**REPUBLIC OF THE PHILIPPINES**
**COURT OF TAX APPEALS**
**QUEZON CITY**

## SPECIAL SECOND DIVISION

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| **SONOMA SERVICES, INC.,** Petitioner, | **CTA CASE NO. 9249** |
| | Members: |
| - versus - | **CASTAÑEDA, JR.,** *Chairperson, and* **MANAHAN,** *JJ.* |
| **COMMISSIONER OF INTERNAL REVENUE,** Respondent. | Promulgated: JAN 04 2019 2:47 PM |

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# RESOLUTION

**CASTAÑEDA, JR., *J.*:**

For resolution is respondent's **Motion for Reconsideration,** filed through registered mail on August 31, 2018 and received by this Court on September 7, 2018, with petitioner's **Comment (Re: Motion for Reconsideration dated August 31, 2018)**, filed on October 10, 2018.

Respondent seeks reconsideration of the Court's Decision (assailed Decision)[1] promulgated on August 15, 2018, the dispositive portion of which reads:

> "**WHEREFORE**, the present Petition for Review is **GRANTED**. Accordingly, respondent is hereby **ORDERED TO REFUND OR TO ISSUE A TAX CREDIT CERTIFICATE** in the amount of **₱4,733,500.00** in favor of petitioner, representing its excess and unutilized CWT for CY 2013.

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[1] Docket, pp. 433-451.

**SO ORDERED.**"[2]

Respondent moves for reconsideration of the assailed Decision arguing that the Court erred in granting petitioner's claim for refund in the amount of ₱4,733,500.00, representing its excess and unutilized creditable withholding taxes (CWT) for taxable year 2013, on the following grounds:

1. Petitioner evidently failed to comply with the requirements under Revenue Regulations (RR) No. 2-98, as amended by RR No. 2-2006, on the claim for refund of excess/unutilized income taxes withheld for taxable year 2013;

2. Petitioner's documentary exhibits consisting of Certificate of Creditable Withholding Tax at Source (*i.e.*, BIR Forms 2307) marked as "P-14-1" to "P-14-24" are inadmissible in evidence for being hearsay; and

3. Petitioner's instant claim for refund should be construed *strictissimi juris* against it.

Respondent contends that petitioner's claim for refund should have been denied outright for its failure to present the documentary requirements prescribed under RR No. 2-98, as amended by RR No. 2-2006. Respondent also argues that the best evidence or proof of remittance is the certification from the Bureau of Internal Revenue's Revenue Accounting Division as to the fact of remittance of the tax withheld.

Moreover, respondent alleges that petitioner failed to present the various payors and withholding agents in order to establish and validate the fact of withholding and remittance of the full amount subject of the instant claim for refund. Respondent avers that the Certificate of Creditable Withholding Tax at Source (BIR Forms 2307) of petitioner should not have been given probative value by this Court for being hearsay evidence.

[2] Docket, pp. 449-450.

Petitioner however submits that grounds relied upon by respondent are devoid of any factual or legal merit, based on the following:

1. The presentation of the Certificates of Creditable Tax Withheld at Source (BIR Form No. 2307) issued by withholding agents constitutes sufficient proof of the existence and validity of petitioner's CWT;

2. Petitioner's documentary evidence were properly admitted in evidence and do not constitute hearsay evidence; and

3. The rule that "claims for refund of overpaid taxes are construed *strictissimi juris* against the taxpayer" does not apply to claims for refund of overpaid or erroneously paid taxes, such as this case.

The Motion for Reconsideration is bereft of merit.

In the assailed Decision, the Court has already established petitioner's compliance with the second requirement in a claim for refund [*i.e.*, the fact of withholding must be 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]. Petitioner presented the Certificate of Creditable Tax Withheld at Source (BIR Form No. 2307) duly issued to it by various withholding agents for calendar year 2013.

In the case of *Commissioner of Internal Revenue vs. Philippine National Bank*[3], the Supreme Court held that the certificate of creditable tax withheld at source is the competent proof to establish the fact that taxes are withheld. It is not necessary for the person who executed and prepared the certificate of creditable tax withheld at source to be presented and to testify personally to prove the authenticity of the certificates. The certificate is complete in the relevant details that would aid the courts in the evaluation of any claim for refund of excess creditable withholding taxes. Thus, upon presentation of a withholding tax certificate complete in its relevant details and with a written statement that it was made under the penalties of perjury, the burden of evidence then shifts to the

[3] G.R. No. 180290, September 29, 2014.

Commissioner of Internal Revenue to prove that (1) the certificate is not complete; (2) it is false; or (3) it was not issued regularly. Proof of actual remittance is not a condition to claim for a refund of unutilized tax credits

In the case of *Commissioner of Internal Revenue vs. Asian Transmission Corporation*[4], the Supreme Court, citing the ruling of the Court of Tax Appeals (CTA) En Banc, held that taxpayer-refund claimant need not prove the actual remittance of the tax withheld made by the withholding agent since remittance is the responsibility of the latter and not of the former, to wit:

> "x x x **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, x x x 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.** We stress that the pertinent provisions of law and the established jurisprudence evidently demonstrate that there is no need for the claimant, respondent in this case, to prove actual

[4] G. R. No. 179617, January 19, 2011.

remittance by the withholding agent (payor) to the BIR." (*Emphasis supplied*)

Moreover, in the case of *Commissioner of Internal Revenue vs. Team [Philippines] Operations Corporation (formerly Mirant (Phils) Operations Corporation)*[5], the Supreme Court, adopting the findings of the CTA, explained that the testimony of the various agents/payors need not be presented to validate the authenticity of the certificates of creditable tax withheld at source considering that the certificates were duly signed and prepared under penalties of perjury, thus, the figures appearing therein are presumed to be true and correct.

Considering the foregoing, the Court finds no cogent reason to reverse or modify the assailed Decision dated August 15, 2018.

**WHEREFORE**, premises considered, respondent's **Motion for Reconsideration** is **DENIED** for lack of merit.

**SO ORDERED.**

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

I CONCUR:

Catherine T. Manahan
**CATHERINE T. MANAHAN**
Associate Justice

[5] G.R. No. 179260, April 2, 2014.