REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus -

MANILA NORTH TOLLWAYS CORPORATION,
Respondent.

CTA EB No. 1157
(CTA Case No. 7870)

Present:

Del Rosario, *P.J.*,
Castañeda, Jr.,
Bautista,
Uy,
Casanova,
Fabon-Victorino,
Mindaro-Grulla,
Cotangco-Manalastas, and
Ringpis-Liban, *JJ.*

Promulgated:

JUL 2 9 2015
2:40 p.m.

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DECISION

CASTAÑEDA, JR., *J.*:

This Petition for Review filed with the Court *en banc* by petitioner Commissioner of Internal Revenue, seeks for the reversal of the Amended Decision[1] promulgated on December 5, 2013 and of the Resolution[2] dated March 21, 2014.

The dispositive portion of the Amended Decision reads:

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[1] Amended Decision penned by Associate Justice Esperanza R. Fabon-Victorino, Division Docket, Vol. II, pp. 877-892.
[2] Division Docket, Vol. II, pp. 935-939.

"**WHEREFORE**, the Petition for Review dated January 14, 2009 filed by petitioner Manila North Tollways Corporation, is hereby **GRANTED**.

Accordingly, let a tax refund or tax credit certificate be issued in favor of petitioner in the amount of P16,960,448.65, representing erroneously withheld income tax on PNCC's NLEX toll revenue share for the period covering February 25, 2005 to November 2006.

SO ORDERED."

On the other hand, the dispositive portion of the Resolution dated March 21, 2014 reads:

"**WHEREFORE**, the Motion for Reconsideration (Re: Amended Decision Promulgated December 5, 2013) dated January 9, 2014 filed by respondent, is hereby **DENIED**, for lack of merit.

SO ORDERED."

THE FACTS

The facts[3] of this case, as found by the Court in Division, are as follows:

"Petitioner [now respondent] Manila North Tollways Corporation is a duly organized domestic corporation with business address at the North Luzon Expressway (NLEX) Compund, Balintawak, Caloocan City, Philippines. It is the builder of the NLEX and is the authorized concessionaire with right to operate, maintain, and charge tolls on NLEX until December 31, 2030.

Respondent [now petitioner], on the other hand, is the Commissioner of the Bureau of Internal Revenue (BIR), vested with authority to exercise the function of said office, including among others, the power to decide, approve, and grant refunds and/or tax credits of erroneously paid or illegally assessed or collected internal revenue taxes, or of penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected. She holds

[3] Decision promulgated on September 23, 2011, penned by Associate Justice Esperanza R. Fabon-Victorino, Division Docket, Vol. II, pp. 568-591.

office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

Petitioner avers that on August 29, 1995, Philippine National Construction Company (PNCC) and First Philippine Infrastructure Development Corporation (FPIDC) executed a Joint Venture Agreement (JVA) for the completion, rehabilitation, refurbishing and modernization of the NLEX. Under the JVA, PNCC assigned its usufructuary rights, interests and privileges under its franchise in favor of the Joint Venture Company to be formed under the JVA, insofar as the funding, design, construction, rehabilitation, refurbishing and modernization of the NLEX were concerned. In consideration thereof, PNCC shall receive a percentage of the toll revenues received from the NLEX.

On February 4, 1997, petitioner was incorporated to serve as the Joint Venture Company that will undertake the funding, design, construction, rehabilitation refurbishing and modernization of the NLEX. Subsequently, on April 30, 1998, petitioner was granted the concession to finance, design, rehabilitate, expand, operate and maintain the NLEX under a Supplemental Toll Operation Agreement ("STOA") executed by and amongst petitioner, the PNCC, and the Republic of the Philippines acting through the Toll Regulatory Board (TRB).

On September 30, 2004, an Amended and Restated Shareholder's Agreement was entered into among FPIDC, PNCC, Egis Projects, S.A., Leighton Asia (Southern) Limited, and petitioner, whereby PNCC, in consideration of the assignment of its franchise, shall be entitled to receive a share of the gross toll revenue collected from the operation of the NLEX.

Consistent with the afore-mentioned agreement, petitioner made payments to PNCC in the year 2006 amounting to Php565,348,288.42, as the latter's revenue share for 2005 and 2006, and withheld the amount of Php28,267,414.42, representing five percent (5%) CWT. However, PNCC insisted that the payment in its favor should be subject to only two percent (2%) and not five percent (5%) CWT. Thus, they placed the amount of Php28,267,414.42 in an escrow account pending a ruling from the BIR on the applicable CWT rate.

