CTA Form No. 8

20-000118-0066

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL FIRST DIVISION

CTA CASE NO. 10273

TULLETT PREBON (PHILIPPINES) INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

NOTICE OF AMENDED DECISION

To:

OFFICE OF THE SOLICITOR GENERAL
134 Amorsolo Street, Legazpi Village
Makati City

ATTY. SYLVIA A. ALMA JOSE
ATTY. AYESHA HANIA B. GUILING-MATANOG
ATTY. MARVEEN B. DE LA PAZ
Bureau of Internal Revenue
Room 703, Litigation Division, BIR National Office Building
Sen. Miriam P. Defensor-Santiago Avenue
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SALVADOR LLANILLO & BERNARDO
8th Floor, Tower One & Exchange Plaza
Ayala Triangle, Ayala Avenue
1226 Makati City

GREETINGS:

You are hereby notified by these presents that on **June 28, 2024,** an Amended Decision was rendered in the above-entitled case, copy of which is attached hereto.

Quezon City, Philippines, **July 1, 2024.**

Atty. Margarette Y. Guzman
Executive Clerk of Court III

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL FIRST DIVISION

TULLETT PREBON (PHILIPPINES), INC.,
Petitioner,

-*versus*-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 10273

Members:

DEL ROSARIO, *P.J., Chairperson,*
MANAHAN, *and*
REYES-FAJARDO, *JJ.*

Promulgated:

JUN 2 8 2024; 1:40PM

x- -x

AMENDED DECISION

MANAHAN, *J.*:

For resolution of the Court are the following:

1. *Motion for Partial Reconsideration (Re: Decision dated 30 January 2024)* filed by respondent on February 19, 2024 ("respondent's *Motion*"),[1] with petitioner's *Comment (Re: CIR's Motion for Reconsideration dated February 16, 2024)*;[2] and

2. *Motion for Partial Reconsideration* filed by petitioner on February 21, 2024 ("petitioner's *Motion*"),[3] without respondent's comment.[4]

Both *Motions* assail the Court's *Decision* dated January 30, 2024 ("Assailed *Decision*"),[5] the dispositive portion of which reads:

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[1] Docket – Vol. II, pp. 751-758.
[2] Docket – Vol. II, pp. 775-793.
[3] Docket – Vol. II, pp. 760-772.
[4] Per *Records Verification* dated March 12, 2024.
[5] Docket – Vol. II, pp. 735-750.

> **WHEREFORE**, in light of the foregoing considerations, the present *Petition for Review* is **PARTIALLY GRANTED**. Respondent is hereby ordered to refund petitioner the amount of **₱6,978,758.87** representing the latter's excess and unutilized CWTs for the CY ended December 31, 2017.
>
> **SO ORDERED**.

Respondent's Motion

Respondent Commissioner of Internal Revenue ("CIR") argues that in a judicial claim for refund or tax credit, it is crucial for the taxpayer to prove that its administrative claim should have been granted in the first place. Here, petitioner allegedly failed to satisfy all the documentary and evidentiary requirements for its administrative claim. It cannot therefore cure the same by presenting the necessary documents before the Court; otherwise, it would be tantamount to circumventing the CIR's role in evaluating the taxpayer's claim.

Respondent cites Revenue Memorandum Order (RMO) No. 53-98 which provides the checklist of documents to be submitted by a taxpayer upon audit of its tax liabilities, and Revenue Regulations (RR) No. 2-2006 which require the submission of the Summary Alphalist of Withholding Agents of Income Payments subjected to Withholding Tax (SAWT). According to respondent, there is no record of petitioner submitting the complete documents under the said issuances.

In its *Comment*, petitioner counterargues that respondent did not specify which specific documents it failed to submit. Moreover, it has been settled already that RMO No. 53-98 and RR No. 2-2006 merely enumerates the documents that the Bureau of Internal Revenue ("BIR") may require from the taxpayer. They are not the benchmark in determining whether the documents submitted are sufficient to support a claim for refund of erroneously paid or collected taxes.

Petitioner's Motion

Petitioner moves that the Court revisit its evidence and reconsider the assailed *Decision* on the following grounds:

First, of the creditable withholding taxes (CWTs) in the amount of P875,606.69 disallowed by the Court based on the findings of the ICPA that the same are unsupported by valid CWT certificates (BIR Forms No. 2307), **P17,406.06** are in fact properly supported by CWT certificates forming part of the evidence it submitted.

Second, the amount of **P49,751.11** disallowed by the Court due to discrepancies between the amounts stated in the CWT certificates and the amounts per claim was due to the fact that the Court missed to appreciate that the latter are supported by two CWT certificates.

Third, the amount of **P6,969.86** disallowed by the Court because the exhibit reference for the purported supporting CWT certificate does not pertain to the client per the schedule of claim was due to the fact that the Independent Certified Public Accountant (ICPA) inadvertently marked the CWT certificate issued to First Metro Investment Corp. as Exhibit "P-61" instead of Exhibit "P-62."

Fourth, the amount of **P106,108.72** disallowed by the Court, because the exhibit references for their supporting CWT certificates already pertained to other CWT amounts, was due to erroneous exhibit markings.

Fifth, contrary to the Court's findings, the CWTs in the amount of **P289,926.03** are in fact properly supported by CWT certificates.

We now resolve.

Section 8 of RA No. 1125,[6] as amended by RA No. 9282,[7] describes the Court as a court of record. It is already well-settled that cases before the Court are litigated *de novo*, therefore party litigants should prove every minute aspect of their cases.[8] The Court's decision should be "solely based on the evidence formally presented before it, *notwithstanding any pieces of evidence that may have been submitted (or not submitted) to the CIR.*"[9]

Respondent's contention therefore that petitioner should have first submitted the complete documents under RMO No. 53-98 and RR No. 2-2006 in support of its administrative claim deserves scant consideration. Aside from the fact that respondent did not even indicate which specific documents petitioner failed to submit, Section 229 of the Tax Code clearly expresses that the only requirement for a judicial claim of refund to be maintained is that an administrative claim had been filed. The law does not require that the latter be acted upon before a judicial claim may be filed.[10]

Moreover, RMO No. 53-98 and RR No. 2-2006 do not provide that non-submission of the documents enumerated therein *ipso facto* results in the denial of the taxpayer's refund claim. This was already addressed by the Supreme Court in *Pilipinas Total Gas, Inc. v. Commissioner of Internal Revenue*:[11]

> "...RMO No. 53-98 is addressed to internal revenue officers and employees, for purposes of equity and uniformity, to guide them as to what documents they may require taxpayers to present upon audit of their tax liabilities. Nothing stated in the issuance would show that it was intended to be a benchmark in determining whether the documents submitted by a

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[6] AN ACT CREATING THE COURT OF TAX APPEALS.
[7] AN ACT EXPANDING THE JURISDICTION OF THE COURT OF TAX APPEALS (CTA), ELEVATING ITS RANK TO THE LEVEL OF A COLLEGIATE COURT WITH SPECIAL JURISDICTION AND ENLARGING ITS MEMBERSHIP, AMENDING FOR THE PURPOSE CERTAIN SECTIONS OF REPUBLIC ACT NO. 1125, AS AMENDED, OTHERWISE KNOWN AS THE LAW CREATING THE COURT OF TAX APPEALS, AND FOR OTHER PURPOSES.
[8] *Commissioner of Internal Revenue v. Jerry Ocier*, G.R. No. 192023, November 21, 2018 [Per J. Bersamin, First Division].
[9] *Commissioner of Internal Revenue v. Philippine Bank of Communications*, G.R. No. 211348. February 23, 2022 [Per J. Hernando, Second Division]. *Emphasis supplied.*
[10] *Commissioner of Internal Revenue v. Univation Motor Philippines, Inc. (formerly Nissan Motor Philippines, Inc.)*, G.R. No. 231581, April 10, 2019 [Per J. Reyes Jr., Second Division].
[11] G.R. No. 207112, December 08, 2015 [Per J. Mendoza, *En Banc*].

taxpayer are actually complete to support a claim for tax credit or refund of excess unutilized excess VAT."

Accordingly, we deny respondent's *Motion*.

Meanwhile, the Court finds partial merit in petitioner's *Motion*.

To recapitulate, aside from compliance with Section 76 of the National Internal Revenue Code, as amended ("NIRC"), the following requisites must be met for the successful claim of refund of excess unutilized CWTs:

1. The claim must be filed within the two-year prescriptive period under Sections 204(C) and 229 of the NIRC;
2. 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; and
3. The income upon which the taxes were withheld must be included in the return of the payee or recipient.

