REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus -

BANGKO SENTRAL NG PILIPINAS,
Respondent.

CTA *EB* NO. 2944
(CTA Case No. 10278)

Present:

DEL ROSARIO, *P.J.,*
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO,
CUI-DAVID,
FERRER-FLORES, *and*
ANGELES, *JJ.*

Promulgated:

SEP 08 2025 ; 3:15 P.M.

x - x

DECISION

CUI-DAVID, J.:

Before the Court *En Banc* is a *Petition for Review*[1] filed by petitioner Commissioner of Internal Revenue (CIR) on July 23, 2024, assailing the Decision[2] dated January 11, 2024 (assailed *Decision*), and the Resolution[3] dated June 18, 2024 (assailed *Resolution*), both rendered by this Court's *Special Third Division* (Court in Division) in CTA Case No. 10278, entitled "*Bangko Sentral ng Pilipinas v. Commissioner of Internal Revenue.*" The dispositive portions of the assailed *Decision* and *Resolution* are as follows:

Assailed Decision:

> **WHEREFORE**, in light of the foregoing considerations, the present *Petition for Review* is **GRANTED**. Accordingly, respondent is hereby **ORDERED** to **REFUND** to petitioner the

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[1] *En Banc (EB)* Docket, pp. 7–26.
[2] *Id.* at 34–56.
[3] *Id.* at 58–61.

amount of **₱1,525,954.63**, representing surcharge, interest, and compromise penalty, on the alleged late payment of EWT erroneously paid or collected *[sic]* the BIR.

SO ORDERED.

Assailed Resolution:

WHEREFORE, premises considered, respondent's Motion for Reconsideration (Re: Decision promulgated on 11 January 2024) is **DENIED** for lack of merit.

SO ORDERED.

Petitioner prays that the aforesaid *Decision* and *Resolution* be set aside and cancelled; and that a new judgment be rendered denying respondent Bangko Sentral ng Pilipinas' claim for refund.

THE PARTIES

Petitioner is the Commissioner of the Bureau of Internal Revenue (BIR), duly appointed to exercise the powers and perform the duties of his office, including, *inter alia*, the power to decide disputed assessments, refunds of internal revenue taxes, fees, other charges, and penalties imposed in relation thereto, or other matters arising under the Tax Code.[4] He holds office at the BIR National Office Bldg., Agham Road, Diliman, Quezon City, where he may be served with summonses, legal processes, orders, and resolutions of the Court.[5]

Respondent Bangko Sentral ng Pilipinas (BSP), is a government instrumentality duly organized and existing under the laws of the Philippines, with principal office at A. Mabini corner P. Ocampo Street, Malate, Manila.[6]

THE FACTS AND THE PROCEEDINGS

The facts, as established by the Court in Division in the assailed *Decision*, are undisputed, to wit:

> [Respondent] acquired the subject properties from one of its borrower banks through *dacion en pago*. Details of the subject properties are as follows:

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4 *Id.* at 8, *Petition for Review, Parties.*
5 Division Docket, p. 346, *Pre-Trial Order, Stipulation of Facts.*
6 *Id.*

Transfer Certificate of Title	Location
060-2016018470	Lot 1 Blk. 10, Southwoods Ecocentrum Business Park, Brgy. San Francisco, Biñan City, Laguna
060-2017022201	Lot 4 Blk. 1, Southwoods Ecocentrum Business Park, Brgy. San Francisco, Biñan City, Laguna

In due course, and as part of [respondent's] mandate, it disposed the subject properties, through a public auction, of which, Ms. Rowena A. Jamaji turned out as the winning bidder. The respective bid prices were as follows:

TCT No.	Location	Bid Price
060-2016018470	Lot 1 Blk. 10	₱42,088,240.00
060-2017022201	Lot 4 Blk. 10	₱53,545,638.00

Ms. Jamaji paid the full bid price (net of the 10% cash bond) for both properties on March 21, 2018. The respective Deeds of Sale were also both executed on April 16, 2018. The capital gains taxes on the sale were respectively paid on April 18, 2018 and April 12, 2018, as follows:

TCT No.	Location	Amount of CGTs Paid	Credit Advice No./Date
060-2016018470	Lot 1 Blk. 10	₱2,525,294.40	9137/April 18, 2018
060-2017022201	Lot 4 Blk. 10	₱3,212,738.28	8588/April 12, 2018

However, Revenue District Office (RDO) 57, Biñan, Laguna, considered the sale as subject to EWT, and assessed [respondent] for surcharge, interest, and penalty for the supposed late payment of EWT [expanded withholding tax] for the sale of the subject properties.

