REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

En Banc

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	**CTA EB No. 1040** (CTA Case No. 8266)
-versus-	Present: DEL ROSARIO, *P.J.*, CASTAÑEDA JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, COTANGCO-MANALASTAS, *and* RINGPIS-LIBAN, *JJ.*
SONOMA SERVICES, INCORPORATED, *Respondent.*	Promulgated: JAN 30 2015 2:25 p.m.

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DECISION

RINGPIS-LIBAN, *J*.:

Before the Court *En Banc* is a Petition for Review filed by the Commissioner of Internal Revenue (CIR) seeking the nullification of the Decision dated April 26, 2013 and the Resolution dated July 1, 2013 of this Court's Special Third Division in CTA Case No. 8266, entitled "Sonoma Services, Incorporated vs. Commissioner of Internal Revenue" which granted respondent's claim for refund/tax credit in the amount of ₱3,683,100.00, representing its excess creditable withholding tax for calendar year 2008.

THE PARTIES

Petitioner Commissioner of Internal Revenue is the head of the Bureau of Internal Revenue (BIR) empowered to perform the duties of her office, including among others, the duty to act upon and approve claims for refund or tax credit as provided by law, with office address at the 4th Floor, BIR National Office Building, Agham Road, Diliman, Quezon City, where she may be served with summons and other legal processes of this Honorable Court.

Respondent Sonoma Services, Inc. (Sonoma) is a corporation duly organized and existing under the laws of the Republic of the Philippines. It is registered with the SEC and was incorporated with the primary purpose of carrying on and conducting a general services business with any party, including rendering of management and allied services within the limits allowed by law, including office and clerical support services, maintenance services of any kind, or otherwise to engage in any preservation, maintenance or repair work upon any and every kind of property, to enter into and execute contracts therefor or relating thereto. Respondent's principal office is at the 35/F Tower One & Exchange Plaza, Ayala Triangle, Ayala Avenue, Makati City, Metro Manila, and may be served with summons and legal processes through its legal counsel.

THE FACTS[1]

Respondent Sonoma filed its Annual Income Tax Return (ITR) for CY 2008 with the BIR on April 15, 2009,[2] declaring therein the following:

Sales/Revenues/Receipts/Fees	39,810,000
Less: Cost of Sales/Services	-
Gross Income from Operation	39,810,000
Add: Non-Operating and Taxable Other Income	2,888,639
Total Gross Income	42,698,639
Less: Deductions	40,334,615
Taxable Income	2,364,024
Tax Rate	35%
Income Tax and Tax Due	827,408
Less: Tax Credits/Payments	
Prior Year's Excess Credits other than MCIT	3,089,843
Creditable Tax Withheld for the first three Quarters	3,570,090
Creditable Tax Withheld for the fourth Quarter	113,010
Total Tax Credits/Payments	6,772,943
Tax Payable/(Overpayment)	(5,945,535)

[1] *Rollo*, pp. 21-24, as found by the 2nd Division.
[2] *Docket*, p. 21; Exhibit "C" of CTA Case No. 8266.

In the same ITR, Sonoma likewise marked the option "To be refunded".[3]

On June 18, 2009, Sonoma filed with the BIR RDO No. 50 a letter-request for the refund of its purported overpaid creditable withholding tax (CWT) for the taxable period ending December 31, 2008 in the amount of ₱3,683,100.00 pursuant to Sections 76 and 204 of the National Internal Revenue Code (NIRC) of 1997, as amended. In the said letter, Sonoma alleged that it paid and remitted to the BIR the amount of ₱3,683,100.00 by way of CWT carried over from taxable year 2007.[4]

Since petitioner CIR has neither approved nor denied Sonoma's administrative claim for refund, Sonoma filed the Petition for Review on April 13, 2011, praying that the Court order the CIR to refund or to issue a TCC in its favor in the amount of ₱3,683,100.00, allegedly representing its excess and unutilized creditable income taxes withheld for CY 2008.[5] Sonoma pointed out that its right to claim a refund for its excess and unutilized CWT is based on Sections 58(D) and 76 of the NIRC of 1997.

