REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	CTA EB No. 1375 (CTA Case No. 8631)
-versus-	Present: DEL ROSARIO, *PJ*, CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN, and MANAHAN, *JJ.*
CITADEL HOLDINGS, INC. Respondent.	Promulgated: MAY 02 2017 11:57 a.m.

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DECISION

FABON-VICTORINO, J.:

In this Petition for Review[1], petitioner Commissioner of Internal Revenue (CIR) seeks to reverse and set aside the (1) Decision dated June 29, 2015[2] and the (2) Resolution dated September 28, 2015[3], both rendered by the Court in Division in CTA Case No. 8631, entitled Citadel Holdings, Inc. v. Commissioner of Internal Revenue.

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[1] *En Banc* Docket, pp. 4-12.
[2] *Ibid.*, pp. 28-42.
[3] *Ibid.*, pp. 20-26.

THE FACTS AND THE PROCEEDINGS

Summarized below are the facts established by the evidence presented, thus:

Petitioner is the Commissioner of Internal Revenue (CIR), vested with the power to decide, approve and grant refunds or tax credits of erroneously paid taxes, as provided by law. He holds office at the BIR National Office Building, BIR Road, Diliman, Quezon City.

On the other hand, respondent Citadel Holdings, Inc. is a domestic corporation primarily engaged in the business of investing in, purchase, exchange, or otherwise dispose of real and personal property of every kind and description, including shares of stock, subscriptions, bonds and other securities or obligations.

On April 15, 2011, respondent filed its Annual Income Tax Return (ITR) for taxable year 2010, showing prior years' excess credits of ₱12,450,514.00 and creditable withholding taxes (CWT) for the first three quarters and for the fourth quarter of 2010 in the respective amounts of ₱2,217,233.00 and ₱861,266.00 or a total of ₱3,078,499.00.

On August 22, 2011, respondent filed with the Bureau of Internal Revenue (BIR) an administrative claim for tax credit corresponding to the alleged excess CWT amounting to ₱3,078,499.00 for taxable year 2010.

On April 11, 2013, respondent filed a Petition for Review before the Court in Division.

On July 4, 2013, petitioner filed the required Answer arguing that respondent's claim for tax credit was subject to administrative investigation and/or examination, that taxes paid and collected were presumed to have been validly and legally made, hence, not refundable. Further, respondent failed to sufficiently establish its claim and entitlement thereto, which is fatal to its case.

After trial on the merits, the case was submitted for decision on August 20, 2014, with respondent's Memorandum filed on July 7, 2014, *sans* any for petitioner.

On July 29, 2015, the Court in Division rendered the assailed Decision[4], the *fallo* of which reads as follows:

> "WHEREFORE, premises considered, the instant Petition for Review is hereby PARTIALLY GRANTED. Accordingly, respondent (petitioner) is hereby ORDERED to ISSUE A TAX CREDIT CERTIFICATE or TO REFUND in favor of petitioner (respondent) the reduced amount of ₱2,755,403.17, representing petitioner's (respondent's) excess creditable withholding tax for taxable year 2010.
>
> SO ORDERED."

The Court in Division affirmed its ruling when it denied petitioner's plea for reconsideration[5] in the similarly assailed Resolution of September 28, 2015[6], which reads as follows:

> "WHEREFORE, premises considered, the instant Motion for Reconsideration is hereby DENIED for lack of merit.
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> SO ORDERED."

Hence, this appeal before the Court *En Banc,* raising the following arguments, to wit:

(1.) ONCE THE OPTION TO CARRY-OVER AND APPLY THE EXCESS QUARTERLY INCOME TAX AGAINST INCOME TAX DUE FOR THE TAXABLE QUARTERS OF THE SUCCEEDING TAXABLE YEARS HAS

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[4] *En Banc* docket, pp. 28-42.
[5] *Ibid.,* pp. 13-17.
[6] *Ibid.,* pp. 20-26.

BEEN MADE, SUCH OPTION SHALL BE CONSIDERED IRREVOCABLE FOR THAT TAXABLE PERIOD AND NO APPLICATION FOR CASH REFUND OR ISSUANCE OF A TAX CREDIT CERTIFICATE SHALL BE ALLOWED THEREFOR.

(2.) PROOF OF ACTUAL REMITTANCE TO THE BIR OF THE WITHHELD TAXES AND TESTIMONIAL EVIDENCE OF THE PAYORS AND WITHHOLDING AGENTS REQUIRED.