On May 22, 2018, [respondent] paid under protest as follows:

<table>
<tr><th>TCT No.</th><th>Location</th><th>Amount of CGTs Paid</th><th>Credit Advice No./Date</th></tr>
<tr><td>060-2016018470</td><td>Lot 1 Blk. 10</td><td>Tax Base:
Capital gains tax (CGT) Paid
₱2,525,294.40
Additional Assessments:<table>
<tr><td>25% Surcharge</td><td>631,323.60</td></tr>
<tr><td>20% Interest</td><td>9,686.06</td></tr>
<tr><td>Compromise Penalty</td><td>40,000.00</td></tr>
<tr><td>Total</td><td>₱681,009.06</td></tr>
</table></td><td>11398/May 22, 2018</td></tr>
<tr><td>060-2017022201</td><td>Lot 4 Blk. 10</td><td>Tax Base:
Capital gains tax (CGT) Paid
₱3,212,738.28</td><td>11394/May 22, 2018</td></tr>
</table>

		Additional Assessments:		
		25% Surcharge	803,184.57	
		20% Interest	1,760.40	
		Compromise Penalty	40,000.00	
		Total	**₱884,944.97**	

[Respondent] administratively claimed for refund of the surcharge, interest, and penalty, for the supposed late payment of the EWT, through the following actions:

a. [Respondent] sought a refund through the letter dated May 22, 2018 addressed to and received by RDO 57, Biñan, Laguna on May 29, 2018.

b. [Respondent] sought another refund through the letter dated August 9, 2018 addressed to and received by RDO 125-Large Taxpayers Service (LTS) on August 10, 2018.

c. In the letter dated August 23, 2018, [petitioner], through Teresita M. Dizon, OIC-Assistant Commissioner, LTS, informed [respondent] that its request for refund was indorsed to Revenue Region 9B-LaQueMar.

d. In the letter dated September 13, 2018, [respondent] acknowledged receipt of the letter dated August 23, 2018 of [petitioner], through Teresita M. Dizon, OIC-Assistant Commissioner, LTS.

e. In the letter dated September 13, 2018, [respondent] inquired as to the status of its request for refund with RDO 57.

f. In the letter dated February 11, 2020, Revenue Region 9B, Legal Division informed that [respondent's] claim for refund is held in abeyance due to its pending open cases, which should first be resolved with RDO 57.

g. [Respondent] thus inquired with RDO 57 as to the status of these open cases in order to properly address them, through the letter dated May 13, 2020, received on May 16, 2020.

h. [Respondent] reiterated its claim for refund through the letter dated May 13, 2020 addressed to [petitioner], received on May 19, 2020.

[Respondent's] claim for refund has not been acted upon either by the RDO 57, RDO 125-LTS, the Regional Director of Revenue Region 9B, or [petitioner].

On May 20, 2020, respondent filed a *Petition for Review* before the Court in Division,[7] seeking a refund.

In his *Answer,*[8] filed through registered mail on September 18, 2020, petitioner interposed, among others, that respondent is not entitled to a refund, asserting that taxes collected are presumed to be in accordance with laws and regulations. Besides, according to petitioner, a claim for refund is not *ipso facto* granted, as the BIR must still investigate and ascertain the validity of the claim.

After the *Pre-Trial Conference*, the parties submitted a *Joint Stipulation of Facts and Issues*[9] (JSFI) on December 1, 2021, based on which a *Pre-Trial Order*[10] was issued on February 15, 2022.

Trial ensued, during which only respondent presented evidence in support of its claim. Petitioner, despite being given the opportunity, opted not to present any witness.[11]

On January 27, 2023, the case was submitted for decision.[12]

On January 11, 2024, the Court in Division rendered the assailed Decision granting respondent's judicial claim for refund. Citing Section 2.57.5(A)[13] of Revenue Regulations (RR) No. 2-98, as amended, the Court in Division ruled that creditable withholding tax is not applicable to income payments made to, *inter alia*, government instrumentalities. Hence, considering that respondent is a government instrumentality, the imposition of surcharge, interest, and compromise penalty for the alleged late payment of expanded withholding tax (EWT), was unwarranted.

On February 1, 2024, petitioner filed a *Motion for Reconsideration (Re: Decision promulgated on 11 January 2024),*[14] which was denied in the assailed *Resolution* dated June 18, 2024.

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[7] Division Docket, pp. 10–29.
[8] *Id.* at 148–152.
[9] *Id.* at 333–340.
[10] *Id.* at 345–354.
[11] *Id.* at 406–407, *Minutes of the Hearing* held on August 17, 2022.
[12] *Id.* at 520, *Resolution* dated January 27, 2023.
[13] Sec. 2.57.5. *Exemption from Withholding.* — The withholding of creditable withholding tax prescribed in these Regulations shall not apply to income payments made to the following:
(A) National government agencies and its instrumentalities, including provincial, city, municipal governments and barangays except government-owned and controlled corporations. xxx
[14] Division Docket, pp. 546–560.

On July 4, 2024, petitioner filed a *Motion for Extension to File Petition for Review*,[15] which the Court *En Banc* granted in a *Minute Resolution*[16] dated July 5, 2024, giving petitioner until July 24, 2024, to file a *Petition for Review*.

On July 23, 2024, petitioner filed the present *Petition for Review*, to which respondent was directed to file a comment within ten (10) days from notice.[17]

Respondent complied and filed its *Comment (Re: Petition for Review dated 23 July 2024)*[18] on September 26, 2024, which the Court *En Banc* noted in a *Minute Resolution*[19] dated November 19, 2024. In the same *Minute Resolution*, the Court *En Banc* submitted the instant case for decision.

Hence, this Decision.

ASSIGNMENT OF ERROR

In the present *Petition for Review*, petitioner raises the following errors allegedly committed by the Court in Division:

I. **THIS HONORABLE COURT IN DIVISION ERRED IN RULING THAT RESPONDENT IS EXEMPT FROM THE PAYMENT OF CREDITABLE WITHHOLDING TAXES.**

II. **THIS HONORABLE COURT IN DIVISION ERRED IN RULING THAT RESPONDENT'S CLAIM FOR REFUND WAS DULY SUBSTANTIATED.**

Petitioner's Arguments:

Petitioner avers that in the assailed *Decision*, the Court in Division found respondent to be a government instrumentality, relying on the Supreme Court's ruling in *Boy Scouts of the Philippines v. Commission on Audit (Boy Scouts of the Philippines)*.[20] Hence, it ruled that respondent is exempt from the withholding of creditable withholding tax under Section 2.57.5(A) of RR No. 2-98, as amended.

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[15] *EB* Docket, pp. 1–4.
[16] *Id.* at 6.
[17] *Id.* at 62, *Minute Resolution* dated September 4, 2024.
[18] *Id.* at 64–82.
[19] *Id.* at 86.
[20] G.R. No. 177131, June 7, 2011 [Per J. Leonardo-De Castro, *En Banc*].

However, petitioner claims that the Court in Division misapplied the *Boy Scouts of the Philippines* case, as the government instrumentality referred to in that case was the Boy Scouts of the Philippines, not the BSP. He likewise asserts that the two entities have distinct and separate charters.

Granting that respondent is indeed a government instrumentality, petitioner submits that respondent failed to present any evidence showing that its sale of real properties is exempt from the payment of EWT. For petitioner, considering that the exemption from the payment of taxes is not absolute, government instrumentalities must first prove their entitlement to such exemption.

In the instant case, petitioner maintains that the Court in Division did not consider the fact that the real properties sold by respondent were classified as ordinary assets, which are subject to EWT. He explains that respondent offered no evidence to prove that the properties it sold were not ordinary assets. In fact, respondent admitted that the properties were acquired in the ordinary course of its trade and business by way of *dacion en pago.*

Anent the Court in Division's ruling that the buyer should have been assessed for the deficiency EWT, petitioner argues that respondent remains statutorily liable to pay the tax since the buyer is only an agent. He stresses that respondent, as a withholding agent, holds in trust the amount of tax it withheld as trustee. Hence, it is duty-bound to remit to the government the proper amount of tax withheld, and this duty is imprescriptible. As such, respondent is ultimately liable for the late payment of EWT arising from the sale of its real properties.

In conclusion, petitioner asserts that in tax refund cases, the burden of proof lies with the taxpayer. The taxpayer must establish entitlement to the refund through a clear and unequivocal grant under the law, and not through vague or implied interpretations. Petitioner contends that respondent failed to present sufficient evidence to invalidate the BIR's assessment for the late payment of EWT.

Respondent's Arguments:

In its *Comment (Re: Petition for Review dated 23 July 2024)*, respondent asks the Court *En Banc* to deny the *Petition for*

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Review and affirm the assailed *Decision* and *Resolution* of the Court in Division, citing the following grounds:

I. The petition is a mere rehash of the arguments raised by petitioner CIR in its Motion for Reconsideration ("MR") in CTA Case No. 10278. Such arguments have already been extensively passed upon by the Honorable Court's Special Third Division when it resolved petitioner CIR's Motion for Reconsideration.

