REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

JARDINE LLOYD THOMPSON INSURANCE BROKERS, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 8471

Members:

CASTAÑEDA, JR., *Chairperson,*
CASANOVA, *and*
COTANGCO-MANALASTAS, *JJ.*

Promulgated:

JUL 2 3 2015 10:34 AM

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RESOLUTION

CASANOVA, *J.*:

For this Court's resolution is respondent's **Motion for Partial Reconsideration Re: Decision dated November 28, 2014** *(sic)*[1], filed on April 29, 2015, with petitioner's **Comment (Re: Respondent's Motion for Partial Reconsideration)**, filed on June 8, 2015.

Respondent seeks partial reconsideration of the Court's Decision promulgated on April 14, 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**

[1] Should be April 14, 2015.

> **REFUND or TO ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the reduced amount of **₱1,356,786.92**, representing petitioner's excess and unutilized creditable income taxes withheld for calendar year 2009.
>
> **SO ORDERED.**"[2]

Respondent maintains that petitioner failed to exhaust administrative remedies prior to the filing of the Petition for Review. According to respondent, the party with an administrative remedy must not merely initiate the prescribed administrative procedure to obtain relief, but 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. Furthermore, respondent contends that petitioner must prove its compliance with Revenue Memorandum Order (RMO) No. 53-98 and Revenue Regulations (RR) No. 2-2006 to give support to the validity of its claim for unutilized creditable withholding tax for calendar year (CY) 2009.

Petitioner, on the other hand, avers that respondent's contentions are rehash of the previous arguments contained in her Memorandum and that respondent did not raise new arguments which could persuade the Court from reconsidering its Decision. It argues that respondent's motion should be denied for the following reasons:

a. Petitioner exhausted administrative remedies through the submission of complete supporting documents before lodging an appeal with the Honorable Court; and

b. Judicial claims are litigated *de novo* and decided based on the evidence presented and formally offered by the parties.

We DENY respondent's Motion for Partial Reconsideration. Petitioner correctly observed that respondent's arguments are mere rehash of the arguments raised in her Memorandum[3] which were already considered and thoroughly threshed out by the Court in the assailed Decision. To reiterate, the pertinent portions of the Decision read:

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[2] Decision, Docket (Vol. 3), p. 1275.

[3] Docket (Vol. 2), pp. 1237-1247.

"Respondent argues that compliance with the afore-quoted requirements will not suffice if petitioner failed to comply with the prescribed checklist of requirements to be submitted involving claims for unutilized creditable withholding tax pursuant to Revenue Memorandum Order (RMO) No. 53-98. She further argues that petitioner must also prove its compliance with Revenue Regulations (RR) 2-2006 to give support to the validity of its claim for unutilized creditable withholding tax for CY 2009 and that with all the administrative requirements continuing up to judicial review.

Petitioner, however, alleges that it has complied with all administrative requirements before filing the instant Petition, thus the Court was vested with jurisdiction over the case.

In the case of *Ayala Corporation vs. Commissioner of Internal Revenue*, the Second Division of this Court discussed both RMO No. 53-98 and RR 2-2006 in relation to claims for unutilized creditable withholding tax, to wit:

> 'It must be stressed that Revenue Memorandum Order (RMO) No. 53-98, dated June 1, 1998 and entitled 'Checklist of Documents to be Submitted by a Taxpayer upon Audit of his Tax Liabilities as well as of the Mandatory Reporting Requirements to be Prepared by a Revenue Officer, all of which Comprise a Complete Tax Docket', refers mainly to the requirements in the administrative level for claims for refund/tax credit, wherein the taxpayer is required to submit for audit purposes, all his/its pertinent documents/records, to establish the veracity of his/its claim. However, when a taxpayer's claim reaches the judicial level or when the claim is elevated to this Court, the Rules of Court and this Court's own Rules govern the matter of proving the said claim.
>
> Moreover, RR 2-2006, indeed, prescribes the attachment of the *Summary of Alphalist of Withholding Agents of Income Payments Subjected to Tax Withheld at Source* (SAWT) to tax returns, with claimed

> tax credits due to creditable tax withheld at source. However, this Court, in numerous cases, held that the following are the requisites that must be complied with in order to claim a Tax Credit Certificate or Refund of excess creditable withholding tax (CWT): (a) that the claim for refund was filed within the two-year prescriptive period as provided under Section 204(C) in relation to Section 229 of the National Internal Revenue Code (NIRC) of 1997, as amended; (b) that the fact of withholding is established by a copy of a statement duly issued by the payor (withholding agent) to the payee, showing the amount paid and the amount of tax withheld therefrom; and (c) that the income upon which the taxes were withheld were included in the return of the recipient. These requisites were also adopted by the Supreme Court in the case of *United International Pictures AB vs. Commissioner of Internal Revenue*.'