For his first argument, petitioner insists that Section 76 of the NIRC, as amended, as well as existing jurisprudence, provide that a corporate taxpayer has two options available when it has excess tax credits or overpaid income tax in a given taxable year. The options are alternative in nature, such that the choice of one precludes the other. Hence, once a corporate taxpayer exercises the option to carry-over and apply the excess credit against the tax due for the succeeding taxable quarters, such option is irrevocable for that year and the corporate taxpayer cannot thereafter apply for a cash refund or tax credit for the amount representing such excess credit or over payment.

Petitioner claims that respondent's Quarterly Income Tax Return for 2011 showed that it had Prior Year's Excess Credit-Taxes Withheld in the amount of ₱12,000,747.00, an amount more than its claim for refund, *i.e.* ₱3,078,499.00. But according to petitioner, respondent failed to present its Quarterly ITRs and Annual ITR for 2012, thus, it cannot be determined whether respondent has exercised the option to carry-over its unutilized CWTs for CY 2010 to the succeeding taxable quarters of 2011 or 2012.

Anent his second argument, petitioner maintains that respondent failed to prove that the creditable taxes it withheld were indeed remitted to the BIR. Allegedly, the evidence it presented failed to conclusively show the fact of payment and remittance to the BIR of the withheld taxes on its income. Petitioner insinuates that the best evidence or proof for that purpose is the certification issued by the BIR's Revenue Accounting Division.

In rejecting petitioner's position, respondent argues that it has complied with all the requisites for the refund of its excess tax credits. In other words, there is no reason for the Court *En Banc* to reverse the assailed Decision and Resolution of the Court in Division.

On May 4, 2016, the instant petition was deemed submitted for decision[7] after respondent filed its Memorandum on March 11, 2016[8]. As in the Court in Division, petitioner failed to file his own, despite the opportunity granted.[9]

THE RULING OF THE COURT *EN BANC*

It cannot simply be ignored that petitioner virtually glued his position navigating on the very same arguments he set forth in his previously filed pleadings before the Court in Division, i.e., Answer and Motion for Partial Reconsideration, conveniently forgetting that all of them have been exhaustively considered and discussed in the assailed Decision of July 29, 2015 and Resolution of September 28, 2015.

But if only to reinforce the findings of the Court in Division, the salient points of the issues he raised shall be discussed anew.

Section 76 of the NIRC of 1997, as amended, provides that a corporate taxpayer entitled to refund or tax credit of its excess or unutilized income taxes paid has two options under Section 76[10], of the NIRC, as amended, to wit: (1) to

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[7] *En Banc* docket, pp. 74-75.
[8] *Ibid.,* pp. 60-71.
[9] *Ibid.,* p. 72.
[10] SEC. 76. Final Adjustment Return. - Every corporation liable to tax under Section 27 shall file a final adjustment return covering the total taxable income for the preceding calendar or fiscal year. If the sum of the quarterly tax payments made during the said taxable year is not equal to the total tax due on the entire taxable income of that year, the corporation shall either:

(A) Pay the balance of tax still due; or
(B) Carry over the excess credit; or

carry over the excess credit to the succeeding taxable quarters/years until it is fully utilized, or (2) to file a claim for refund either in the form of cash or tax credit certificate.

Under the irrevocability rule embodied in the last sentence of the cited provision,[11] the two options are alternative in nature and the choice of one precludes the other[12].

In the present case, respondent allegedly chose the issuance of tax credit certificate for its excess/unutilized CWT for CY 2010. However, it failed to present its Quarterly ITRs and Annual ITR for 2012 which is fatal to its claim. *Sans* the said documents, it could not be determined whether respondent opted to exercise the option to carry-over its unutilized CWTs for CY 2010 to the succeeding taxable quarters of 2011 or 2012.

The Court does not agree.

Evidence shows that respondent clearly indicated in its Original Annual ITR for taxable year 2010[13] its choice "To be issued a Tax Credit Certificate"[14], signifying its plain intention to apply for a tax credit for its excess/unutilized CWT for the year 2010 in the total amount of ₱3,078,499.00.

Further, in respondent's ITR for the year 2010, it had a total CWT of ₱15,529,013.00[15] coming from its prior year's

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(C) Be credited or refunded with the excess amount paid, as the case may be.