On January 15, 2007, petitioner, allegedly through inadvertence, remitted to the BIR the full five percent (5%) CWT amounting to Php28, 267,414.42.

Despite the remittance of the full (5%) CWT to the BIR, petitioner still proceeded with the placement of an equivalent amount in the escrow account.

On May 2, 2007, the BIR issued BIR Ruling No. DA-282-07 sustaining PNCC's opinion that its Share in Gross Revenues is subject to a two percent (2%) CWT rate. In view thereof, petitioner instructed the escrow agent to release the three percent (3%) difference to PNCC in consonance with the escrow agreement. Of the 3% CWT amounting to Php16,960,448.65, Php15,380,461.95 was reimbursed to PNCC on June 4, 2007. Subsequently, petitioner executed a Settlement Agreement with PNCC whereby the latter relinquishes its right to file or seek any claim for refund before any court, tribunal or administrative body with respect to the three percent (3%) overpaid CWT and recognizes the right of petitioner to pursue the said claim for refund.

On December 23, 2008, petitioner filed its administrative claim for refund with the BIR. A supplement to the said administrative claim was subsequently filed on January 13, 2009.

The following day, January 14, 2009, petitioner elevated its claim for refund before this Court via a Petition for Review alleging inaction on the part of respondent.

In her Answer, respondent alleges the following Special and Affirmative Defenses:

> '14. Respondent adopts the abovementioned admissions and denials as part of his special and affirmative defenses.
>
> 15. It is incumbent upon petitioner to prove that the alleged claim for refund was filed within the two-year period provided under Section 229 of the NIRC of 1997.
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> 16. Section 229 of the NIRC of 1997 reads in part:
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> *Recovery of Tax Erroneously or Illegally Collected* – No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner

wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner xxx.'

17. A valid claim for refund should consist of the following:

a. There must be written claim for refund filed by the taxpayer with the Commissioner of Internal Revenue. This is a mandatory requirement. Without this requirement, the CIR is without any authority to refund.

b. The claim for refund must be a categorical demand for reimbursement.

c. The claim for refund must be filed within two years from date of payment of the tax or penalty regardless of any supervening cause. In claims for refund, the thirty-day period to appeal should be within the two-year prescriptive period.

18. While it is true that BIR Ruling No. DA-282-2007 was issued favoring petitioner, it is incumbent upon the claimant to prove that the facts as presented therein remain true as it was at the time of the issuance. Every BIR Ruling concludes with the following caveat:

> 'This ruling is being issued on the basis of the foregoing facts as represented. However, if upon investigation, it will be disclosed that the facts are different, then this ruling shall be considered null and void.'

Hence, a BIR Ruling by itself is insufficient for a meritorious claim for refund.

19. In the case of *Far East Bank & Trust Company vs. Commissioner of Internal Revenue*, the Supreme Court held:

> 'A tax refund is in the nature of a tax exemption which must be construed *strictissimi juris* against the taxpayer. To stress, the taxpayer must present convincing evidence to substantiate a claim for refund.' *je*

20. Petitioner must prove that it is indeed entitled to a claim for refund under existing laws, rules and jurisprudence.'

In compliance with the Court's directives, the parties filed their respective Pre-Trial Briefs on April 21, 2009. On May 14, 2009, they filed their Joint Stipulation of Facts and Issues filed which was approved on May 22, 2009.

Trial ensued during which petitioner presented three (3) witnesses, namely, 1) Huger L. Labang, its Asst. Vice President for Accounting; 2) Atty. Romulo S. Quimbo, Jr., its Vice President for Legal and Regulatory Affairs; and 3) Ms. Miriam M. Pasetes, the Chief Financial Officer of PNCC.

Huger Labang, by way of Judicial Affidavit, testified that as petitioner's Asst. Vice President for Accounting, he is responsible for all the accounting matters of petitioner. Allegedly, the instant case arose from the claim for refund or issuance of tax credit certificate of petitioner for its overpaid CWT on its 2006 payments to PNCC. These payments, amounting to Php565,348,288.48, represent the share of PNCC in the gross revenues from the operation of the NLEX. In relation to the said payments, petitioner filed a Creditable Withholding Tax Return on January 15, 2007 and an Amended Creditable Withholding Tax Return on July 27, 2007.