Here, for the reconsideration of the subject disallowances, petitioner must convince the Court that the *second* and *third* requisites have in fact been met.

Below is a summary of the Court's findings on petitioner's compliance with the *second* requisite:

Client Name	Per assailed *Decision*		**Ground for Reconsideration**
	Amount Disallowed (PhP)	**Ground for Disallowance**	
CHINA BANKING CORPORATION	763.20	Without BIR Form No. 2307 per ICPA's findings	N/A
JP MORGAN CHASE BANK NA	1,050.00		N/A
CITIBANK NA	12,197.47		Duly covered by BIR Form No. 2307 per Exhibit "P-46"
INTERNATIONAL NEDERLAND BANK	2,487.85		Duly covered by BIR Form No. 2307 per

			Exhibit "P-64," **except the amount of ₱149.50**
RIZAL COMMERCIAL BANKING CORP.	907.54		Duly covered by BIR Form No. 2307 per Exhibit "P-428"
Subtotal	***17,406.06***		
SECURITY BANK CORP. (₱29,603.68 per claim less ₱14,843.84 per 2307)	14,759.84	The CWT amounts per BIR Form No. 2307 are lower than the CWT amounts per claim	The amount per claim is duly supported by Exhibit "103"
AUSTRALIA & NEW ZEALAND BANKING GROUP LTD (₱82,991.85 per claim less ₱76,568.48 per 2307)	6,423.37		The amount of ₱6,423.37 is duly covered by another BIR Form No. 2307 per Exhibit "131"
SECURITY BANK CORP. (₱48,397.23 per claim less ₱19,829.33 per 2307)	28,567.90		The amount per claim is duly supported by Exhibit "210," **except the amount of ₱250.97**
Subtotal	***49,751.11***		
FIRST METRO INVESTMENT CORP.	6,969.86	The supporting BIR Form No. 2307 does not pertain to the client per schedule of claim	Duly covered by BIR Form No. 2307 per Exhibit "P-62"
Subtotal	***6,969.86***		
SECURITY BANK CORP.	38,393.61	The supporting BIR Form No. 2307 already pertains to other income payments and CWT amounts	Duly covered by BIR Form No. 2307 per Exhibit "P-103" **except the amount of ₱315.16**
SECURITY BANK CORP.	36,755.80		Duly covered by BIR Form No. 2307 per Exhibit "P-210"
INTERNATIONAL NEDERLAND BANK	30,959.31		Duly covered by BIR Form No. 2307 per Exhibit "P-172"
Subtotal	***106,108.72***		
CITIBANK NA	22,129.94	Without BIR Form No. 2307 per Court verification	Duly supported by BIR Form No. 2307 per Exhibit "P-46"
METROPOLITAN BANK & TRUST COMPANY	61,622.52		Duly supported by BIR Form No. 2307 per Exhibit "P-76"
METROPOLITAN BANK & TRUST COMPANY	57,183.37		
METROPOLITAN BANK & TRUST COMPANY	73,790.73		
SECURITY BANK CORP.	5,400.00		Duly supported by BIR Form No. 2307 per Exhibit "P-209"
SECURITY BANK CORP.	14,429.31		
AUSTRALIA & NEW ZEALAND BANKING GROUP LTD.	16,041.91		Duly supported by BIR Form No. 2307 per Exhibit "P-352"
AUSTRALIA & NEW ZEALAND BANKING GROUP LTD.	8,005.72		
RIZAL COMMERCIAL BANKING CORP.	41,255.00		Duly supported by BIR Form No. 2307 per Exhibit "P-428"
Subtotal	***299,858.50***		
TOTAL	**480,094.25**		

I. Of the P17,406.06 CWTs disallowed by the Court for not being supported by BIR Form No. 2307 per ICPA Report, P15,443.26 is properly substantiated.

In the *ICPA Report*, the CWTs in the amounts of P763.20 and P1,050.00 listed in *Annex 3, "Schedule of CWT Certificates that are scanned/photocopies only"*, were disallowed because the supporting documents thereof are mere scanned copies or photocopies of the BIR Forms No. 2307. Meanwhile, the CWTs in the amounts of P12,197.47, P2,487.85, and P907.54 found in *Annex 4, "Schedule of CWT subject for refund without certificates (BIR Form 2307)"*, were disallowed because there are no exhibit references for the corresponding BIR Forms No. 2307 in support thereof.