In case the corporation is entitled to a tax credit or refund of the excess estimated quarterly income taxes paid, the excess amount shown on its final adjustment return may be carried over and credited against the estimated quarterly income tax liabilities for the taxable quarters of the succeeding taxable years. Once the option to carry over and apply the excess quarterly income tax against income tax due for the taxable quarters of the succeeding taxable years has been made, such option shall be considered irrevocable for that taxable period and no application for cash refund or issuance of a tax credit certificate shall be allowed therefor.

[11] Systra Philippines, Inc. v. Commissioner of Internal Revenue, G.R. No. 176290, September 21, 2007.

[12] Commissioner of Internal Revenue v. PERF Realty Corporation, G.R. No. 163345, July 04, 2008.

[13] Exhibit "P-5".

[14] Exhibit "P-5", Line 33.

[15] Exhibit "P-5", Line 30H.

excess credits amounting to ₱12,450,514.00[16], creditable taxes withheld during the first three quarters of year 2010 in the amount of ₱2,217,233.00 and creditable taxes withheld in the amount of ₱861,266.00 for the fourth quarter of 2010. Thus, for the entire 2010, respondent had a total CWT of ₱3,078,499.00 (₱2,217,233.00 + ₱861,266.00).

However, since respondent had an income tax liability of ₱449,767.26[17] in 2010, which it applied against its CWT from Prior Year's Excess Credits Other Than MCIT, the total balance of its Prior Year's Excess Credits Other Than MCIT for the year 2010 became ₱12,000,746.74 (₱12,450,514.00-₱449,767.26) or rounded off to ₱12,000,747.00, which it carried over to the subsequent quarters/year 2011.

As proof that respondent did not carry over its CWT for 2010 to the succeeding quarters/year, it presented its 2011 Annual ITR[18], as well as its 1st, 2nd and 3rd quarter ITRs for 2011[19] which showed that its "Prior Year's Excess Credit" remained intact in the amount of ₱12,000,747.00. Indubitably, respondent did not carry over its 2010 excess tax credits of ₱3,078,499.00, in its 2011 ITRs. Thus, as held by the Court in Division, respondent's excess CWT for taxable year 2010 in the amount of ₱3,078,499.00 is a proper subject for its claim for tax credit.

However, to be entitled to refund, respondent must establish compliance with the following requisites, to wit: (1) the administrative and judicial claims for refund were filed within the mandatory[20] two-year period[21] reckoned from the filing of the final adjusted return (FAR),[22] (2) it is shown on the return of the recipient that the income payment received was declared as part of the gross income; and (3) the fact of withholding as evidenced by a copy of the statement duly issued by the payor to the payee showing the amount paid

[16] Exhibit "P-5", Line 30A.
[17] Exhibit "P-5", Line 29.
[18] Exhibit "P-9", Line 33A.
[19] Exhibits "P-6", "P-7", "P-8" and "P-9", Line 31A, respectively.
[20] Commissioner of Internal Revenue v. Manila Electric Company (MERALCO), G.R. No. 181459, June 9, 2014.
[21] CBK Power Company Limited v. Commissioner of Internal Revenue, G.R. Nos. 193383-84, January 14, 2015 and Commissioner of Internal Revenue v. CBK Power Company Limited, G.R. Nos. 193407-08.
[22] Commissioner of Internal Revenue v. Primetown Property, G.R. No. 162155, August 28, 2007.

and the amount of the tax withheld.[23] The second and third conditions are anchored on Section 2.58.3 (B) of Revenue Regulations No. 2-98.[24]

The Court *En Banc* is one with the Court in Division that both the administrative and judicial claims for refund were seasonably instituted by respondent on August 22, 2012 and April 11, 2013, respectively. It was established that respondent filed its ITR for the year 2010 on April 15, 2011, therefore, it had until April 15, 2013 to file its claim for refund, both with petitioner and with the Court.

The second requisite was also complied with. As held by the Court in Division, respondent was able to prove that the allowed creditable withholding taxes in the amount of ₱2,755,403.17 were withheld on income payments in the amount of ₱22,841,192.25 received by respondent in the year 2010.

With respect to the third requisite, petitioner claims that actual payment and remittance of the withheld taxes to the BIR can only be established through the testimonies of the various payors and the certification from the BIR's Revenue Accounting Division of such fact. However, respondent failed to present them to the Court in Division, adversely affecting its claimed entitlement to the relief sought.