Pending the issuance of BIR Ruling No. DA-282-07, petitioner and PNCC placed in escrow the entire amount of Php28,267,414.42, which was withheld by petitioner from its 2006 income payments to PNCC. Thereafter, BIR issued a ruling that petitioner's payments to PNCC were subject to only 2% CWT. Consequently, petitioner ordered the release of the amount of Php15,380,461.95 to PNCC as partial payment of the 3% CWT difference. The remaining balance of Php1,579,986.70 shall be paid within six (6) months from the execution of the Settlement Agreement. Since petitioner remitted to the BIR the full 5% as CWT it withheld from PNCC, there was an overpayment thereof equivalent to 3% CWT from the payments to PNCC.

Atty. Romulo S. Quimbo testified that petitioner is a duly organized domestic corporation registered with the SEC as indicated in its Certificate of Registration, Amended Articles of Incorporation and By-Laws. As its Vice President for Legal and Regulatory Affairs, he manages all the legal matters pertaining to petitioner. He reviews key contracts and legal documents of petitioner and has them in his custody.

Petitioner is the builder of the NLEX and the authorized concessionaire with rights to operate, maintain and charge tolls on the NLEX, its extensions, linkages and diversions as assignee of the PNCC's franchise over the NLEX. In 2006, petitioner paid PNCC the amount of Php565,348,288.48 as the latter's share in the gross toll revenues from the operation of the NLEX, pursuant to Amended and Restated Shareholder's Agreement dated September 30, 2004 they executed. From the said payments, petitioner withheld and remitted to the BIR 5% CWT. Upon insistence of PNCC that petitioner should only subject its payment to 2% CWT, they agreed to open an escrow account to place the amount of Php28,267,414.42 pending clarification from the BIR on the applicable CWT rate.

In its Ruling No. DA-282-07 issued on May 2, 2007, the BIR stated that petitioner belongs to the top 10,000 corporations, hence, the payments by petitioner to PNCC based on percentage of revenues of petitioner from the NLEX are subject to 2% CWT. Consequently, petitioner ordered the release of the amount of Php15,380,461.95 to PNCC as partial reimbursement of the 3% CWT credited by petitioner from its payment to PNCC.

In the Settlement Agreement entered on July 20, 2009, PNCC agreed that it shall not file or seek any claim for refund before any court, tribunal or administrative body for the 3% overpaid CWT and it recognized the right of petitioner to pursue said claim for refund.

Petitioner's last witness, Miriam M. Pasetes, testified that as the Chief Financial Officer and Treasurer of PNCC, she is responsible for all financial matters of her employer. She confirmed that PNCC received the amount of Php565,348,288.42 from petitioner, representing PNCC's February 2005 to November 2006 NLEX Revenue Share plus interests but exclusive of VAT. From the said payment, 5% CWT in the amount of Php28,267,414.42 was withheld and placed in an escrow account.

Further, in PNCC's 2006 ITR, only 2% CWT was claimed on the 2006 NLEX Revenue Share as shown in the Certificate of Creditable Withholding Tax At Source issued by petitioner to PNCC for the January to November 2006 NLEX Revenue Share. She also stated that PNCC's 2005 NLEX Revenue Share including interests on said share were reflected in PNCC's 2005 Amended ITR. However, the corresponding CWT on the 2005 NLEX Revenue Share was not reflected nor applied against the tax due for the said taxable year as PNCC was no longer allowed to further amend its 2005 Amended ITR as it was already in receipt of Letter of Authority from the BIR.

During the hearing on August 12, 2010, counsel manifested that respondent was waiving her right to present evidence and opted to file a memorandum within thirty (30) days from said date.