Upon verification, the Court finds that the CWTs listed in *Annex 3* in the total amount of P1,813.20 are properly disallowed. Their supporting documents are in fact scanned copies or photocopies, therefore, the same cannot be given probative value by the Court.

The CWTs listed in *Annex 4*, on the other hand, are found to be properly substantiated by Exhibits No. "P-46," "P-64," (except for P149.50 withheld by the International Nederland Bank) and "P-428."

Therefore, the Court affirms the disallowance of CWTs only in the amount of P1,962.70. The amount of **P15,443.36**[12] shall be allowed by the Court as it was established by petitioner to be properly substantiated by BIR Forms No. 2307.

II. Of the P49,751.11 CWTs disallowed by the Court due to the amounts per BIR Form No. 2307 being lower than the amounts per claim, the amount of P49,500.14 is properly substantiated.

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[12] P12,197.47 + (P2,487.85 – P149.50) + P907.54. am

To support its allegation that the discrepancies between the amounts stated in the BIR Forms No. 2307 and the amounts per claim was due to the fact that the latter are supported by two CWT certificates, petitioner submits the following exhibit references:

Exhibit No.	Client Name	Exhibit No. of Additional BIR Form 2307	CWT Amount
P-102	Security bank Corp.	Please refer to Exhibit P-103	₱ 14,759.84
P-132	Australia & New Zealand Banking Group Ltd.	Please refer to Exhibit P-131	6,423.37
P-209	Security Bank Corp.	Please refer to Exhibit P-210	28,567.90
TOTAL			**₱ 49,751.11**

Verification of the above exhibits confirm that the CWTs withheld by Australia & New Zealand Banking Group Ltd. is indeed duly supported by another BIR Form No. 2307 per Exhibit No. "P-131."

As to the CWTs withheld by Security Bank Corp., further verification reveals that Exhibits No. "P-102" and "P-209" do not actually pertain to the CWTs from which the amounts of P14,759.84 and P28,567.90 are respectively derived. In any case, Exhibits No. "P-103" and "P-210" do support the latter amounts, save for the amount of P250.97 which is still in excess of the CWT covered by Exhibit No. "P-210."

Thus, the CWTs in the amount of **P49,500.14**[13] shall be allowed by the Court.

III. The P6,969.86 CWTs disallowed by the Court because the supporting BIR Form No. 2307 does not pertain to the client is properly supported.

Examination of the supporting documents for the CWTs in the amount of P6,969.86 reveal that the ICPA indeed erred

[13] P6,423.37 + P14,759.84 + (P28,567.90 - P250.97).

in indicating Exhibit "P-61" as supporting reference therefor, although the BIR Form No. 2307 issued by First Metro Investment Corp was correctly marked as Exhibit "P-62." Verily, Exhibit "P-62" supports the "*Tax Withheld For the Quarter*" amounting to P32,022.61 which includes the amount of **P6,969.86** corresponding to the income payment of P69,698.63 for the 3rd month of the quarter.

IV. Of the P106,108.72 CWTs disallowed by the Court because the supporting BIR Form No. 2307 pertains to another period or income payments and CWTs, the amount of P105,793.56 is supported.

To support its claim that the CWTs in the amount of P106,108.72 disallowed by the Court due to their supporting exhibits pertaining to other CWT amounts was simply due to erroneous exhibit markings, petitioner points to the following correct exhibits:

Exhibit No.	Client name	Correct Exhibit No.	CWT amount (PhP)
"P-100"	SECURITY BANK CORP.	"P-103"	38,393.61
"P-100"	SECURITY BANK CORP.	"P-210"	36,755.80
"P-169"	INTERNATIONAL NEDERLAND BANK	"P-172"	30,959.31

Upon validation of the above exhibits, the Court finds that the amount of P315.16 withheld by Security Bank Corp. was not covered by Exhibit "P-103." The amount of **P105,793.56**[14] is properly substantiated and shall therefore be allowed by the Court.

V. The P299,858.50 CWTs disallowed by the Court for lack of supporting BIR Form No. 2307 are in fact properly supported.

[14] (P38,393.61 - P315.16) + P36,755.80 + P30,959.31.