Petitioner's contention is unmeritorious.

It is worth to note that as a rule, Certificates of Creditable Tax Withheld at Source (BIR Form No. 2307) issued by withholding agents are *prima facie* proof of actual

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[23] Commissioner of Internal Revenue v. Merchant (Phil.) Operations Corporation, G.R. Nos. 171742 & 176165, June 15, 2011.
[24] Sec. 2.58.3. Claim for Tax Credit or Refund. —

xxx xxx xxx

(B) Claims for tax credit or refund of any creditable income tax which was deducted and withheld on income payments shall be given due course only when it is shown that the income payment has been declared as part of the gross income and the fact of withholding is established by a copy of the withholding tax statement duly issued by the payor to the payee showing the amount paid and the amount of tax withheld therefrom.

payment of creditable withholding taxes by the payee-taxpayer to the government and there is no further need to present the various payors and withholding agents in order to establish the fact of withholding and remittances made.

Sections 57 and 58 of the NIRC of 1997, as amended, pertinently provide that it is the payor-withholding agent, and not the payee-refund claimant, who is vested with the responsibility of withholding and remitting income taxes, *viz:*

> "SECTION 57. Withholding of Tax at Source. —
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> xxx xxx xxx
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> (B) Withholding of Creditable Tax at Source. — The Secretary of Finance may, upon the recommendation of the Commissioner, **require the withholding of a tax on the items of income payable** to natural or juridical persons, residing in the Philippines, **by payor-corporation/persons as provided for by law**, at the rate of not less than one percent (1%) but not more than thirty-two percent (32%) thereof, **which shall be credited against the income tax liability of the taxpayer for the taxable year**."
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> "SECTION 58. Returns and Payment of Taxes Withheld at Source. —
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> (A) Quarterly Returns and Payments of Taxes Withheld. — **Taxes deducted and withheld under Section 57 by withholding agents shall be covered by a return and paid to**, except in cases where the Commissioner otherwise permits, an authorized agent bank, Revenue District Officer, Collection Agent, or duly authorized Treasurer of the city or municipality where the withholding agent has his legal residence

or principal place of business, or where the withholding agent is a corporation, where the principal office is located.

The taxes deducted and withheld by the withholding agent shall be held as a special fund in trust for the government until paid to the collecting officers.

The return for final withholding tax shall be filed and the payment made within twenty-five (25) days from the close of each calendar quarter, while the return for creditable withholding taxes shall be filed and the payment made not later than the last day of the month following the close of the quarter during which withholding was made: xxxx"

Further, the Supreme Court in Commissioner of Internal Revenue v. Philippine National Bank[25] explained that proof of actual remittance by respondent taxpayer is not needed in order to prove withholding and remittance of taxes to petitioner CIR, *viz:*

". . . **proof 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 Regulations 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

[25] G.R. No. 180290, September 29, 2014, 736 SCRA 609.

> 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, . . . 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.**" (boldfacing supplied)

In fine, proof of actual remittance is not a condition to claim for a refund or tax credit of unutilized/excess CWT.

Also, the testimony of the withholding agent is not required to establish the fact of withholding because the certificate of tax withheld at source (BIR Form No. 2307) is competent proof of the fact that taxes were withheld by the withholding agent, who by law, is obliged to remit the amount withheld to the BIR. In other words, it is not necessary for the person who executed and prepared the certificate of creditable tax withheld at source to be presented in court and authenticate the said document.[26]

Again, as held by the Court in Division, respondent was able to comply with the third requisite by submitting the various Certificates of Creditable Tax Withheld at Source (BIR Form No. 2307) issued by its payors/withholding agents as proof of the fact of withholding.

WHEREFORE, the Petition for Review filed by the Commissioner of Internal Revenue on November 6, 2015, is hereby **DENIED**, for lack of merit. Accordingly, the assailed

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[26] Commissioner of Internal Revenue v. Team (Philippines) Operations Corporation, G.R. No. 179260, April 2, 2014.

Decision dated June 29, 2015 and the Resolution dated September 28, 2015 of the Court in Division in CTA Case No. 8631, are hereby **AFFIRMED**.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

We Concur:

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
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 among the members of the Court *En Banc* before the case was assigned to the writer of the opinion of the Court *En Banc*.

ROMAN G. DEL ROSARIO
Presiding Justice