bears stressing that the fact of withholding and claiming, as in this case may be established by the CWT Certificates, is a matter separately proven from the fact that the related income had been duly reported in the claimant's books.

It is not uncommon for businesses to engage in agreements that give rise to the exchange of recurring, similar payments across periods. However, in instances such as the present refund claim, it is incumbent upon petitioner, as claimant, to reliably establish its entitlement. With the totality of the evidence considered by the Court in arriving at the assailed Decision, with respect to this specific income payment, petitioner's evidence fell short.

Tax refunds, as in the instant case, 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.[21] The burden is on the taxpayer to show that he has strictly complied with the conditions for the grant of the tax refund or credit.[22] Since taxes are the lifeblood of the government, tax laws must be faithfully and strictly implemented as they are not intended to be liberally construed.[23]

RESPONDENT'S MOTION FOR PARTIAL RECONSIDERATION (MPR)

As for respondent's MPR, as petitioner aptly raised, these consist of those previously proffered and already considered by this Court then laid out exhaustively in the assailed Decision. Thus, We no longer find it worthwhile to make further exposition and rehash our own discussions concerning the legal and factual basis of petitioner's claim.

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20 Exhibits "P-12-26" and "P-13-33", USB.

21 *Atlas Consolidated Mining and Development Corporation v. Commissioner of Internal Revenue*, G.R. No. 159490, 18 February 2008.

22 *Coca-Cola Bottlers Philippines, Inc. v. Commissioner of Internal Revenue,* G.R. No. 222428, 19 February 2018.

23 Id.

As the Supreme Court held in *Ortigas and Company Limited Partnership v. Judge Tirso Velasco, et al.*[24]:

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> The filing of a motion for reconsideration, authorized by Rule 52 of the Rules of Court, does not impose on the Court the obligation to deal individually and specifically with the grounds relied upon therefor, in much the same way that the Court does in its judgment or final order as regards the issues raised and submitted for decision. This would be a useless formality or ritual invariably involving merely a reiteration of the reasons already set forth in the judgment or final order for rejecting the arguments advanced by the movant; and it would be a needless act, too, with respect to issues raised for the first time, these being, as above stated, deemed waived because not asserted at the first opportunity. It suffices for the Court to deal generally and summarily with the motion for reconsideration, and merely state a legal ground for its denial (Sec. 14, Art. VIII, Constitution); i.e., the motion contains merely a reiteration or rehash of arguments already submitted to and pronounced without merit by the Court in its judgment, or the basic issues have already been passed upon, or the motion discloses no substantial argument or cogent reason to warrant reconsideration or modification of the judgment or final order; or the arguments in the motion are too unsubstantial to require consideration, etc.
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> ...

Furthermore, the Supreme Court in *Shangri-La International Hotel Management, Ltd., et al. v. Developers Group of Companies, Inc.*[25] ruled:

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> The bulk of the aforementioned grounds is a mere rehash of movant's previous arguments. While DGCI is correct in stating that a motion for reconsideration, by its very nature, may tend to dwell on issues already resolved in the decision sought to be reconsidered and that this should not be an obstacle for a reconsideration, the hard reality is that movant has failed to raise matters substantially plausible or compellingly persuasive to warrant the desired course of action.
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> Considering that the grounds presently raised have been sufficiently considered, if not squarely addressed, in the subject Decision, it behooves movant to convince the Court that certain findings or conclusions in the Decision are contrary to law. **As it is, however, the instant motion does not raise any new or**

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24 G.R. No. 109645, 04 March 1996.

25 G.R. No. 159938, 22 January 2007; Citation omitted and emphasis supplied.

substantial legitimate ground or reason to justify the reconsideration sought.

...

It is clear from the above principles that it is the movant's duty to convincingly show grounds for a reconsideration of an assailed judgment or order, or at the least give its previous arguments a fresh perspective in such a way that would warrant a re-examination of the case. Unfortunately, in the instant case, respondent had failed to do so.

Thus, finding no merit in either of the MPRs, the Court finds no cogent reason to disturb or modify the assailed Decision.

WHEREFORE, in view of the foregoing, petitioner Global Energy Supply Corporation's "Motion for Partial Reconsideration [of Decision dated May 3, 2024]" filed on 24 May 2024 and respondent Commissioner of Internal Revenue's "Motion for Partial Reconsideration (Re: Decision promulgated 3 May 2024)" filed on 23 May 2024 are both **DENIED** for lack of merit.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

I CONCUR:

LANEE S. CUI-DAVID
Associate Justice