REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

HONDA CARS MAKATI, INC.,
Petitioner,

CTA CASE NO. 8806

Members:

- versus -

CASTAÑEDA, JR., *Chairperson,*
CASANOVA, *and*
MANAHAN, *JJ.*

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
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RESOLUTION

CASTAÑEDA, JR., *J.*:

For the Court's resolution is respondent's **Motion for Partial Reconsideration Re: Decision dated June 27, 2017** filed on July 12, 2017, with petitioner's **Comment (Re: Respondent's Motion for Partial Reconsideration)** filed on August 14, 2017.

Respondent seeks reconsideration of the Decision promulgated on June 27, 2017 (assailed Decision), the dispositive portion of which reads:

> **WHEREFORE**, premises considered, the instant Petition for Review filed by Honda Cars Makati, Inc. is **PARTIALLY GRANTED**. Accordingly, respondent is **ORDERED TO REFUND** or **TO ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the amount of

₱17,614,110.27, representing its excess and unutilized creditable withholding taxes for calendar year 2011.

SO ORDERED.

Respondent requests for partial reconsideration of the assailed Decision based on the following grounds:

a. Petitioner failed to adduce evidence that will prove the fact of withholding of taxes and their subsequent remittance to the BIR; and

b. The Court erred in ruling that petitioner had sufficiently proved that petitioner complied with the three requisites for the refund of the unutilized creditable withholding taxes (CWTs) to the extent of ₱17,614,110.27.

Respondent argues that for a claim for refund of excess and unutilized creditable income taxes to prosper, petitioner must prove the fact of withholding of taxes and their subsequent remittance to the Bureau of Internal Revenue (BIR), anchoring his argument on Section 2.58.3 of Revenue Regulations No. 2-98. Respondent alleges that since petitioner failed to adduce evidence that will prove actual remittance of the taxes withheld to the BIR, the claim for refund must fail.

Respondent also avers that the determination of the correct tax due is a condition precedent before determining whether petitioner is entitled to the claimed refund. Hence, respondent contends that petitioner's declaration that it is liable only for minimum corporate income tax (MCIT) for calendar year 2011 must be supported by sufficient evidence and not simply by allegations. Furthermore, respondent asserts that before granting a refund/tax credit, it is necessary to first determine how the income tax due was computed, since the basis of claiming for refund is the fact that the creditable tax withheld in its income payments received were more than the income tax due.

Lastly, respondent insists that petitioner violated the doctrine of exhaustion of administrative remedies. Petitioner filed the administrative claim for refund on April 2, 2014, and twelve days after, or on April 14, 2014, it then filed its judicial claim for refund before this Court. Respondent argues that petitioner must not merely initiate the prescribed administrative procedure to obtain relief, but it must also pursue it to its appropriate conclusion before seeking judicial intervention in order to give the administrative agency the opportunity to decide correctly and prevent unnecessary and premature resort to court.

The instant motion is bereft of merit.

Anent respondent's first argument, petitioner contends that actual remittance is not a condition to a claim for refund of unutilized tax credits.

Petitioner is correct.

In the case of *Commissioner of Internal Revenue vs. Asian Transmission Corporation*[1], the Supreme Court, citing the decision of this Court *En Banc*, ruled as follows:

> x x x [P]roof 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 Regulations 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 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, x x x has no control over the remittance of the taxes withheld from its income by

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

> 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. x x x (*Underscoring ours*)

This was reiterated in the subsequent case of *Commissioner of Internal Revenue v. Philippine National Bank*[2] where the Supreme Court held:

> 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 such as respondent, who is vested with the responsibility of withholding and remitting income taxes.

Hence, it is clearly settled that proof of actual remittance is not a condition to claim for a refund. Based on the foregoing, the Certificates of Creditable Tax Withheld at Source suffices as proof of actual payment by the payee-refund claimant to the government, through the withholding agents.

As to respondent's second argument, he avers that petitioner failed to adduce evidence that will show that it was liable only to MCIT and not the normal income tax.