Petitioner, therefore, need not comply with all the documents prescribed in RMO No. 53-98 and RR 2-2006 before it can claim its unutilized creditable withholding tax. It just needs to comply with the three conditions enumerated above."[4]

The non-submission of supporting documents at the administrative level will not automatically deny petitioner of its right to refund the excess taxes paid. The Court can still accept petitioner's evidence assuming these were not submitted at the administrative level. In the case of *Commissioner of Internal Revenue vs. Philippine National Bank*[5], the Supreme Court categorically settled this issue as follows:

"More importantly, the Court of Tax Appeals is not precluded from accepting respondent's evidence assuming these were not presented at the administrative level. Cases filed in the Court of Tax Appeals are litigated *de novo*. Thus, respondent 'should prove every minute aspect of its case by presenting, formally offering and

[4] Decision, Docket (Vol. 3), pp. 1267-1268.
[5] G.R. No. 180290, September 29, 2014.

> submitting . . . to the Court of Tax Appeals [all evidence] . . . required for the successful prosecution of [its] administrative claim."[6]

Moreover, in the more recent consolidated case of *CBK Power Company Limited vs. Commissioner of Internal Revenue*[7] involving the refund of excess final withholding taxes, the Supreme Court held that since the administrative and judicial claims for refund were filed within the two-year prescriptive period, there was exhaustion of administrative remedies. Section 229 only requires that the administrative claim be priorly filed, thus:

> "With respect to the remittance filed on March 10, 2003, **the Court agrees with the ratiocination of the CTA *En Banc* in debunking the alleged failure to exhaust administrative remedies. Had CBK Power awaited the action of the Commissioner on its claim for refund prior to taking court action knowing fully well that the prescriptive period was about to end, it would have lost not only its right to seek judicial recourse but its right to recover the final withholding taxes it erroneously paid to the government thereby suffering irreparable damage.**
>
> Also, while it may be argued that, for the remittance filed on June 10, 2003 that was to prescribe on June 10, 2005, CBK Power could have waited for, at the most, three (3) months from the filing of the administrative claim on March 4, 2005 until the last day of the two-year prescriptive period ending June 10, 2005, that is, if only to give the BIR at the administrative level an opportunity to act on said claim, the Court cannot, on that basis alone, deny a legitimate claim that was, for all intents and purposes, timely filed in accordance with Section 229 of the NIRC. **There was no violation of Section 229 since the law, as worded, only requires that an administrative claim be priorly filed.**
>
> In the foregoing instances, attention must be drawn to the Court's ruling in *P.J. Kiener Co., Ltd. v. David*

[6] *Ibid.*
[7] G.R. Nos. 193383-84 and G.R. Nos. 193407-08, January 14, 2015.

> (*Kiener*), wherein it was held that **in no wise does the law**, *i.e.,* Section 306 of the old Tax Code **(now, Section 229 of the NIRC), imply that the Collector of Internal Revenue first act upon the taxpayer's claim, and that the taxpayer shall not go to court before he is notified of the Collector's action**. In *Kiener*, the Court went on to say that **the claim with the Collector of Internal Revenue was intended primarily as a notice of warning that unless the tax or penalty alleged to have been collected erroneously or illegally is refunded, court action will follow xxx**". *(Emphasis ours)*

The Court, in the assailed Decision, found that petitioner filed both its administrative and judicial claims for refund within the two-year prescriptive period, to wit:

> "A perusal of the records shows that petitioner filed its Original Annual Income Tax Return on April 14, 2010. Counting from this date, petitioner had until April 13, 2012 within which to file its administrative claim as well as its judicial claim for refund or tax credit of excess and unutilized creditable income taxes withheld for CY 2009. Petitioner filed its administrative claim for refund with the BIR on April 25, 2011, while the instant Petition for Review was filed on April 13, 2012. Thus, petitioner filed both its administrative and judicial claims for refund or issuance of Tax Credit Certificate within two (2) years from the date of filing of its Annual ITR for CY 2009, in accordance with Sections 204(C) and 229 of the NIRC of 1997, as amended."[8]

Consequently, petitioner did not violate the doctrine of exhaustion of administrative remedies, hence, the Court finds no compelling reason to reverse or set aside the assailed Decision dated April 14, 2015.

WHEREFORE, in view of the foregoing, respondent's Motion for Partial Reconsideration is hereby **DENIED** for lack of merit.

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[8] Decision, Docket (Vol. 3), p. 1270.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

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

(On Leave)
AMELIA R. COTANGCO-MANALASTAS
Associate Justice