In response to the Summons issued on May 3, 2011, the CIR filed her Answer on June 3, 2011, praying for the dismissal of the Petition for Review for lack of merit. In support thereof, she interposed the following Special and Affirmative Defenses:

> "5. Assuming but without admitting that [Sonoma] filed a claim for refund, the same is still subject to investigation by the Bureau of Internal Revenue;
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> 6. [Sonoma] failed to demonstrate that the tax, which is the subject of this case, was erroneously or illegally collected;
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> 7. Taxes paid and collected are presumed to be made in accordance with the laws and regulations, hence, not creditable or refundable;
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> 8. It is incumbent upon [Sonoma] to show that it has complied with the provisions of Sections 204(C) in relation to Section 229 of the 1997 Tax Code, as amended;
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> 9. In an action for tax credit or refund, the burden is upon the taxpayer to prove that it is entitled thereto, and failure to

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[3] *Id.*, Exhibit "C-1".
[4] *Docket*, p. 22.
[5] *Id.*

> discharge the said burden is fatal to the claim *(Emmanuel & Zenaida Aguilar v. Commissioner, CA-GR No. Sp. 16432, March 30, 1990 cited in Aban, Law of Basic Taxation in the Philippines, 1st Edition, p. 206);*
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> 10. Claims for refund are construed strictly against the claimant, the same partake the nature of exemption from taxation *(Commissioner of Internal Revenue vs. Ledesma, 31 SCRA 95)* and, as such, they are looked upon with disfavor. *(Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 121)."*

Afterwards, pre-trial ensued. The parties submitted their Pre-Trial Briefs and attended the pre-trial held on June 30, 2011.[6] The pre-trial was deemed terminated after this Court issued the Pre-Trial Order[7] dated August 10, 2011.

During trial, petitioner filed a Motion for the Commissioning of an Independent Certified Public Accountant to conduct the actual examination, audit and certification of the voluminous documents supporting its claim, which motion was granted in a Resolution dated September 16, 2011. Sonoma also presented both documentary and testimonial evidence and then filed its Formal Offer of Evidence on December 29, 2011. Its documentary exhibits were admitted as evidence in the Court's Resolutions dated January 27, 2012 and May 14, 2012.

On the other hand, the CIR's counsel was constrained to submit the case for decision without presenting any evidence for respondent due to the fact that there was still no Report of Investigation regarding Sonoma's claim for refund.

Thereafter, both parties were ordered to file their simultaneous memoranda within thirty (30) days from notice. Considering respondent's Memorandum was filed on July 20, 2012 and petitioner's Memorandum was filed on July 19, 2012, the case was submitted for decision on July 30, 2012.

On April 26, 2013, the Court's Special Third Division promulgated its Decision which ordered petitioner to refund or issue in favor of respondent a TCC in the amount of ₱3,683,100.00. The dispositive portion thereof states:

> "**WHEREFORE,** premises considered, the instant Petition for Review is hereby **GRANTED.** Accordingly, respondent is hereby **ORDERED TO REFUND** or **TO ISSUE A TAX CREDIT CERTIFICATE** in the amount of

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[6] *Docket*, p. 23.
[7] *Id.*

Php3,683,100.00 in favor of petitioner, representing the latter's excess Creditable Withholding Tax for calendar year 2008.

SO ORDERED."

Petitioner filed her Motion for Reconsideration of the Decision on May 9, 2013. On July 1, 2013, this Court's Special Third Division promulgated a Resolution which denied petitioner's Motion for Reconsideration.

