REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

SUMISETSU PHILIPPINES, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB CASE NO. 993
(CTA Case No. 8076)

Present:

DEL ROSARIO, *PJ*,
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA,
FABON-VICTORINO,
MINDARO-GRULLA,
COTANGCO-MANALASTAS, *and*
RINGPIS-LIBAN, *JJ.*

Promulgated:

MAR 03 2014 ApApolinario 9:05 a.m.

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DECISION

DEL ROSARIO, P.J.:

This is a Petition for Review filed by petitioner Sumisetsu Philippines, Inc. on April 8, 2013, appealing the Decision dated November 13, 2012 (assailed Decision) and the Resolution dated March 5, 2013 (assailed Resolution) of the former Third Division[1] of this Court in CTA Case No. 8076 entitled *Sumisetsu Philippines, Inc. vs. Commissioner of Internal Revenue*. The assailed Decision dismissed the petition for review for lack of merit while the assailed Resolution denied petitioner's Motion for Reconsideration also for lack of merit.

[1] Composed of Associate Justice Lovell R. Bautista, then Associate Justice Olga Palanca-Enriquez and Associate Justice Amelia R. Cotangco-Manalastas.

THE FACTS

Petitioner is a corporation duly organized under Philippine laws and engaged in the business of providing electrical and mechanical services for electrical transmission and distribution systems, air conditioning and ventilation systems, telephone and communications systems, and other allied services, with principal office located at the 4th/Floor, Glass Tower, 115 C. Palanca St., Legaspi Village, Makati City.[2]

Respondent, on the other hand, is the duly appointed Commissioner of Internal Revenue, vested with authority to act as such, including, among others, the power to decide, approve and grant refunds or tax credits of erroneously or excessively paid taxes. She may be served with summons, pleadings and other legal processes at the BIR National Office Building, BIR Road, Diliman, Quezon City.[3]

On April 14, 2008, petitioner filed, through the Bureau of Internal Revenue's (BIR) Electronic Filing and Payment System, its Annual Income Tax Return for taxable year 2007 with Reference No. 12080002182860.[4]

On April 15, 2008, petitioner manually filed with the BIR its Annual Income Tax Return for taxable year 2007.[5]

On July 30, 2008, petitioner filed a written claim for issuance of a TCC with the BIR[6] in the amount of ₱18,872,767.00, representing petitioner's excess/unutilized creditable withholding tax (CWT) for the taxable year 2007.

On April 14, 2010, in order to preserve its right and to toll the running of the prescriptive period for its judicial claim, petitioner filed a Petition for Review before the Court in Division.[7]

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[2] Assailed Decision, *Rollo*, p. 31.
[3] *Id.*
[4] *Id.*
[5] *Id.*, p. 32.
[6] *Id.*
[7] *Id.*

In her Answer, respondent alleged the following special and affirmative defenses: (a) petitioner's administrative claim for refund is subject to investigation by the BIR; (b) petitioner failed to demonstrate that the tax sought to be refunded was erroneously or illegally collected; (c) taxes paid and collected are presumed to be made in accordance with law and regulations; (d) petitioner has the burden to show that it complied with Section 204(C) in relation to Section 229 of the National Internal Revenue Code of 1997 (1997 NIRC), as amended; and, (e) claims for refund are construed strictly against the claimant as the same partakes the nature of exemption from taxation and is thus looked upon with disfavor.[8]

As aforestated, the Court in Division issued the assailed Decision dismissing the petition for review for lack of merit. Aggrieved, petitioner filed a Motion for Reconsideration on December 3, 2012 which was also denied by the Court in Division in the assailed Resolution.

Hence, petitioner filed the subject Petition for Review[9] before the Court *En Banc* on April 8, 2013, raising the following issues for the Court *En Banc*'s resolution:

1. Whether petitioner is entitled to the tax credit certificate for its excess and/or unutilized CWT in the amount of ₱18,872,767.00;

2. Whether petitioner is entitled to the tax credit certificate for its excess and/or unutilized CWT in the amount of ₱13,992,315.80,[10] the related income of which amounts to ₱685,597,137.67; and,

3. Whether or not the existence of prior year's excess credits is not relevant in computing petitioner's claim.[11]

In the Resolution[12] dated May 14, 2013, the Court *En Banc* ordered respondent to file her comment on the subject Petition for Review but

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[8] *Id.*, pp. 32 to 33.
[9] *Rollo,* pp. 8 to 23.
[10]

Amount CWT being claimed for the year 2007	18,872,767.00
Less: Substantiated CWT for the year 2007	4,880,451.20
Disallowed CWT for the year 2007	**13,992,315.80**

[11] *Rollo*, p. 12.

respondent failed to do so within the given period. On July 23, 2013, the Court *En Banc* gave due course to the subject Petition for Review and required both parties to submit their respective memoranda within thirty (30) days from notice.[13] Petitioner filed its Memorandum[14] on September 16, 2013. Respondent, on the other hand, failed to file her memorandum within the prescribed period.[15] On October 23, 2013, the Court *En Banc* submitted the case for decision.[16]

THE COURT *EN BANC'S* RULING

Petitioner argues that the Court in Division erred in disallowing petitioner's claim in the amount of ₱18,872,767.00 as the reports of the Court-commissioned Independent Certified Public Accountant (ICPA) and petitioner's explanation in its Motion for Reconsideration prove that its income pertaining to the claimed excess/unutilized creditable withholding taxes formed part of petitioner's taxable gross income. Petitioner further contends that the subject claim has nothing to do with its tax liabilities for prior years (that is, 2005 and 2006) and the existence of petitioner's prior years' excess CWT is not relevant to the subject claim. Invoking the basic principle of *solutio indebiti*, petitioner avers that it is entitled to a refund or tax credit certificate in the full amount of ₱18,872,767.00.

The Court *En Banc* notes that the supporting schedules[17] attached to the subject Petition for Review are substantially similar to the supporting schedules[18] attached to petitioner's Motion for Reconsideration dated December 3, 2013 and which schedules were duly considered by the Court in Division in its assailed Resolution. Nonetheless, the Court *En Banc* carefully evaluated the supporting documents attached to the petition for review and found the same insufficient to justify a reversal or modification of the assailed Decision and Resolution.

To be sure, the supporting schedules attached to the subject petition for review were not sufficient to reconcile the discrepancies noted by the Court in Division. Thus, the Court *En Banc* finds no cogent reason to depart from the findings of the Court in Division in its assailed Resolution, *viz.*:

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[12] *Rollo*, p. 112 to 113.
[13] Resolution dated July 23, 2013, *Rollo*, pp. 116 to 117.
[14] *Rollo*, unpaginated.
[15] Records Verification dated October 3, 2013, *Rollo*, unpaginated.
[16] *Rollo*, unpaginated.
[17] *Rollo*, pp. 62 to 110.
[18] CTA-Third Division Docket, pp. 412 to 451.

"While petitioner provided references where the disallowed CWT may be found, such as the page number on a particular Exhibit, still the same cannot be traced. Likewise, although petitioner attached a schedule of discrepancies with explanation in the instant motion, petitioner failed to provide documents to corroborate such statements and to fully account such discrepancies. For instan[ce] and to illustrate:

1. There were income payments per GL which do not tally with the alleged supporting CWT certificates, thus it cannot be ascertain[ed] if they pertain to one and the same transaction/income payment/s:

	Income per BIR Form 2307		Income per GL			
	Exhibit No.	**Amount**	**Exhibit No.**	**Amount**	**Discrepancy**	**Disallowed CWT**
Cebu Yushin, Inc.	W-21	**53,500.00**	Z, p. 19	**33,200.00**	₱ 20,300.00	₱ 1,070.00
First Sumiden Circuits, Inc.	W-42	30,000.00	Z, p. 16	156,800.00	(94,300.00)	2,250.00
		82,500.00	Z, p. 30	50,000.00		
		112,500.00		**206,800.00**		

2. There were income payments per schedule which were allegedly traced in the GL but as verified by this Court, the same cannot be found/traced. Although the total income payments per BIR Form 2307 tallied with the total per schedule, it cannot be surmised that the income payments which cannot be found were lodged in the same total per schedule and that the CWT certificates presented support the said total income payments per schedule:

	Income per BIR Form 2307		Income per Schedule			
	Exhibit No.	**Amount**	**as traced in the GL**	**Amount**	**Remarks**	**Disallowed CWT**
Philippine Epson Optical Inc.	W-86	1,067,000.00		**945,000.00**	The amount of ₱945,000.00 cannot be traced in the GL (Exh Z), could be a balancing figure to arrive at a total of P1,067,000.00 to tally with the CWT certificate.	₱21,340.00
			Exh Z, p. 20	100,000.00		
			Exh Z, p. 20	22,000.00		
				1,067,000.00		
SDE (Philippines) Corp.	W-101	1,890,000.00		1,050,000.00	Not found/traced in the GL	₱37,800.00
				840,000.00		
				1,890,000.00		

3. There were income payments recorded in the GL of Contract Price account but were subsequently reversed in the same GL account, thus, it was zeroed out. In effect there were no income reported:

	Income per BIR Form 2307		Income per Schedule			
	Exhibit No.	**Amount**	**as traced in the GL**	**Amount**	**Remarks**	**Disallowed CWT**
Correa Zenitaka, Inc.	W-150	**6,900,000.00**	Exh Z, p. 25	3,050,070.00	Subsequently reversed as shown in the same GL account (Exh Z, p. 25)	₱ 138,000.00
			Exh Z, p. 25	3,849,930.00		
				6,900,000.00		

4. There were several income payments per schedule with identical amounts but when traced in the GL, they actually pertain to one and the same transaction:

	Income per BIR Form 2307		**Income per Schedule**			
	Exhibit No.	**Amount**	**as traced in the GL**	**Amount**	**Remarks**	**Disallowed CWT**
Mitsumi Philippines Inc.	W-178	**2,350,251.60**	Exh Z, p. 16	1,070,886.60	Per Schedule, the amount of ₱150,000.00 was referred to Sales Invoice nos. 6976, 7185, 7275, 7384 & 7452 but when trace to their respective purported GL page number (Exh H, p. 8), only Sales Invoice with number 6563 was reported as income.	47,005.03
			Exh Z, p. 18	936,365.00		
			Exh Z, p. 17	193,000.00		
			Exh Z, p. 8	**150,000.00**		
				2,350,251.60		
	W-180	**1,201,627.50**	Exh Z, p. 8	**150,000.00**		24,032.55
				193,000.00		
			Exh Z, p. 22	858,627.50		
				1,201,627.50		
	W-181	**758,934.70**	**Exh Z, p. 8**	**150,000.00**		15,178.69
				193,000.00		
			Exh Z, p. 23	415,934.70		
				758,934.70		
	W-182	**2,147,825.25**	Exh Z, p. 27	1,804,825.25		42,956.51
				193,000.00		
			Exh Z, p. 8	**150,000.00**		
				2,147,825.25		
	W-183	**768,670.00**		145,000.00		15,373.40
			Exh Z, p. 28	280,670.00		
			Exh Z, p. 8	**150,000.00**		
				193,000.00		
				768,670.00		

Thus, petitioner's claim shall be denied for the same reason stated in the assailed Decision." (Citation omitted)

In the subject Petition for Review, petitioner also avers that the Court in Division erred in comparing the tax due of 2005 and 2006 with the 2005 CWT Certificates alone. According to petitioner, the Court should have considered the excess CWT from prior years[19] which was carried forward to 2005 and 2006. Said excess CWT from prior years was allegedly enough to cover the tax due in 2005 and 2006.

The Court disagrees with petitioner.

Petitioner alleges that the CWT carried forward to 2005 and 2006 amounted to ₱29,038,665.00 and ₱21,385,657.00, respectively, and that the same were sufficient to cover the tax due for 2005 and 2006 of ₱11,183,902.00 and ₱1,461,367.00, respectively. Petitioner's bare allegations were not sufficient to convince this Court that it has sufficient prior years' excess CWT to cover its tax due for the years 2005, 2006 and 2007. Absent any supporting documents, such as the CWT Certificates for

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[19] 2001, 2002 and 2003; See petitioner's Memorandum, *Rollo*, unpaginated.

the prior years, there is no way for this Court to determine the veracity of petitioner's claim.

As correctly found by the Court in Division, petitioner was able to substantiate its prior year's excess CWT in the amount of ₱6,662,857.36 only (representing CWT from year 2005), which is not even sufficient to cover its tax due for the years 2005 and 2006 in the amount of ₱11,183,902.00 and ₱1,461,367.00, respectively. Petitioner's tax due in the year 2007 amounts to ₱6,654,501.35 and its substantiated CWT for the year 2007 amounts only to ₱4,880,451.20. Clearly, petitioner has no excess/unutilized CWT in the year 2007 as the amount of its substantiated 2007 CWT was even less than its 2007 tax due. Thus, there is no basis to grant petitioner's claim for refund or issuance of a tax credit certificate of excess/unutilized CWT for the year 2007 in the amount of ₱18,872,767.00.

Settled is the rule that tax refunds partake of the nature of tax exemptions, and are construed *strictissimi juris* against the taxpayer. Thus, evidence in support of a claim must likewise be *strictissimi* scrutinized and duly proven.[20] The taxpayer has the burden to present convincing evidence to substantiate a claim for refund.[21]

For all the foregoing, the Court *En Banc* finds no compelling reason that will justify the reversal or modification of the Court in Division's assailed Decision and assailed Resolution.

WHEREFORE, premises considered, the Petition for Review filed by petitioner Sumisetsu Philippines, Inc. on April 8, 2013 is hereby **DENIED** for lack of merit. The Decision dated November 13, 2012 and the Resolution dated March 5, 2013 of the former Third Division of this Court in CTA Case No. 8076 entitled *Sumisetsu Philippines, Inc. vs. Commissioner of Internal Revenue* are hereby **AFFIRMED.**

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[20] Commissioner of Internal Revenue vs. Far East Bank & Trust Company (Now Bank of the Philippines Islands), G.R. No. 173854, March 15, 2010, citing Philippine Long Distance Telephone Company v. Commissioner of Internal Revenue, G.R. No. 157264, January 31, 2008, 543 SCRA 329, 33.

[21] Philam Asset Management, Inc. vs. Commissioner of Internal Revenue, G.R. Nos. 156637/162004, December 14, 2005.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate 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 M. RINGPIS-LIBAN
Associate Justice

CERTIFICATION

Pursuant to Section 13 of Article VIII of the Constitution, it is hereby certified that the conclusion 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