REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-versus-

PHILIPPINE BANK OF COMMUNICATIONS,
Respondent.

CTA EB NO. 1128
(CTA Case No. 8269)

x--x

PHILIPPINE BANK OF COMMUNICATIONS,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB NO. 1130
(CTA CASE NO. 8269)

Present:

Del Rosario, *P.J.,*
Castañeda, Jr.
Bautista,
Uy,
Casanova,
Fabon-Victorino,
Mindaro-Grulla,
Cotangco-Manalastas,
Ringpis-Liban, *JJ.*

Promulgated:

JUN 16 2016 1:07 p.m.

x---x

RESOLUTION

RINGPIS-LIBAN, *J*.:

For resolution are the Commissioner of Internal Revenue's (CIR) "Motion for Partial Reconsideration (Re: Decision promulgated on 21 September 2015)" and Philippine Bank of Communications' (PB Com) "Motion for Partial Reconsideration (re: Decision dated 21 September 2015)."

On February 11, 2016, the Court *En Banc* issued a Resolution ordering the parties to file their respective Comments on the Motions for Partial Reconsideration within ten (10) days from notice.

On March 1, 2016, PB Com filed its "Comment (Re: Commissioner of Internal Revenue's Motion for Partial Reconsideration)."

On March 8, 2016, the CIR filed a "Manifestation" stating that she is adopting the arguments she raised in her Petitioner for Review.

The CIR argues that the Court *En Banc* erred in holding that PB Com did not fail to comply with the imperative requirements under Revenue Regulations No. 53-98 and 2-2006; that failure on the part of the taxpayer to submit relevant documents on the administrative level makes the administrative claim for tax refund pro-forma and shall be construed as if no administrative claim was filed at all; that PB Com failed to exhaust administrative remedies before elevating the case to the Court.

On the other hand, PB Com argues that the Court *En Banc* committed reversible error in affirming the Court's Second Division in solely considering the tax payments supported by BIR Form No. 2307 amounting to P16,302,740.46 as satisfying the second requirement for a tax refund; and that the Court *En Banc* committed reversible error in affirming the Court's Second Division's finding that only P10,042,655.42 corresponds to income payments included in PB Com's general ledger and annual income tax return for taxable year 2008.

A perusal of the records shows that the arguments raised by the parties in their respective "Motions for Partial Reconsideration" have already been passed upon and considered by the Court *En Banc* in the Assailed Decision. In fact, their line of reasoning and allegations are essentially the same in their Memoranda filed before this Court and in the Court in Division, and in the Petitions for Review before this Court.

In *Ferdinand Marcos et al. vs. Hon. Raul Manglapus et al.*[1], the Supreme Court emphasized that "in all motions for reconsideration, the burden is upon the movants, petitioner herein, to show that there are compelling reasons to reconsider the decision of the Court." However, in this case, the parties did not satisfy this burden.

Thus, the Motions for Partial Reconsideration deserve to be denied for failing to present any legitimate argument which could warrant reconsideration of the Court's Decision dated September 21, 2015.

WHEREFORE, premises considered, the Motions for Partial Reconsideration are **DENIED** for lack of merit.

SO ORDERED.

Ma. Belen

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO see concurring & dissenting opinion
Presiding Justice

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

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

(On Leave)
AMELIA R. COTANGCO – MANALASTAS
Associate Justice

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[1] G.R. No. 88211, October 27, 1989.

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Ringpis-Liban, JJ.

Promulgated:
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CONCURRING AND DISSENTING OPINION

DEL ROSARIO, PJ:

I maintain my Concurring and Dissenting Opinion dated September 21, 2015 where I opined that the proof of fact of withholding of tax, as an indispensable element to justify refund of the claimed excess and unutilized Creditable Withholding Tax (CWT) is not limited to the submission of BIR Form 2307, but the same can also be proven by BIR Form 1606; thus, Philippine Bank of Communications (PBCom) is entitled to a refund or issuance of a Tax Credit Certificate in the total amount of P12,680,375.22, representing its unutilized and excess CWT for calendar year 2008 consisting of the amount of P10,042,655.42 as decreed by the Court in Division and the additional amount of P2,637,719.80 which fact of withholding is supported with BIR Form 1606. In this regard, I reiterate the pertinent part of my Concurring and Dissenting Opinion, which reads as follows:

> "With all due respect, however, I am of the opinion that the proof of fact of withholding of tax, as an indispensable element to justify refund, is not limited to the submission of BIR Form 2307.
>
> In *Commissioner of Internal Revenue v. Team (Philippines) Operations Corporation,*[1] the Supreme Court laid down the requirements for granting a claim for refund of excess or unutilized creditable withholding tax (CWT), *viz.*:
>
> > 'A taxpayer claiming for a tax credit or refund of creditable withholding tax must comply with the following requisites:
> >
> > 1) The claim must be filed with the CIR within the two-year period from the date of payment of the tax;
> >
> > 2) It must be shown on the return of the recipient that the income received was declared as part of the gross income; and
> >
> > 3) **The fact of withholding is established by a copy of a statement duly issued by the payor to the payee showing the amount paid and the amount of tax withheld**.'
>
> Based on the foregoing, the **third requirement** mandates a taxpayer to show proof of the fact of withholding by presenting a copy of a statement duly issued by the payor to the payee showing the amount paid and the amount of tax withheld. Nowhere in afore-cited case did the Supreme Court limit the proof of fact of withholding to the submission of BIR Form 2307.[2]

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[1] G.R. No. 185728, October 16, 2013.
[2] BIR Form 2307 is the prescribed form pursuant to Revenue Regulations No. 2-98, as amended.

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In the case at bar, PBCOM presented BIR Form 1606 to prove the fact of withholding on its sales of real and other properties acquired (ROPA). A perusal of a sample BIR Form 1606 shows that the amount paid and the amount of tax withheld are clearly indicated in the said return. A copy of Exhibit O-3-29 is shown below for reference. Xxx

Moreover, **BIR Form 1606 is a withholding tax remittance return required by law to be filed by the buyer in triplicate copies as a requirement for the transfer of title to the buyer. The form supports the certification (BIR Form 2307) issued by the withholding agent/buyer attesting to the fact of withholding**.

xxx xxx xxx

On the other hand, PBCOM has sufficiently proven compliance with the third requisite for the refund of unutilized CWT in the additional amount of P2,637,719.80, as computed, based on BIR Form 1606: xxx" *(Underscoring supplied)*

My position that BIR Form 1606 may be used as a valid proof of fact of withholding of tax is consistent with the pronouncement of the Supreme Court in *Philippine National Bank vs. Commissioner of Internal Revenue*[3] where it was declared that BIR Form 1606 provides the same key information that would be gathered from BIR Form 2307, viz:

"**In claims for excess and unutilized creditable withholding tax, the submission of BIR Forms 2307 is to prove the fact of withholding of the excess creditable withholding tax being claimed for refund**. This is clear in the provision of Section 58.3, RR 2-98, as amended, and in various rulings of the Court. In the words of Section 2.58.3, RR 2-98, 'That the fact of withholding is established by a copy of a statement duly issued by the payor (withholding agent) to the payee showing the amount paid and the amount of tax withheld therefrom."

Hence, the probative value of BIR Form 2307, which is basically a statement showing the amount paid for the subject transaction and the amount of tax withheld therefrom, is to establish only the fact of withholding of the claimed creditable withholding tax. There is nothing in BIR Form No. 2307 which would establish either utilization or non-utilization, as the case may be, of the creditable withholding tax.

It must be noted that PNB had already presented the Withholding Tax Remittance Returns (BIR Form No. 1606) relevant to the transaction. The said forms show that the

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[3] G.R. No. 206019, March 18, 2015.

> **amount of P74,400,028.49 was withheld and paid by PNB in the year 2003. It contains, among other data, the name of the payor and the payee, the description of the property subject of the transaction, and the determination of the taxable base, and the tax rate applied. These are the very same key information that would be gathered from BIR Form No. 2307.**
>
> While perhaps it may be necessary to prove that the taxpayer did not use the claimed creditable withholding tax to pay for his/its tax liabilities, there is no basis in law or jurisprudence to say that BIR Form No. 2307 is the only evidence that may be adduced to prove such non-use." *(Boldfacing supplied)*

All told, I vote to DENY the Motion for Partial Reconsideration of the Commissioner of Internal Revenue and to PARTLY GRANT the Motion for Partial Reconsideration of PBCOM. Accordingly, the Commissioner of Internal Revenue should be ORDERED to issue a Tax Credit Certificate in favor of Philippine Bank of Communications in the total amount of P12,680,375.22, representing its unutilized and excess CWT for calendar year 2008.

ROMAN G. DEL ROSARIO
Presiding Justice