REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

CITADEL HOLDINGS, INC.,
Petitioner,

CTA Case No. 8631

- versus-

Members:

Castañeda, Jr., *Chairperson*
Casanova, and
Cotangco-Manalastas, *JJ.*

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:

SEP 2 8 2015 10:30 AM

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RESOLUTION

COTANGCO-MANALASTAS, *J.:*

For resolution is respondent's *Motion for Reconsideration* filed through registered mail on August 6, 2015 and received by this Court on August 17, 2015 with petitioner's *Comment to Motion for Reconsideration* filed on September 4, 2015.

Respondent moves for the reconsideration of this Court's Decision promulgated on July 29, 2015, the dispositive portion of which reads:

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

Respondent argues that once the option to carry-over and apply the excess quarterly income tax against the 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 shall be allowed therefor.

In this case, petitioner's Quarterly Income Tax Return for 2011 (First Quarter to Third Quarter) showed that petitioner has a Prior Year's Excess Credit-Taxes Withheld in the amount of Php12,000,747.00 which is actually more than the amount being claimed for refund (Php3,078,499.00). The said amount was carried over from 2010.

In view thereof, respondent contends that the amount being claimed for refund by the petitioner which is Php3,078,499.00, could have been actually included already in the Prior Year's Excess Credit-Taxes Withheld of Php12,000,747.00. However, petitioner failed to prove that the amount being claimed for refund was not included in the Prior Year's Excess Credit-Taxes Withheld as shown in in its Quarterly Income Tax Return. Apparently, the carry over option was constructively exercised in the case of petitioner as petitioner failed to prove that the amount being claimed for refund was not included in the Prior Year's Excess Credit-Taxes Withheld of Php12,000,747.00.

Moreover, petitioner failed to present and offer as evidence its quarterly income tax returns and annual income tax return (AITR) for the year 2012. Petitioner's petition for review was filed on April 11, 2013, hence, its AITR and the corresponding Quarterly Income Tax Returns for 2012 were already available at that time. Yet, petitioner opted not to present the same. This is suspicious. In fact, it is fatal to petitioner's claim for refund.

Respondent further argues that proof of actual remittance to the Bureau of Internal Revenue (BIR) of the withheld taxes and testimonial evidence of the payors and withholding agents are required in this case. The certificates of creditable taxes withheld accomplished by its withholding agents showing the amount deducted and withheld from its income in support of the tax refund, does not constitute conclusive evidence of payment and remittance to the BIR of the withheld taxes on petitioner's income. The act of withholding is one thing while the act of remittance is another thing. The best evidence or proof of remittance is the certification from the BIR's Revenue Accounting Division as to the fact of remittance of the tax withheld. Hence, petitioner failed to prove that the creditable taxes withheld by the payors were indeed remitted to the BIR.

In its comment, petitioner stresses that respondent's argument that "the amount being claimed for refund by the petitioner which is Php3,078,499.00, could have been actually included already in the Prior Year's Excess Credit-Taxes Withheld of Php12,000,747.00" is easily debunked by petitioner's exhibits, as summarized by petitioner in its Memorandum:

> "49. The income tax due of Petitioner for the year 2010 in the amount of ₱449,767.00 was deducted from Petitioner's prior years' CWT in the aggregate amount of ₱12,450,514.00 (before tax deduction). After the deduction of ₱449,767.00 for 2010 income tax payment, Petitioner reflected the new balance of only ₱12,000,747.00 – this is the same amount carried over to 2011. Thus, Petitioner's 2010 CWT amounting to ₱3,078,499.00 remains fully unutilized."

Moreover, petitioner argues that the amount of Php3,078,499.00 could not have been included in the credits accumulated in 2010 for the simple reason that petitioner's 2009 ITR (Exhibit "P-152") already reflects the total credits of Php12,450,514.00 – the same amount of 2009 and prior years' credits of Php12,450,514.00 before the 2010 income tax payment deduction. Also, petitioner could not have also included its 2010 accumulated credits in 2011 because as clearly shown by its 2011 income tax returns (Exhibits "P-6", "P-7", "P-8", and "P-9") its prior years' credits remained at Php12,000,747.00.

Respondent pointed out that petitioner failed to present and offer as evidence its quarterly income tax returns and AITR for the year 2012. Petitioner invites the attention of respondent to petitioner's Exhibits "P-10", "P-11", and "P-12" which are petitioner's 2012 returns. Moreover, non-presentation of these returns cannot defeat petitioner's entitlement to the refund granted because petitioner had convincingly shown, as early as 2011 through its 2011 returns, that it did not carry over its 2010 unutilized creditable withholding taxes (CWT) to 2011.

Lastly, respondent's argument that proof of actual remittance to the BIR of the withheld taxes and testimonial evidence of the payors and withholding agents are required has no basis in law. Petitioner reiterates the ruling in the case of *Far East Bank and Trust Company vs. Court of Appeals, et al.* (G.R. No. 129130, December 9, 2005) where the Supreme Court held that "[c]odal provisions on withholding tax are mandatory and must be complied with by the withholding agent. This is significant in that a taxpayer cannot be compelled to answer for the non-performance by the withholding agent of its legal duty to withhold unless there is collusion or bad faith."

The instant motion for reconsideration has no merit.

