REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

SERVICE RESOURCES, INC.,
Petitioner,

CTA Case No. 9978

Members:

- versus -

CASTAÑEDA, JR., *Chairperson, and*
BACORRO-VILLENA, ***JJ.***

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
JUN 01 2021 1:10 p.m.

x--x

RESOLUTION

BACORRO-VILLENA, J.:

For the Court's resolution are the following:

1. Petitioner Service Resources, Inc.'s (**petitioner**'s/ **SRI**'s) "Motion for Partial Reconsideration (Re: Decision dated January 4, 2021)"[1] (**MPR**) filed on 20 January 2021, without respondent Commissioner of Internal Revenue's (**respondent**'s/**CIR**'s) comment[2]; and,

2. Respondent's "Motion for Reconsideration with Notice of Change of Address (Decision dated 04 January 2021)"[3] (**MR**) filed *via* registered mail on 21 January 2021[4], with petitioner's "Comment [on Respondent's Motion for

[1] Division Docket, Volume III, pp. 1098-2004.
[2] *Per* Records Verification dated 02 March 2021, id., p. 2022.
[3] Id., pp. 2006-2010.
[4] Received by the Court on 03 February 2021.

Reconsideration with Notice of Change of Address (Decision dated 04 January 2021) dated January 21, 2121]"[5] filed on 24 February 2021.

The dispositive portion of the Court's Decision promulgated on 04 January 2021 (**assailed Decision**) subject of petitioner's MPR and respondent's MR pertinently reads:

> ...
>
> **WHEREFORE**, premises considered, the present Petition for Review is **PARTIALLY GRANTED**. Accordingly, respondent Commissioner of Internal Revenue is hereby **ORDERED TO REFUND OR ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner Service Resources, Inc. in the reduced amount of **₱16,115,719.39**, representing unutilized creditable withholding taxes for the taxable year 2016.
>
> **SO ORDERED.**
>
> ...

In its MPR, petitioner only seeks for the Court to modify the assailed Decision insofar as it gave an option for respondent to issue a tax credit certificate (**TCC**) instead of merely a cash refund.

Petitioner anchors its claim upon Revenue Regulations (**RR**) No. 14-2020[6] which essentially states that unused TCCs are automatically converted into cash after a year. According to petitioner, the same would allow the government to better capture actual tax collections, since TCCs are generally not recognized as such because they do not represent the real and true yield of the taxes prescribed and sought to be generated.

Petitioner also claims that it expects no use of a TCC as it anticipates paying lesser, if not none, internal revenue taxes by reason of its reduced operation brought about the current pandemic situation.

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[5] Division Docket, pp. 2014-2021.

[6] Amending the Pertinent Provisions on Cash Conversion of Unutilized Tax Credit Certificate under Revenue Regulations No. 5-2000.

Petitioner likewise emphasizes that in its Petition for Review dated 21 September 2018[7], it only prayed for cash refund and not the issuance of TCC.

On the other hand, respondent, in his MR, contends that the Court erred in giving due course to the Petition for Review. Respondent maintains that petitioner's claim for refund was still subject to the administrative routinary examination. After the investigation was conducted, petitioner was assessed of deficiency income tax (**IT**) in the amount of ₱23,070,369.22, as a result of undeclared sales/receipts, and deficiency compromise penalty of ₱50,000.00 for taxable year (**TY**) 2016.

With the above, respondent thus asserts that petitioner failed to sufficiently prove that there was an erroneously or illegally collected tax which could be the subject of a refund (as petitioner was even assessed of deficiency IT and compromise penalty).

We resolve.

After going over the arguments raised by the parties, We are constrained to deny both petitioner's MPR and respondent's MR.

With respect to petitioner's MPR, we find no merit in its argument that the Bureau of Internal Revenue (**BIR**) had since been issuing cash refunds (instead of TCCs) for tax refund purposes to achieve the objective of RR 14-2020.

Contrary to petitioner's claim, RR 14-2020 merely states that "any TCC which remains unutilized for more than one (1) year at any given interval of time during its validity shall be converted into cash with prior written notice by the BIR, subject to the availability of funds in accordance with the procedural requirements that will be issued by the BIR for this purpose". Nothing in the said provision mandates respondent to only grant cash refund and not TCCs.

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7 Division Docket, Volume I, pp. 10-22.

In fact, the said RR 14-2020 even addresses petitioner's apprehension that it may find no use of a TCC (as it anticipates paying lesser taxes, if not none) since the same may be converted into cash if remained unutilized after one (1) year.

As to petitioner's argument that what it prayed for in its Petition for Review is for the grant of refund alone, it must be emphasized that petitioner itself claimed for either refund or issuance of TCC in its administrative claim for refund[8] which pertinently reads as follows:

> ...
> On behalf of Service Resources, Inc., (the "Company["]), **we hereby (sic) are applying for the refund or issuance of tax credit certificate** of the Company's unutilized creditable withholding tax for the taxable year 2016 in the amount of Sixteen Million Six Hundred Eighty Three Thousand Seven Hundred Ninety Five Pesos and 71/100 (₱16,683,795.71)...
> ...
>
> The Company, **in applying for the issuance of tax credit/refund** has complied with all the above-mentioned requirements.
> ...
>
> In view of the legal and factual bases for this claim as above laid down, **we hope that this claim for refund or the issuance of tax credit certificate** be given due course and promptly granted.[9]
> ...

In *Pilipinas Total Gas, Inc. v. Commissioner of Internal Revenue*[10], the Supreme Court ruled:

> ...
> At this stage, a review of the nature of a judicial claim before the CTA is in order. In *Atlas Consolidated Mining and Development Corporation v. CIR*, it was ruled –
>
> x x x First, **a judicial claim for refund or tax credit in the CTA is by no means an original action but rather an *appeal* by way of petition for review of a previous, unsuccessful administrative claim...**
> ...

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8 Exhibit "P-14", Division Docket, Volume II, pp. 710-714.
9 Emphasis supplied.
10 G.R. No. 207112, 08 December 2015; Emphasis supplied.

Considering that a judicial claim for refund is not an original action but an appeal of the unsuccessful claim, petitioner cannot now insist on being granted a refund when it pursued the alternatives of a refund or issuance of a TCC when it filed its administrative claim.

Moreover, Section 204 of the National Internal Revenue Code (**NIRC**) of 1997, as amended, reads:

> ...
>
> **SEC. 204.** *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.* –
>
> **The Commissioner may** –
>
> ...
>
> (C) **Credit or refund taxes erroneously or illegally received** or penalties imposed without authority..."[11]
>
> ...

Relatedly, under the provisions governing alternative obligations, it is provided that "[t]he right of choice belongs to the debtor, unless it has been expressly granted to the creditor".[12] Since the right of choice belongs to respondent (as the debtor herein) pursuant to Section 204 of the NIRC of 1997, as amended, coupled by the fact that petitioner sought the grant of either relief when it filed its administrative claim (from which this present appeal has arisen), respondent may then fulfill his obligation by opting for refund **or** issuance of a TCC in favor of petitioner.

As regards respondent's MR, the same merely contains a rehash of his earlier submissions, which have already been thoroughly passed upon by the Court in the assailed Decision.

In *Licomcen Incorporated v. Foundation Specialists, Inc.*[13], the Supreme Court, citing *Ortigas and Company Limited Partnership v. Judge Tirso Velasco, et al.*[14], held that:

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[11] Emphasis supplied.
[12] Article 1200, Civil Code of the Philippines.
[13] G.R. Nos. 167022 & 169678, 31 August 2007.
[14] G.R. Nos. 109645 & 112564, 04 March 1996.

> ...
>
> 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, x x x 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.
>
> ...

WHEREFORE, with the foregoing, petitioner Service Resources, Inc.'s Motion for Partial Reconsideration filed on 20 January 2021 and respondent Commissioner of Internal Revenue's Motion for Reconsideration filed on 21 January 2021 are both **DENIED** for lack of merit.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

I CONCUR:

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