Petitioner insists that the following CWTs in the total amount of P289,926.03[15] are properly supported by BIR Forms No. 2307:

Client Name	BIR Form No. 2307 (Exhibit No.)	Amount
CITIBANK N.A.	Included in P-46	12,197.47
METROPOLITAN BANK & TRUST COMPANY	P-76	61,622.52
METROPOLITAN BANK & TRUST COMPANY	P-76	57,183.37
METROPOLITAN BANK & TRUST COMPANY	P-76	73,790.73
SECURITY BANK CORP.	Included in P-209	5,400.00
SECURITY BANK CORP.	Included in P-209	14,429.31
AUSTRALIA & NEW ZEALAND BANKING GROUP LTD.	P-352	16,041.91
AUSTRALIA & NEW ZEALAND BANKING GROUP LTD.	P-352	8,005.72
RIZAL COMMERCIAL BANKING CORP.	P-428	41,255.00
Total		**289,926.03**

The Court notes that the disallowed CWT withheld by Citibank N.A. in the assailed *Decision* is in the amount of P22,129.94,[16] not P12,197.47. Hence, the total CWTs without supporting BIR Forms No. 2307 for reconsideration is P299,858.50, not P289,926.03.

Upon verification of the specified exhibit references which were already offered in evidence and admitted by the Court, the Court confirms that the CWTs in the amount of **P299,858.50** is duly substantiated.

In sum, out of the P480,094.25 total disallowed CWTs, the amount of **P477,565.42** is duly substantiated.

GROUND FOR DISALLOWANCE PER ASSAILED *DECISION*	AMOUNT OF DISALLOWED CWTS FOR RECONSIDERATION	UNSUPPORTED CWTS UPON FURTHER VERIFICATION	RECONSIDERED CWTS SUPPORTED BY BIR FORMS NO. 2307
Without BIR Form No. 2307 per ICPA's findings	P17,406.06	P1,962.70	P15,443.36
The CWT amounts per BIR Form No. 2307 are lower than the CWT amounts per claim	P49,751.11	P250.97	P49,500.14
The supporting BIR Form No. 2307 does not pertain to the client per schedule of claim	P6,969.86	-	P6,969.86

[15] Incorrect total due to incorrect input of CWT amount withheld by Citibank N.A.
[16] Docket – Vol. II, p. 746.

The supporting BIR Form No. 2307 already pertains to other income payments and CWT amounts	P106,108.72	P315.16	P105,793.56
Without BIR Form No. 2307	P299,858.50	-	P299,858.50
	P480,094.25	**P2,528.83**	**P477,565.42**

Nonetheless, petitioner still has to establish the *third* requisite for the valid claim of refund of excess unutilized CWTs—*i.e.* that the income upon which the taxes were withheld must be included in the return of the recipient.

Upon further scrutiny of the documents for income tracing, the Court finds that out of the validly substantiated CWTs amounting to P477,565.42, the amount of P259.50 withheld by Security Bank Corp. corresponding to the income payment of P2,594.97 should still be disallowed. The said income payment is not traced to the revenues (net brokerage) per *Annex 7 "Summary of Revenue Ledger"* of the *ICPA Report* that were included in petitioner's gross income in its annual income tax return for calendar year (CY) 2017. Consequently, only the amount of **P477,305.92**[17] satisfied the third requisite.

In view of the above findings, the Court finds that petitioner sufficiently proved its entitlement to the refund of its excess and unutilized CWTs for CY 2017 in the adjusted amount of P7,456,064.79, as computed below:

Valid CWTs granted per assailed *Decision*[18]	₱ 6,978,758.87
Add: Total reconsidered valid CWTs	477,305.92
Adjusted valid CWTs	**₱ 7,456,064.79**

ACCORDINGLY, respondent's *Motion for Partial Reconsideration (Re: Decision dated 30 January 2024)* filed on February 19, 2024 is **DENIED** for lack of merit, while petitioner's *Motion for Partial Reconsideration* filed on February 21, 2024 is **PARTIALLY GRANTED**. The dispositive portion of the *Decision* dated January 30, 2024 is hereby **AMENDED** to read as follows:

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[17] P477,565.42 - P259.50.
[18] Docket – Vol. II, p. 749.

WHEREFORE, in light of the foregoing considerations, the present *Petition for Review* is **PARTIALLY GRANTED**. Respondent is hereby ordered to refund petitioner the amount of **₱7,456,064.79** representing the latter's excess and unutilized CWTs for the CY ended December 31, 2017.

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

(on leave)
MARIAN IVY F. REYES-FAJARDO
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above *Amended Decision* were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ROMAN G. DEL ROSARIO
Presiding Justice