On October 11, 2010, the instant case was submitted for decision after petitioner filed its Memorandum on September 23, 2010 and respondent on October 6, 2010."[4]

On September 23, 2011, the Court in Division promulgated its Decision, the dispositive portion of which reads:

> "**WHEREFORE**, the instant Petition for Review is hereby **DENIED** for insufficiency of evidence.
>
> **SO ORDERED.**"[5]

In dismissing the said Petition, the Court in Division found that respondent failed to prove its remittance to the BIR of the 5% Creditable Withholding Tax of P28,267,414.42, for failure to present the original BIR Form No. 1601-E for the month of December 2006. Respondent likewise failed to establish that PNCC applied against its income tax liabilities the 2% CWT on its share in NLEX revenues from February 2005 to November 2006 and did not utilize any portion of petitioner's claimed P16,960,448.65 difference in CWT of 3%.[6]

On October 17, 2011, respondent filed through registered mail its Motion for Reconsideration and to Reopen Case for Presentation of Additional Evidence.[7] On February 1, 2012, the Court in Division issued a Resolution[8] granting the said Motion, the dispositive portion of which reads:

> "**WHEREFORE**, petitioner's Motion for Reconsideration and to Reopen Case for Presentation of Additional Evidence is hereby **GRANTED.** fe

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[4] Id., pp. 569-579.
[5] Id., p. 591.
[6] Id., p. 588.
[7] Division Docket, Vol. II, pp. 614-625.
[8] Division Docket, Vol. II, pp. 642-647.

Accordingly, let the case be set for hearing for the presentation of petitioner's additional evidence on March 1, 2012 at 9:00 a.m.

SO ORDERED."

Thus, respondent presented additional testimonial and documentary pieces of evidence. Thereafter, on March 14, 2013,[9] the Court in Division ordered the parties to submit their memoranda, which petitioner and respondent submitted on May 14, 2013[10] and May 20, 2013,[11] respectively. On June 4, 2013, the case was submitted anew for decision.[12]

On December 5, 2013, the Court in Division rendered the assailed Amended Decision, granting respondent's claim for refund.[13]

On January 10, 2014, petitioner filed her Motion for Reconsideration (Re: Amended Decision Promulgated December 5, 2013).[14] Subsequently, on March 21, 2014, the Court issued a Resolution[15] denying the aforesaid motion.

In denying petitioner's motion for reconsideration, the Court in Division held that the grant of refund was based on the ruling that PNCC's share in the NLEX toll revenues is not service income on the part of PNCC and does not represent petitioner's purchase of services, hence not subject to CWT under Section 2.57.2(M) of Revenue Regulations (RR) No. 02-98, as amended by RR No. 17-03.

On April 15, 2014, petitioner filed her Motion for Extension of Time to File Petition for Review,[16] which the Court *en banc* granted in the Resolution[17] dated April 22, 2014.

On May 5, 2014, petitioner filed through registered mail the present Petition for Review,[18] which the Court received on May 13, 2014. In the Resolution[19] dated September 25, 2014, the Court *en banc* directed the respondent to file its Comment. However, respondent failed to file the same.

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[9] Resolution dated March 14, 2013, Division Docket, Vol. II, p. 816.
[10] Division Docket, Vol. II, pp. 843-853.
[11] Division Docket, Vol. II, pp. 854-873.
[12] Resolution dated June 4, 2013, Division Docket, Vol. II, p. 875.
[13] See Note 1.
[14] Division Docket, Vol. II, pp. 893-905.
[15] Division Docket, Vol. II, pp. 935-939.
[16] Court *en banc* Docket, pp. 1-5.
[17] Minute Resolution, Court En Banc Docket, p. 6.
[18] Court *en banc* Docket, pp. 59-78.
[19] Court *en banc* Docket, pp. 121-122.

Thereafter, in the Resolution[20] dated December 22, 2014, the Court *en banc* directed the parties to submit their memoranda within thirty (30) days from receipt thereof.

On February 20, 2015, respondent filed its Memorandum,[21] which the Court received on February 26, 2015. On the other hand, on March 2, 2015, petitioner filed a Manifestation,[22] stating that she is adopting the arguments raised in her Petition for Review. Subsequently, the case was submitted for decision on April 16, 2015.[23]

Hence, this Decision.

THE ISSUE

THE HONORABLE COURT ERRED IN GRANTING RESPONDENT'S CLAIM FOR REFUND IN THE AMOUNT OF SIXTEEN MILLION NINE HUNDRED SIXTY THOUSAND FOUR HUNDRED FORTY EIGHT PESOS AND 65/100 (P16,960,448.65) ALLEGEDLY REPRESENTING ERRONEOUSLY WITHHELD CREDITABLE WITHHOLDING TAX FOR TAXABLE YEAR 2006.[24]

THIS COURT'S RULING

We deny the Petition.

Respondent exhausted its administrative remedies before seeking relief from the Court

Petitioner states that respondent filed its administrative claim for refund on December 23, 2008 and its supplemental administrative claim on January 13, 2009. On January 14, 2009, respondent filed a Petition for Review through registered mail before the Court in Division. Thus, given a short period of time, petitioner was not able to properly evaluate respondent's claim. *Jr*

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[20] Court *en banc* Docket, pp. 125-126.
[21] Court *en banc* Docket, pp. 131-150.
[22] Court *en banc* Docket, pp. 155-156.
[23] Resolution, Court *en banc* Docket, pp. 159-160.
[24] Assigned Error, Petition for Review, Court *en banc* Docket, p. 12.

On the other hand, respondent argues that under applicable laws and jurisprudence, the only requirement is that both administrative claim and judicial action for refund or credit must be filed before the end of the two (2) year period from the date of payment of tax sought to be refunded or credited.

Sections 204 (C) and 229 of the National Internal Revenue Code of 1997, as amended (NIRC of 1997, as amended) respectively state:

> "SEC. 204. **Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.** — The Commissioner may —
>
> xxx xxx xxx
>
> (C) Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two (2) years after the payment of the tax or penalty: Provided, however, That a return filed showing an overpayment shall be considered as a written claim for credit or refund."
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> "SEC. 229. **Recovery of Tax Erroneously or Illegally Collected.** — No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.
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> In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment: Provided, however, That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was

> made, such payment appears clearly to have been erroneously paid."

Based from the foregoing, a taxpayer must file both its administrative and judicial claims for refund within two (2) years from the date of payment of the tax, for it to be entitled to a tax refund or issuance of a tax credit certificate.

In the present case, it is undisputed that respondent filed both its administrative and judicial claims for refund within the 2-year prescriptive period. What petitioner questions, however, is the manner by which the claims were filed, as respondent filed its administrative claim on January 13, 2009, while it filed its judicial claim on the following day, or on January 14, 2009. This, according to petitioner, is a violation of the rule on non-exhaustion of administrative remedies as the government was deprived of reasonable opportunity to examine respondent's claim.

It bears stressing that the law requires both administrative and judicial claims for refund to be filed within the 2-year prescriptive period. In other words, respondent merely complied with the above-quoted provisions of the law, because had it filed its claim after the lapse of the 2-year period or after January 15, 2009, petitioner would have been deprived of its right to seek judicial intervention.

Thus, We agree with the pronouncement of the Court in Division that:

> "The mandatory two-year period is a limitation of action not only in filing of application for refund or credit with respondent but in lodging an appeal before this Court as well. Hence, the taxpayer must file its administrative claim for refund with respondent within two (2) years after the payment of tax; however, if the period of two (2) years is about to end and no action from respondent is forthcoming, the taxpayer may seek judicial intervention before this Court via a petition for review before the lapse of the prescribed two-year period. In other words, when the two-year period is about to prescribe and no action has been taken by respondent, the taxpayer should file a petition for review with this Court to preserve his right to seek judicial recourse.
>
> In the case at bar, the CWT of ₱16,960,448.65 subject of the claim for refund/TCC together with the other taxes due was remitted by petitioner to the BIR on January 15, 2007. Counting from the said date, petitioner had until January 15, 2009 within which to file its claim both in the administrative and judicial

levels. Hence, petitioner's administrative claim for refund filed on December 23, 2008 and appeal to this Court filed through registered mail on January 14, 2009, were both within the two-year prescriptive period, therefore, seasonably filed."[25]

Considering the foregoing, We declare that respondent did not violate the rule on exhaustion of administrative remedies, as it merely observed the 2-year period under Sections 204 (C) and 229 of the NIRC of 1997, as amended.

It is the respondent, not the petitioner, who determines the pieces of evidence it shall present in support of its claim

Petitioner asserts that respondent is not entitled to its claim for failure to submit all the documentary requirements under Revenue Memorandum Order (RMO) No. 53-98 dated June 1, 1998.