Petitioner, on the other hand, argues that its alleged failure to prove that it is entitled to MCIT cannot negate its claim for refund. Instead, its claim can only be negated by non-compliance with the requisites for a refund. Petitioner stresses that if respondent had any doubts as to the propriety of petitioner's availment of MCIT, his remedy is not to raise the same before this Court and the current

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

proceedings but to audit and assess petitioner for the resulting income tax deficiency.

Respondent's contention deserves scant consideration.

We agree with petitioner that the correct venue for raising the propriety of the availment of MCIT is not with this Court, but in an audit or investigation of its books by respondent. In the case of *Citibank N.A. vs. Court of Appeals*[3], the Supreme Court held that:

> A refund claimant is required to prove the inclusion of the income payments which were the basis of the withholding taxes and the fact of withholding. However, detailed proof of the truthfulness of each and every item in the income tax return is not required. That function is lodged in the commissioner of internal revenue by the NIRC which requires the commissioner to assess internal revenue taxes within three years after the last day prescribed by law for the filing of the return. In *San Carlos Milling Co., Inc. vs. Commissioner of Internal Revenue,* the Court held that the internal revenue branch of government must investigate and confirm the claims for tax refund or credit before taxpayers may avail themselves of this option. The grant of a refund is founded on the assumption that the tax return is valid; that is, the facts stated therein are true and correct. In fact, even without petitioners tax claim, the commissioner can proceed to examine the books, records of the petitioner-bank, or any data which may be relevant or material in accordance with Section 16 of the present NIRC. *(Underscoring ours)*

Moreover, in cases of tax refunds of excess CWT, income tax returns filed by taxpayers are presumed to be correct in the absence of controverting evidence. In the case of *Shimizu Philippine Contractors, Inc. vs. Commissioner of Internal Revenue*[4], citing *Citytrust Banking Corporation v. Commissioner of Internal Revenue,* this Court held: *gr*

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[3] G.R. No. 107434, October 10, 1997.
[4] CTA Case No. 5399, March 3, 1999.

As regards the contention of the Respondent that Petitioner has not shown proof of the loss incurred, We find this without basis in fact and in law. Suffice it to state that in the case of *Citytrust Banking Corporation vs. Commissioner of Internal Revenue, CTA Case No. 4099, May 28, 1993,* it has already been settled to wit:

> "Respondent's contention that a mere allegation of loss does not *ipso facto* merit a refund is unmeritorious. <u>As stated, Respondent did not present any evidence which will effectively dispute the correctness of the returns and other material facts therein</u>. <u>Neither did Respondent issue any deficiency assessment for said year</u>. Hence, <u>in the absence of contrary evidence the income tax return should be given credence</u> and thus, coupled by the fact that Petitioner was able to present documents to substantiate its income tax returns, provided sufficient proof of a loss sustained by Petitioner in the year (see also *Bank of the Philippine Islands as Liquidator of Paramount Acceptance Corporation vs. Commissioner of Internal Revenue, CTA Case No. 4257, December 30, 1993*)." (*Underscoring ours*)

Clearly, respondent's argument that petitioner must first prove its right to avail of MCIT is without basis. Based on the afore-quoted cases, in the absence of contrary evidence presented by respondent, and considering that it did not assess petitioner for calendar year 2011, petitioner's income tax returns must be given credence.

Finally, as to respondent's last argument, the Court maintains its ruling in the assailed Decision that there was exhaustion of administrative remedies since the administrative and judicial claims for refund were filed within the two-year prescriptive period provided by law.

WHEREFORE, premises considered, respondent's **Motion for Partial Reconsideration Re: Decision dated June 27, 2017** is **DENIED** for lack of merit. ge

SO ORDERED.

JUANITO C. CASTANEDA, JR.
Associate Justice

WE CONCUR:

CAESAR A. CASANOVA
Associate Justice

CATHERINE T. MANAHAN
Associate Justice