II. The Honorable Court's Special Third Division correctly ruled that it was improper to impose surcharge, interest, and compromise penalty on the alleged late payment of EWT against BSP, as income payments made to it, being a government instrumentality, are exempt from EWT.

III. The Honorable Court's Special Third Division correctly ruled that BSP's claim for refund was duly substantiated.

IV. The Honorable Court's Special Third Division correctly ruled that, assuming arguendo that BSP's income on the subject sale is subject to EWT, it is the income payor/buyer who is liable to pay the penalties for late payment of EWT.

V. Tax refunds based on erroneous payment should be construed strictly against the government and liberally in favor of the taxpayer.

THE COURT *EN BANC'S* RULING

The present Petition for Review was timely filed; therefore, the Court En Banc has jurisdiction to resolve it.

Before delving into the merits, the Court *En Banc* must first determine whether the *Petition for Review* was filed within the prescribed period, as required under Section 3(b), Rule 8 of the Revised Rules of the Court of Tax Appeals, which states:

SEC. 3. *Who may appeal; period to file petition.* — ...

Mr

... ...

> (b) A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court by filing before it a petition for review **within fifteen days from receipt of a copy of the questioned decision or resolution**. Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of the reglementary period herein fixed, the Court may grant an additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review. (*Emphasis supplied*)

Records show that petitioner received the assailed *Resolution* on June 24, 2024,[21] giving him fifteen (15) days, or until July 9, 2024, to file the *Petition for Review* before the Court *En Banc*. On July 4, 2024, petitioner filed a *Motion for Extension to File Petition for Review*,[22] which the Court *En Banc* granted in a *Minute Resolution*[23] dated July 5, 2024, extending the deadline to July 24, 2024.

The *Petition for Review* was filed on **July 23, 2024**, well within the extended period.

The Court in Division did not err in granting respondent a refund of ₱1,525,954.63, having found the claim to be properly substantiated.

Upon careful review, the Court *En Banc* finds that the arguments raised in the *Petition for Review* are mere reiterations of those previously raised in petitioner's *Motion for Reconsideration (Re: Decision promulgated on 11 January 2024)*. These arguments were thoroughly examined, discussed, and passed upon by the Court in Division in both the assailed *Decision* and *Resolution*.

The Court *En Banc* finds no compelling reason to disturb the findings and conclusions of the Court in Division. As correctly held, the imposition of surcharge, interest, and compromise penalty for the alleged late payment of EWT was unwarranted, considering that respondent BSP is a government

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[21] *EB* Docket, p. 57, *Notice of Resolution*.
[22] *Id.* at 1–4.
[23] *Id.* at 6.

instrumentality. Under Section 2.57.5(A) of RR No. 2-98, as amended, [24] income payments made to government instrumentalities are not subject to creditable withholding tax.

The Court in Division also correctly noted that BSP's status as a government instrumentality was **judicially admitted** by the parties in their JSFI, which formed part of the *Pre-Trial Order*. Such admission dispenses with the need for further proof and binds the parties to the agreed fact.

To be sure, in *Manila International Airport Authority v. Court of Appeals*,[25] the Supreme Court affirmed that BSP is a government instrumentality:

> Many **government instrumentalities** are vested with corporate powers but they do not become stock or non-stock corporations, which is a necessary condition before an agency or instrumentality is deemed a government-owned or controlled corporation. Examples are the Mactan International Airport Authority, the Philippine Ports Authority, the University of the Philippines and **Bangko Sentral ng Pilipinas**. All these government instrumentalities exercise corporate powers, but they are not organized as stock or non-stock corporations as required by Section 2(13) of the Introductory Provisions of the Administrative Code. These **government instrumentalities** are sometimes loosely called government corporate entities. (*Emphasis supplied*)

Petitioner's contention that BSP must prove its exemption from EWT, and that the properties sold were ordinary assets subject to tax, was likewise addressed. The Court in Division clarified that the exemption under Section 2.57.5(A) applies to income payments made to government instrumentalities, **regardless of asset classification**. Even assuming, *arguendo,* that the income from the sale was subject to EWT, the obligation to withhold and remit the tax rests with the **buyer/income payor/withholding agent,** not with BSP as the seller/income payee/recipient.

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[24] Sec. 2.57.5. Exemption from Withholding. — The withholding of creditable withholding tax prescribed in these Regulations shall not apply to income payments made to the following:
(A) National government agencies and its instrumentalities, including provincial, city, municipal governments and barangays except government-owned and controlled corporations. xxx.

[25] G.R. No. 155650, July 20, 2006 [Per J. Carpio, *En Banc*], cited in *Bangko Sentral ng Pilipinas v. Commission on Audit*, G.R. No. 210314, October 12, 2021 [Per J. Hernando, *En Banc*], and in *National Food Authority v. City Government of Tagum*, G.R. No. 261472, May 21, 2024 [Per J. Lazaro-Javier, *En Banc*], among other jurisprudence.

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For clarity and to put petitioner's mind to rest, the Court *En Banc* adopts and affirms the relevant discussion in the Court in Division's assailed *Resolution*,[26] as follows:

> After due consideration, the Court finds respondent's Motion for Reconsideration bereft of merit.
>
> At the outset, the Court is not unaware that the crux of the controversy in the case of *Boy Scouts of the Philippines v. Commission on Audit*,[27] was whether the Commission on Audit has jurisdiction over Boy Scouts of the Philippines. However, [petitioner] remised the point that it was in this case that the Supreme Court defined the term "government instrumentality," to wit:
>
>> "The existence of public or government corporate or juridical entities or chartered institutions by legislative fiat distinct from private corporations and government owned or controlled corporation is best exemplified by the 1987 Administrative Code cited above, which we quote in part:
>>
>> Sec. 2. General Terms Defined. — Unless the specific words of the text, or the context as a whole, or a particular statute, shall require a different meaning:
>>
>> xxx xxx xxx
>>
>> (10) 'Instrumentality' refers to any agency of the National Government, not integrated within the department framework, vested with special functions or jurisdiction by law, endowed with some if not all corporate powers, administering special funds, and enjoying operational autonomy, usually through a charter. This term includes regulatory agencies, chartered institutions and government-owned or controlled corporations."
>
> **Similar to the *Boy Scouts of the Philippines*, such definition was applied herein to show that [respondent] is a government instrumentality — an agency of the National Government vested with special functions and enjoying operational autonomy. Being as such, petitioner is therefore exempt from creditable withholding tax pursuant to Section 2.57.5(A)[28] of Revenue Regulations No. 2-98,[29] as amended**.

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[26] *EB* Docket, pp. 60-61, *Assailed Resolution.*

[27] G.R. No. 177131, June 7, 2011 [Per J. Leonardo-De Castro, *En Banc*].

[28] *SECTION 2.57.5. Exemption from Withholding.* — The withholding of creditable withholding tax prescribed in these Regulations shall not apply to income payments made to the following:
(A) National government and its instrumentalities, including provincial, city or municipal governments;

[29] SUBJECT: *Implementing Republic Act No. 8424, "An Act Amending the National Internal Revenue Code, as Amended" Relative to the Withholding on Income Subject to the Expanded Withholding Tax and Final Withholding Tax, Withholding of Income Tax on Compensation, Withholding of Creditable Value-Added Tax and Other Percentage Taxes.*

> Moreover, the fact that [respondent] is a government instrumentality was further admitted by [petitioner] in the parties' *Joint Stipulation of Facts and Issues* filed on December 1, 2021, which was adopted in the *Pre-Trial Order* promulgated on February 15, 2022. Accordingly, the Court cannot lightly set aside a judicial admission especially when the opposing party relied upon the same and had dispensed with further proof of the fact already admitted. An admission made by a party in the course of the proceedings does not require proof. (*Boldfacing and underscoring supplied*)

Finally, the Court in Division correctly ruled that BSP's claim for refund was duly substantiated, and that the imposition of surcharge, interest, and compromise penalty on the alleged late payment of EWT was erroneous. The refund of **₱1,525,954.63** was warranted, and petitioner failed to present any compelling evidence to justify the assessment or to overturn the Court in Division's findings.

WHEREFORE, premises considered, the *Petition for Review* filed by the Commissioner of Internal Revenue is **DENIED**, for lack of merit. The assailed *Decision* dated January 11, 2024, and *Resolution* dated June 18, 2024, rendered by the Court's Special Third Division in CTA Case No. 10278, are **AFFIRMED**.

SO ORDERED.

LANEE S. CUI-DAVID
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

(On Leave)
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

(With due respect, I join the Dissenting Opinion of Justice Flores)
CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

(With due respect, I join the Dissenting Opinion of Justice Flores)
MARIAN IVY F. REYES-FAJARDO
Associate Justice

(With due respect, I reiterate my Dissenting Opinion in the assailed Decision in CTA Case No. 10278.)
CORAZON G. FERRER-FLORES
Associate Justice

HENRY S. ANGELES
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