On the other hand, respondent argues that in Our ruling in the case of *Commissioner of Internal Revenue v. CE Luzon Geothermal Power Company, Inc.*,[26] We declared that the requirements under RMO No. 53-98 refer to the requirements in the administrative level for purposes of claiming tax refund or credit. However, when the claim is elevated to this Court, it is not RMO No. 53-98, but the Rules of Court, that governs the appreciation of evidence. Thus:

> "In the same light, respondent's non-compliance with the requirements listed under RMO 53-98 is not fatal. The requirements listed under RMO 53-98 refer mainly to the requirements for refund of tax credit in the administrative level for purposes of establishing the authenticity of a taxpayer's claim for refund or tax credit. However, in the judicial level or when the case is elevated to the Court, the Rules of Court governs. In this connection, it may not be amiss to mention that the question of whether or not the evidence submitted by a party is sufficient to warrant the granting of its prayer lies within the sound discretion and judgment of the Court."*(Citations omitted)*

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[25] Amended Decision dated December 5, 2013, Division Docket, Vol. II, p. 882, citing *Commissioner of Internal Revenue v. Philippine National Bank*, CTA EB No. 499, November 26, 2009 with Entry of Judgment on October 11, 2010.
[26] CTA EB No. 474 (CTA Case Nos. 6792 & 6837), September 1, 2009, penned by Associate Justice Lovell R. Bautista.

We agree with respondent.

In addition to Our pronouncement in the *CE Luzon* case that the determination of the sufficiency of evidence of a party lies within the discretion of the Court, the Supreme Court ruled in the case of *Commissioner of Internal Revenue v. First Express Pawnshop Company, Inc.*[27] that, in relation to the phrase "relevant supporting documents", the BIR can only inform the taxpayer to submit additional documents. However, the BIR cannot demand what type of supporting documents the taxpayer should submit. Otherwise, a taxpayer will be at the mercy of the BIR, which may require the production of documents that a taxpayer cannot submit.

While the present case does not involve tax assessment, the doctrine laid down by the Supreme Court in the *First Express Pawnshop* case is equally applicable in this case. Thus, the BIR cannot determine what type of document respondent needs to produce in order to prove its claim for tax refund. In other words, respondent is given leeway to present any evidence which, to its mind, would be sufficient to prove entitlement to its claim for refund.

Applying Our ruling in the *CE Luzon* case in relation to the ruling of the Supreme Court in the *First Express Pawnshop* case, We hold that it is not incumbent upon respondent to present before this Court the requirements under RMO No. 53-98, as long as it is able to prove that it is entitled to its claim upon presentation of sufficient supporting evidence sanctioned by the Revised Rules of Court.

Respondent is a real party in interest

Petitioner argues that respondent is merely a special agent instituted by law to withhold and remit to the BIR the tax payments of its payees. By operation of law, the relationship between the Government and the withholding agent is one of agency and as such, the withholding agent only holds the funds withheld in trust for the Government. Respondent, as a mere withholding agent cannot claim a refund of the special fund. It is the statutory taxpayer, PNCC, who has the personality to file a claim for refund for it is the entity subjected to tax imposed by law and respondent merely acted as a collecting agent.

On the other hand, respondent reasons that because a withholding agent is personally liable for the income tax withheld, such agent has sufficient legal interest to bring a suit for refund.

[27] G.R. No. 172045-46, June 16, 2009 (589 SCRA 275).

Section 2, Rule 3 of the Revised Rules of Court defines a *party in interest* as follows:

> "**SEC. 2**. *Parties in interest*. – A real party in interest is the party who stands to be benefited or injured by the judgment in the suit, or the party entitled to the avails of the suit. Unless otherwise authorized by law or these Rules, every action must be prosecuted or defended in the name of the real party in interest."

The Supreme Court, in the case of *Commissioner of Internal Revenue v. Smart Communication, Inc.*,[28] explained that a withholding agent may file a claim for refund, in this wise:

> "In *Commissioner of Internal Revenue v. Procter & Gamble Philippine Manufacturing Corporation,* a withholding agent was considered a proper party to file a claim for refund of the withheld taxes of its foreign parent company. Pertinent portions of the Decision read:
>
> The term "taxpayer" is defined in our NIRC as referring to "any person subject to tax imposed by the Title [on Tax on Income]." It thus becomes important to note that under Section 53(c) of the NIRC, the withholding agent who is "required to deduct and withhold any tax" is made "personally liable for such tax" and indeed is indemnified against any claims and demands which the stockholder might wish to make in questioning the amount of payments effected by the withholding agent in accordance with the provisions of the NIRC. The withholding agent, P&G-Phil., is directly and independently liable for the correct amount of the tax that should be withheld from the dividend remittances. The withholding agent is, moreover, subject to and liable for deficiency assessments, surcharges and penalties should the amount of the tax withheld be finally found to be less than the amount that should have been withheld under law.
>
> A "person liable for tax" has been held to be a "person subject to tax" and properly considered a "taxpayer." The terms "liable for tax" and "subject to tax" both connote legal obligation or duty to pay a tax. It is very difficult, indeed conceptually impossible, to consider a person who is statutorily made "liable for tax" as not "subject to tax." By any reasonable

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[28] G.R. Nos. 179045-46, August 25, 2010.

standard, such a person should be regarded as a party in interest, or as a person having sufficient legal interest, to bring a suit for refund of taxes he believes were illegally collected from him.

In *Philippine Guaranty Company, Inc. v. Commissioner of Internal Revenue*, this Court pointed out that a withholding agent is in fact the agent both of the government and of the taxpayer, and that the withholding agent is not an ordinary government agent:

"The law sets no condition for the personal liability of the withholding agent to attach. The reason is to compel the withholding agent to withhold the tax under all circumstances. In effect, the responsibility for the collection of the tax as well as the payment thereof is concentrated upon the person over whom the Government has jurisdiction. Thus, the withholding agent is constituted the agent of both the Government and the taxpayer. With respect to the collection and/or withholding of the tax, he is the Government's agent. In regard to the filing of the necessary income tax return and the payment of the tax to the Government, he is the agent of the taxpayer. The withholding agent, therefore, is no ordinary government agent especially because under Section 53 (c) he is held personally liable for the tax he is duty bound to withhold; whereas the Commissioner and his deputies are not made liable by law."

If, as pointed out in *Philippine Guaranty*, the withholding agent is also an agent of the beneficial owner of the dividends with respect to the filing of the necessary income tax return and with respect to actual payment of the tax to the government, such authority may reasonably be held to include the authority to file a claim for refund and to bring an action for recovery of such claim. This implied authority is especially warranted where, as in the instant case, the withholding agent is the wholly owned subsidiary of the parent-stockholder and therefore, at all times, under the effective control of such parent-stockholder. In the circumstances of this case, it seems particularly unreal to deny the implied authority of P&G-Phil. to claim a refund and to commence an action for such refund.

xxx xxx xxx

We believe and so hold that, under the circumstances of this case, P&G-Phil. is properly regarded as a "taxpayer" within the meaning of Section 309, NIRC, and as impliedly authorized to file the claim for refund and the suit to recover such claim. (Emphasis supplied.)

Petitioner, however, submits that this ruling applies only when the withholding agent and the taxpayer are related parties, i.e., where the withholding agent is a wholly owned subsidiary of the taxpayer.

We do not agree.

Although such relation between the taxpayer and the withholding agent is a factor that increases the latter's legal interest to file a claim for refund, there is nothing in the decision to suggest that such relationship is required or that the lack of such relation deprives the withholding agent of the right to file a claim for refund. Rather, what is clear in the decision is that a withholding agent has a legal right to file a claim for refund for two reasons. *First*, he is considered a "taxpayer" under the NIRC as he is personally liable for the withholding tax as well as for deficiency assessments, surcharges, and penalties, should the amount of the tax withheld be finally found to be less than the amount that should have been withheld under law. *Second*, as an agent of the taxpayer, his authority to file the necessary income tax return and to remit the tax withheld to the government impliedly includes the authority to file a claim for refund and to bring an action for recovery of such claim.

In this connection, it is however significant to add that while the withholding agent has the right to recover the taxes erroneously or illegally collected, he nevertheless has the obligation to remit the same to the principal taxpayer. As an agent of the taxpayer, it is his duty to return what he has recovered; otherwise, he would be unjustly enriching himself at the expense of the principal taxpayer from whom the taxes were withheld, and from whom he derives his legal right to file a claim for refund.

As to *Silkair (Singapore) Pte, Ltd. v. Commissioner of Internal Revenue* cited by the petitioner, we find the same inapplicable as it involves excise taxes, not withholding taxes. In that case, it was ruled that the proper party to question, or seek a refund of, an indirect tax "is the statutory taxpayer, the person on whom the tax is imposed by law and who paid the same even if he shifts the burden thereof to another."

In view of the foregoing, we find no error on the part of the CTA in upholding respondent's right as a withholding agent to file a claim for refund."[29]

[29] Id., citing G.R. No. 66838, December 2, 1991, 204 SCRA 377 and G.R. No. 173594, February 6, 2008, 544 SCRA 100.

The *Smart* case categorically states that a withholding agent may file a claim for refund on behalf of the principal taxpayer even if they are unrelated parties. However, the withholding agent has the correlative obligation to remit the same to the principal taxpayer to obviate any unjust enrichment on the part of the agent.

Applying the *Smart* case in the present case, respondent may file a claim for refund on behalf of PNCC. More so, the factual circumstances of the present case reveal that respondent had already reimbursed PNCC the overpaid CWT. Hence, respondent is clearly a real party interest under Section 2, Rule 3 of the Revised Rules of Court as it stands to be benefited or injured by the judgment in the suit, or entitled to the avails of the suit, i.e., it has interest over the 3% CWT it overpaid to the BIR on behalf of PNCC which respondent already paid to the latter.

Respondent sufficiently proved entitlement to its claim for refund

Finally, petitioner contends that respondent failed to present evidence showing that PNCC, the principal taxpayer, exercised the option to be refunded as prescribed under Section 76 of the NIRC of 1997, as amended.

On the other hand, respondent explains that:

> "54. It should be further emphasized that it was not possible for PNCC to credit more than 2% CWT against its income tax liability for taxable year 2005 or 2006, and even for the years succeeding 2006, because the CWT Certificates issued by MNTC to PNCC covering PNCC's Revenue Share for 2005 and 2006 is limited to 2%. Since CWT Certificates issued by the payor to the payee are required for the purpose of applying the CWT against the income tax payable, PNCC cannot credit more than the CWT as contained in the CWT Certificates – i.e., PNCC cannot apply more than 2% CWT against its income tax liabilities. Thus, it is impossible for PNCC to credit the overpaid 3% CWT since what was in fact withheld from PNCC's payment, as evidenced by the CWT Certificate, already excluded the amount subject of the refund. Accordingly, the same 3% CWT could not have also been the subject of a claim for refund given the abovementioned circumstances.
>
> 55. Moreover, even if the CWT Certificates issued by MNTC to PNCC in relation to the Revenue Share for 2005 and 2006 already indubitably show that PNCC could not have

credited the overpaid 3% CWT against its income tax liability for taxable years 2005, 2006 and the taxable years succeeding 2006, PNCC's ITRs for the years succeeding 2006 all show that PNCC only credited against its income tax liability for the applicable year the CWT Certificates issued by MNTC."[30]

We find petitioner's contention untenable.

Section 76 of the NIRC of 1997, as amended, provides:

"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

(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."

The above-quoted provision enunciates the *irrevocability rule*, where 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. ge

[30] Memorandum for Respondent, Court En Banc Docket, pp. 146-147.

While Section 76 of the NIRC of 1997, as amended, requires the observance of the irrevocability rule, We find that the same is inapplicable in the present case.

Here, respondent already reimbursed PNCC the overpaid 3% CWT prior to respondent's filing of its claim for refund. Considering that respondent had already reimbursed PNCC of the said amount, PNCC need not indicate in its Return the option to carry-over or claim for refund the overpaid amount, because there is nothing more to carry-over or to refund.

In other words, the irrevocability rule under Section 76 of the NIRC of 1997, as amended, is inapplicable in this case considering that the respondent –as withholding agent, already refunded to the principal taxpayer PNCC the amount which could have been the latter's basis for carry-over, refund or issuance of a tax credit certificate. PNCC has no more basis in order for it to exercise the option to carry-over, refund, or request for the issuance of a tax credit certificate, because it had already been reimbursed by respondent of the said amount.

In view of the foregoing, We see no compelling reason to reverse and set aside the Amended Decision promulgated on December 5, 2013 and the Resolution dated March 21, 2014.

WHEREFORE, the instant Petition for Review is hereby **DENIED**, for lack of merit.

SO ORDERED.

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

WE CONCUR:

(Inhibited)
ROMAN G. DEL ROSARIO
Presiding Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

Ma. Belen
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice