REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus -

AYALA CORPORATION,
Respondent.

CTA EB NO. 2118
(CTA Case No. 9024)

Present:

DEL ROSARIO, *P.J.,*
CASTAÑEDA, JR.,
UY,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA, *and*
MODESTO-SAN PEDRO, *JJ.*

Promulgated:
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RESOLUTION

BACORRO-VILLENA, J.:

For the Court *En Banc's* resolution is petitioner Commissioner of Internal Revenue's (**petitioner/CIR's**) "Motion for Reconsideration Re: Decision dated 14 October 2020"[1] (**MR**), filed on 09 November 2020. Respondent's "Motion for Extension of Time to File Comment" filed on 14 December 2020 was denied in the Resolution dated 20 January 2021. Consequently, the Comment/Opposition filed on 28 December 2020 was ordered expunged from the records.

In petitioner's MR, petitioner seeks the reversal of this Court's Decision[2] in the above-captioned case dated 14 October 2020. The dispositive portion of which reads:

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1 Rollo, pp. 71-77.
2 Id., pp. 58-67.

> ...
>
> **WHEREFORE,** the foregoing considered, petitioner Commissioner of Internal Revenue's Petition for Review filed on 23 August 2019 is **DENIED.** Accordingly, the Assailed Amended Decision and Resolution dated 25 March 2019 and 18 July 2019, respectively, of the Special First Division in CTA Case No. 9024, entitled *Ayala Corporation v. Commissioner of Internal Revenue*, are hereby **AFFIRMED.**
>
> **SO ORDERED.**
>
> ...

Petitioner remains firm in its position that respondent is not entitled to the refund or issuance of a Tax Credit Certificate (**TCC**) amounting to ₱127,292,477.20 for failing to prove the fact of withholding of taxes and the subsequent remittance to the Bureau of Internal Revenue (**BIR**). He insists that for a claim for refund to prosper, it is incumbent upon the claimant to prove the actual remittance of the withheld taxes to the BIR.

Further, petitioner asserts that a tax refund is in the nature of a tax exemption, which must be construed *strictissimi juris* against the taxpayer. According to him, the taxpayer must present convincing evidence to substantiate a claim for refund.

We resolve.

A careful perusal of petitioner's MR readily reveals that the arguments put forward herein are mere rehash of the issues raised in Petition for Review, which the Court already considered, passed upon and exhaustively discussed in the assailed Decision.

In *Shangri-la International Hotel Management, Ltd., et al. v. Developers Group of Companies, Inc.*[3], the Supreme Court opined that it is incumbent upon petitioner-movant to raise substantially plausible matters to warrant the relief sought, thus:

> ...
>
> 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

[3] G.R. No. 159938, 22 January 2007.

> 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 cause of action.
>
> 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 substantial legitimate ground or reason to justify the reconsideration sought.
>
> ...

Nonetheless, for emphasis, the Court *En Banc* shall briefly discuss and reiterate the reasons why the grant of petitioner's MR is unavailing.

Revenue Regulations (**RR**) No. 2-98[4] provides that the claimant-taxpayer need not prove the fact of actual remittance to the BIR to be entitled to the refund of unutilized creditable withholding taxes (**CWT**). The claimant-taxpayer is only required to prove that the income payment formed part of the gross income and the *fact of withholding*. The proof of remittance of the withheld taxes remains the responsibility of the withholding agent. We reproduce the relevant portion of RR No. 2-98 below:

> **Sec. 2.58.3.** *Claim for tax credit or refund –*
>
> ...
>
> (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.
>
> **Proof of remittance is the responsibility of the withholding agent.**[5]
>
> ...

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[4] *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.*

[5] Emphasis supplied.

Further, the Supreme Court elaborates in the case of *Commissioner of Internal Revenue v. Philippine National Bank*[6], to wit:

> ...
>
> Petitioner's posture that respondent is required to establish actual remittance to the Bureau of Internal Revenue deserves scant consideration. **Proof of actual remittance is not a condition to claim for a refund of unutilized tax credits. Under Sections 57 and 58 of the 1997 National Internal Revenue Code, as amended, it is the payor-withholding agent, and not the payee-refund claimant such as respondent, who is vested with the responsibility of withholding and remitting income taxes.**
>
> This court's ruling in *Commissioner of Internal Revenue v. Asian Transmission Corporation*, citing the Court of Tax Appeals' explanation, is instructive:
>
>> ... 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 Regulation 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 withheld taxes by the withholding agents acting under government authority. Moreover, pursuant to Section 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 petitioner. The Certificate 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.
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> ...

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6 G.R. No. 180290, 29 September 2014; Citations omitted; Emphasis supplied and Italics in the original text.

As a final word, while tax refund partakes the nature of a tax exemption and is strictly construed against the taxpayer, the government should not misuse technicalities to keep money it is not entitled to.[7]

WHEREFORE, the foregoing considered, petitioner's Motion for Reconsideration Re: Decision dated 14 October 2020 is hereby **DENIED** for lack of merit. Accordingly, the Court's Decision dated 14 October 2020 is **AFFIRMED**.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

WE CONCUR:

ON LEAVE
ROMAN G. DEL ROSARIO
Presiding Justice

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

ERLINDA P. UY
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

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7 *Philippine Airlines, Inc. (PAL) v. Commissioner of Internal Revenue*; G.R. No. 206079, 17 January 2018.