Respondent argues that the amount being claimed for refund by the petitioner which is ₱3,078,499.00, "could have been actually included already" in the Prior Year's Excess Credit-Taxes Withheld of ₱12,000,747.00.

The Court is not persuaded.

As held in the assailed Decision, the Court had already examined petitioner's Certificates of Creditable Tax Withheld at Source (BIR Form No. 2307) for taxable year 2010 and verified that out of the claimed refund of ₱3,078,499.00, only ₱2,755,403.17 was properly substantiated. Hence, this amount cannot have been included in the Prior Year's Excess Credit (from 2009 and prior years) of ₱12,450,514.00 which was later reduced to ₱12,000,747.00 after deducting the amount of ₱449,767.00 therefrom for the income tax due for 2010.

Moreover, as pointed out by petitioner, its 2009 AITR[1] already shows that petitioner had excess tax credits for 2009 and prior years in the total amount of ₱12,450,514.00[2]. This same amount was reflected as petitioner's "Prior Year's Excess Credits" in its 2010 AITR[3] as well as in its 1st, 2nd and 3rd quarter income tax return for 2010[4]. The income tax due of ₱449,767.00 for 2010 was deducted from the "Prior Year's Excess Credit" of ₱12,450,514.00. Hence, the new balance of the "Prior Year's Excess Credit" was reduced to ₱12,000,747.00 – this is the same amount reflected as petitioner's "Prior Year's Excess Credits" in its 2011 AITR[5] as

[1] Exhibits "P-152" and "P-152-A".
[2] Exhibits "P-152" and "P-152-A", Line 33.
[3] Exhibit "P-5", Line 30A.
[4] Exhibits "P-153", "P-154" and "P-155" (Line 31A), respectively.
[5] Exhibit "P-9", Line 33A.

well as in its 1st, 2nd and 3rd quarter income tax return for 2011[6]. Hence, petitioner could not have also included its 2010 excess tax credits in 2011 because as clearly shown by its 2011 income tax returns its "Prior Year's Excess Credits" remained at ₱12,000,747.00.

Respondent was mistaken when she argued that petitioner failed to present and offer as evidence its quarterly income tax returns and AITR for the year 2012. As borne by the records, petitioner did present its quarterly income tax returns[7] for 2012 showing that petitioner did not carry over its 2010 excess CWT even in 2012.

Even if petitioner failed to present in evidence its 2012 income tax returns, the same would not be fatal to its claim for refund.

It should be noted that petitioner already presented in evidence its 2011 income tax returns showing that petitioner did not carry over the 2010 excess CWT in 2011.

Moreover, in the case of *Winebrenner & Iñigo Insurance Brokers, Inc. vs. Commissioner of Internal Revenue*[8], the Supreme Court reiterated that it is the duty of the CIR to verify whether or not the taxpayer carried over its excess tax credits, thus:

> The CIR must then be reminded that in *Philam*[9], the CIR's "*failure to present* [the quarterly ITRs and AFR] to support its contention against the grant of a tax refund to [a claimant] is certainly fatal." *PERF*[10] reinforces this with a sweeping statement holding that the verification process is not incumbent on PERF [or any claimant for that matter]; [but] is the duty of the CIR to verify whether . . . excess income taxes [have been carried over].
>
> And should there be a possibility that a claimant may have violated the irrevocability rule and thereafter claim twice from its credits, no one is to be blamed but the CIR for not discharging its burden of evidence to destroy a claimant's right to a refund. At any rate, a claimant who

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[6] Exhibits "P-6", "P-7", "P-8", and "P-9" (Line 31A), respectively.
[7] Exhibits "P-10", "P-11", and "P-12"
[8] G.R. No. 206526, January 28, 2015.
[9] *Philam Asset Management, Inc. vs. Commissioner of Internal Revenue*, G.R. Nos. 156637 and 162004, December 14, 2005.
[10] *Commissioner of Internal Revenue vs. PERF Realty Corporation*, GR No. 163345, July 4, 2008.

> defrauds the government cannot escape liability be it criminal or civil in nature.

When the petitioner was able to establish *prima facie* its right to the refund by testimonial and object evidence, the respondent should have presented rebuttal evidence to shift the burden of evidence back to the petitioner.[11]

Based on the foregoing, respondent should have presented petitioner's income tax returns for 2012, on the basis of which it could rebut petitioner's claim that it did not carry over its unutilized and excess CWT even in 2012.

Respondent's argument that proof of actual remittance to the BIR of the withholding taxes and testimonial evidence of the payors or withholding agents are required deserves scant consideration.

In the case of *Commissioner of Internal Revenue vs. Philippine National Bank*[12], 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. Moreover, 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, who is vested with the responsibility of withholding and remitting income taxes.

The Supreme Court's ruling in *Commissioner of Internal Revenue vs. Asian Transmission Corporation*[13], quoting the ruling of the Court *En Banc*, is enlightening, *to wit*:

> "...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

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[11] *Republic of the Philippines, represented by the Commissioner of Internal Revenue vs. Team (Philippines) Energy Corporation (formerly Mirant [Philippines] Energy Corporation)*, G.R. No. 188016, January 14, 2015.

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

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

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

WHEREFORE, premises considered, the instant Motion for Reconsideration is hereby **DENIED** for lack of merit.

SO ORDERED.

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

CAESAR A. CASANOVA
Associate Justice