Petitioner filed the present Petition for Review on August 5, 2014 assailing the Special Third Division's Decision and Resolution on the following grounds:

a) "The absence of any entry in the 'Creditable Tax Withheld' column in respondent's 2008 Annual Income Tax Return (AITR) would mean that no part of the gross income reported therein were ever subjected by respondent's *(sic)* to creditable withholding tax; thus, the supposed income payments to which taxes were withheld -- the subject of the present claim -- cannot be said to have been declared as part of the gross income of respondent in its 2008 ITR"[8];

b) "Respondent failed to present the source documents, such as official receipts, management, consultancy and service agreements/contracts, detailed general ledger and sales register to prove that the income payments related to the claimed creditable taxes withheld formed part of its taxable gross income in its 2008 Annual Income Tax Return"[9];

c) "Proof of actual remittance to the BIR of the income taxes withheld and testimonial evidence of the payors and withholding agents are required to be presented in Court, which respondent failed to prove in the instant case"[10]; and

d) "Tax refunds being in the nature of tax exemption is construed *strictissimi juris* against respondent."[11]

On October 3, 2013, respondent filed its Comment to the Petition for Review.

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[8] *Rollo*, p. 7.
[9] *Rollo*, p. 9.
[10] *Rollo*, p. 12.
[11] *Rollo*, p. 14.

On November 11, 2013, this Court issued a Resolution directing both parties to file their simultaneous memoranda.

On March 12, 2014, the Court *En Banc* issued a resolution noting petitioner's failure to file her Memorandum and the submission of respondent's Memorandum on December 26, 2013. In that same resolution, the above-captioned case was submitted for decision.

During the period for study and deliberation of this case, it was brought to the Court's attention that respondent filed a Manifestation on January 9, 2014, stating that, on December 18, 2013, respondent received a letter dated December 17, 2013 from the Bureau of Internal Revenue (BIR) signed by Erlinda A. Simple, Assistant Commissioner, Assessment Service, for Kim. S. Jacinto-Henares, Commissioner of Internal Revenue, informing respondent that its administrative claim for refund of excess and unutilized creditable withholding taxes (CWT) for calendar year 2008 in the amount of ₱3,683,100.00 has been found meritorious and was approved by the BIR **<u>in its entirety</u>**. Respondent likewise attached a photocopy of the letter in its Manifestation, the pertinent portion of which reads:

> "This refers to your claim for tax refund amounting to Php3,683,100.00 representing excess creditable withholding tax on income for the year 2008. Please be informed that after consideration of the factual basis of the claim and the law applicable thereto, **<u>this Office found the claim meritorious and the same is hereby approved in the same amount</u>**.
>
> The report on said claim may be subjected to post-audit by a higher authority upon the directive of the Commissioner or Deputy Commissioner, Operations Group. Should there be material findings upon post-audit, an assessment notice to be approved and signed by the Commissioner, may be issued to you for the collection of any deficiency tax or excess tax credit previously granted." *(Emphasis ours)*

Petitioner was furnished a copy of the Manifestation as evidenced by the received stamp of the BIR-RR#8 Makati City Legal Division. Despite being given ample time and notification, petitioner did not file any comment, objection or opposition thereto.

In ***Gancho-on vs. Secretary of Labor and Employment***[12], the Supreme Court emphatically stated:

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[12] G.R. No. 108033. April 14, 1997.

> "It is a rule of universal application, almost, that courts of justice constituted to pass upon substantial rights **will not consider questions in which no actual interests are involved; they decline jurisdiction of moot cases**.[13] And where the issue has become moot and academic, there is no justiciable controversy, so that a declaration thereon would be of no practical use or value. There is no actual substantial relief to which petitioners would be entitled and which would be negated by the dismissal of the petition.[14]" *(Emphasis ours)*

Given that petitioner filed this Petition for Review to assail the Decision and Resolution of this Court's Special Third Division which granted respondent's claim for refund/tax credit in the amount of ₱3,683,100.00, and it is that very same amount that petitioner herself granted respondent in her December 17, 2013 letter, this Court finds that there is no more justiciable issue needing serious consideration by the court.

WHEREFORE, premises considered, the above-captioned Petition for Review is hereby **DISMISSED** for being moot and academic.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

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[13] *Id.*, citing *In the Matter of the Estate of Jose Ma. Ceballos*, 12 Phil. 271 (1908).
[14] *Id.*, citing *Southeast Asia Manufacturing Corporation v. The Municipal Council of Tagbilaran*, No. L-23858, 21 November 1979, 94 SCRA 341.

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

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice