REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC
****

DAVAO CITY WATER DISTRICT, Petitioner,	**CTA EB No. 1472** (CTA Case Nos. 8505 and 8575)
	Present:
- versus -	**DEL ROSARIO,** *P.J.*, **CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN,** and **MANAHAN,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	***Promulgated:*** SEP 13 2017 3:17 p.m.

x - x

DECISION

UY, *J.*:

Before the Court *En Banc* is a *Petition for Review* filed by Davao City Water District on June 3, 2016 against the Commissioner of Internal Revenue,[1] praying for the reversal of the Decision dated October 12, 2015[2] rendered by the Third Division of this Court (Court in Division) in CTA Case Nos. 8505 and 8575, entitled *"Davao City Water District, Petitioner, versus Commissioner of Internal Revenue, Respondent"*, the dispositive portion of which reads:

---

[1] EB Docket, pp. 1 to 17.

[2] EB Docket, pp. 21 to 36; Penned by Associate Justice Esperanza R. Fabon-Victorino, and concurred by Associate Justice Lovell R. Bautista and Associate Justice Ma. Belen M. Ringpis-Liban.

> "**WHEREFORE,** the instant consolidated Petitions for Review are hereby **DENIED** due to insufficiency of evidence.
>
> **SO ORDERED.**"

THE FACTS

As found by the court *a quo,* these are the established facts of CTA Case Nos. 8505 and 8575.

Petitioner Davao City Water District is a government-owned and controlled corporation created and organized by virtue of Presidential Decree No. 198. It is a public utility engaged in the production and supply of potable water to the entire City of Davao.

Respondent, on the other hand, is the Commissioner of the Bureau of Internal Revenue (BIR) vested with the power to decide, approve and grant refunds or tax credits of erroneously paid taxes, as provided by law. He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

On November 26, 2008, respondent issued Revenue Regulations No. 14-2008, increasing the coverage of withholding tax agents required to withhold 1% from regular suppliers of goods and 2% from regular suppliers of services from the top 10,000 private corporations to top 20,000 private corporations.

Many of the top 20,000 corporations and government agencies operating in Davao City were petitioner's customers withholding 2% income taxes from their water bills. According to petitioner, the accumulated income tax withheld from it for 2010 and 2011 reached ₱1,182,638.08 and ₱1,384,914.18, respectively.

On March 11, 2010, Republic Act (RA) No. 10026 entitled *"An Act Granting Income Tax Exemption To Local Water Districts By Amending Section 27 (C) of the National Internal Revenue Code (NIRC) of 1997, as amended, and adding Section 289-A to the Code, for the purpose"* was enacted. By reason of such enactment, petitioner formally requested the BIR for a Ruling/Certification of Exemption so that it could inform its clients belonging to the top 20,000 corporations and government agencies to cease withholding taxes on their payments of water bills.

In its *Reply* dated April 15, 2011, the BIR indicated that it could not as yet process the request for tax exemption in the absence of implementing rules and regulations required under Section 3 of RA No. 10026.

On December 6, 2011, petitioner filed with respondent, an application for refund of income tax payments for taxable year 2010 amounting to ₱1,182,638.08. This was followed by a similar application on April 18, 2012, this time for the year 2011 in the amount of ₱1,384,914.18.

Respondent failed to act on both applications for refund.

Consequently, petitioner, Davao City Water District, filed two (2) separate *Petitions for Review* against respondent, Commissioner of Internal Revenue with the Court in Division on June 21, 2012 pertaining to its claim for the refund of its 2010 income tax payments; and on November 12, 2012 pertaining to its claim for the refund of its 2011 income tax payments, docketed as CTA Case No. 8505 and 8575, respectively.

On September 13, 2012, petitioner filed an *Amended Petition for Review* in CTA Case No. 8505, which was admitted on November 21, 2012.

In the *Answer* filed in CTA Case No. 8505 on December 10, 2012, respondent assailed the jurisdiction of the Court in Division based on the allegations in the petition and the relief prayed for. Respondent also claimed that RA No. 10026 was not self-executing, and thus, its implementation was subject to certain conditions. Allegedly, petitioner must prove its entitlement to refund and failure to do so was fatal. According to respondent, petitioner was liable for income tax, pursuant to Section 27(A) of the 1997 Tax Code, and thus, the claim for refund would be construed strictly against petitioner and in favor of the government.

With respect to the Answer filed in CTA Case No. 8575 on February 21, 2013, respondent denied petitioner's entitlement to refund due to its failure to submit relevant documents at the administrative level, as required under Revenue Memorandum Order No. 53-98, thereby rendering its application *pro-forma*.

On May 30, 2013, the two *Petitions for Review* were consolidated at the instance of petitioner.

Respondent filed his *Consolidated Pre-Trial Brief* on August 23, 2013; while petitioner filed its *Consolidated Pre-Trial Brief* on November 25, 2013 in said consolidated petitions. Pre-trial conference was held on January 16, 2014. [3]

On February 26, 2014, a Pre-Trial Order was issued by the Court in Division[4], but it was amended on June 11, 2014, at the instance of the parties.

During trial, petitioner presented four (4) witnesses, namely: (1) its Acting General Manager, Engineer Edwin V. Regalado, (2) the Manager of its Legal Department, Attorney Richard D. Tumanda, (3) the OIC-Department Manager of its Accounting and Budget Department, Hilton P. Husain, and (4) the Court-appointed Independent Certified Public Accountant (ICPA), Annabelle I. Opamin.

To expedite the proceedings, the testimony of Engineer Edwin V. Regalado was dispensed with in view of the stipulation that as the Acting General Manager of petitioner, he was authorized in a Board Resolution to sign and file the consolidated *Petitions for Review* before the Court *a quo*.

With respect to petitioner's witness, Attorney Richard D. Tumanda, stated in his direct testimony by way of Judicial Affidavit, that as petitioner's Legal Department Manager, he assisted in the filing of the consolidated petitions for tax refund with the BIR. He also said that petitioner's applications for refund/tax credit for 2010 and 2011 were filed with respondent through registered mail; and that as appearing in the Certification dated July 11, 2013 and January 3, 2014 issued by the Philippine Postal Corporation, the applications for tax refund were received by respondent.

Witness Hilton P. Husain, also by way of a Judicial Affidavit, testified that as the OIC-Department Manager of petitioner's Accounting and Budget Department, he reviews and signs disbursements, journal vouchers, purchase orders and other reports; that on November 16, 2011, he issued a Certification that for the period January 1 to December 31, 2010, its customers withheld a total amount of ₱1,182,638.08, as expanded withholding tax from their respective monthly water bills and remitted the same to the BIR

---

[3] Minutes of the Hearing held on January 16, 2014, Division Docket, CTA Case Nos. 8505 and 8575, Vol. II, p. 848
[4] Minutes of the Hearing held on January 16, 2014, Division Docket, CTA Case Nos. 8505 and 8575, Vol. II, p. 878 to 881.

as shown in its Income Tax Return. Further, he stated that to arrive at such amount, he collated all the Certificates of Creditable Tax Withheld delivered to them by their customers belonging to the top 20,000 corporations and government agencies at the time they paid their monthly water bills; and that he believes that petitioner is exempt from income tax by virtue of RA No. 10026.

ICPA Annabelle I. Opamin also testified on direct examination by way of a Judicial Affidavit, that petitioner had about 922 customers who withheld 2% from their total monthly water bills payment and remitted them to the BIR; that her examination and verification of the Certificates of Tax Withheld issued by these customers to petitioner show that the amount of ₱1,053,818.44 for 2010 and ₱1,312,700.81 for 2011 income tax withheld were properly substantiated.

After presentation of its evidence, and admission of its documentary exhibits, petitioner rested its case. Respondent, however, opted not to adduce any evidence. As directed by the Court in Division, petitioner filed its *Memorandum* on October 21, 2014. Respondent did not file any, per Records Verification Report dated October 17, 2014 issued by this Court's Judicial Records Division.

In the assailed Decision,[5] the consolidated *Petitions for Review*, were denied for insufficiency of evidence. The Court in Division held that petitioner failed to substantiate its claimed entitlement to refund. It said:

> "In the instant case however, the **date of payment of the alleged erroneously withheld income taxes could not be determined** for purposes of determining the two-year prescriptive period within which to file both the administrative and judicial claims for refund. Petitioner failed to adduce evidence indicating the date of payment of subject income taxes withheld for taxable year 2010 and 2011. Petitioner submitted only the relatively short ICPA Report, the self-serving Certifications dated November 16, 2011 and March 14, 2012, the 2010 and 2011 Annual Income Tax Returns of petitioner, and the Judicial Affidavits of petitioner's witnesses to support its claim of erroneously withheld income taxes. Petitioner failed to present any Monthly Withholding Tax Return to prove the actual payment/remittance of the alleged erroneously withheld income taxes. Without the said

---

[5] EB Docket, pp. 21 to 36; Division Docket (CTA Case No. 8505) – Vol. 3, pp. 1269 to 1284.

> documents, the Court in Division cannot with certainty determine if the two-year period for purposes of the claims for refund has been complied with by petitioner. On this score alone, the consolidated Petitions for Review must fail."
>
> xxx xxx xxx
>
> Hence, for purposes of establishing the fact of withholding, only BIR Form No. 2307 (Certificate of Creditable Tax Withheld at Source) issued by the withholding agent may be introduced. It cannot be replaced by any other BIR Form. This is so because administrative regulations have the force and effect of law. Needless to state, what the law decrees must be obeyed."[6]

On November 3, 2015, petitioner filed its *Motion for Partial Reconsideration* of the assailed Decision.[7] Respondent filed its *Comment* thereto on March 3, 2016.[8]

Petitioner's *Motion for Partial Reconsideration* was denied in the Resolution April 27, 2016 by the Court in Division for lack of merit.[9]

Petitioner thereafter filed before the Court *En Banc* the instant *Petition for Review* on June 3, 2016.[10]

As directed by the Court *En Banc,* respondent filed his *Comment To Petition For Review*[11] on July 21, 2016. Thereafter, the Court *En Banc* gave due course to the instant *Petition for Review* in the Resolution dated August 3, 2016[12], and required the parties to submit their respective memorandum. Petitioner filed its *Memorandum* on October 13, 2016.[13] Respondent, however, failed to file his memorandum.[14] On November 11, 2016, this case was

---

[6] EB Docket, pp. 21 to 36 , Assailed Decision dated October 12, 2015,at pp. 8 and 15
[7] EB Docket, pp. 37 to 41; Division Docket (CTA Case No. 8505) – Vol. 3, pp. 1286 to 1290.
[8] Division Docket (CTA Case No. 8505) – Vol. 3, pp. 1313 to 1315.
[9] EB Docket, pp. 44 to 47; Division Docket (CTA Case No. 8505) – Vol. 3, pp. 1324 to 1327.
[10] EB Docket, pp. 1 to 17.
[11] EB Docket, pp. 122 to 125.
[12] EB Docket, pp. 128 to 129.
[13] EB Docket, pp. 134 to 152.
[14] Per Records Verification dated October 27, 2016 issued by the Judicial Records Division of this Court, EB Docket, p. 154.

deemed submitted for decision.[15]

Hence, this Decision.

THE ISSUE

Petitioner raises the following issue for the resolution of the Court *En Banc*, to wit:

> "Whether or not the evidence adduced by petitioner to prove due payment of 2010 and 2011 income taxes, by way of withholding and remittance of selected customers of petitioner was insufficient."[16]

Petitioner's arguments:

Petitioner argues that the income taxes withheld by the withholding agents were deemed paid to the BIR on the same day the said taxes were withheld; that the withholding customers of the petitioner were duly constituted withholding agents of the BIR, and payment to the agents is payment to the principal. Allegedly, the actual remittance by the withholding agents to the BIR is not a matter of concern to the petitioner and that if the agents failed or refused to remit the income taxes they withheld, such concern is purely between the principal and the erring withholding agents.

According to petitioner, based on the case of *Accra Investments Corporation vs. Court of Tax Appeals, et al.*,[17] even if the ICPA report is relatively short as noted by respondent, still, the date of payment of the withheld income taxes could be determined as well discussed in the said case. In its subject claim for the refund of its erroneously withheld 2010 and 2011 income taxes, the date of payments could be taken either at the end of the tax year (December 31, 2010 and December 31, 2011) or when the tax liabilities fell due.

Petitioner further contends that there is a legal presumption that the duly constituted withholding agents of the BIR were regularly performing their official duty, and that the regular course of business has been followed.

---

[15] Resolution dated November 11, 2016, 2016, EB Docket, pp. 156 to 157.
[16] *Petition for Review*, EB Docket, p. 10; Petitioner's *Memorandum*, EB Docket, p. 144.
[17] G.R. No. 96322, December 20, 1991.

As regards to the ICPA Report, the ICPA is allegedly not just an ordinary witness, because he is an officer of the Court, or the officer charged with the duty of determining factual issues necessary for the Court to arrive at an informed judgment. Said ICPA Report was conscientiously and judiciously made taking into account the generally accepted accounting and auditing principles; and the same ICPA Report was never rebutted or impugned by respondent during the July 7, 2014 trial. Thus, unless properly challenged by respondent, the content of the ICPA Report was *prima facie* correct and should have allegedly been given credence by the Court.

In addition, petitioner is asking the Court to take judicial notice that water bills were issued to customers on a month to month basis, and that the withholding is done on a monthly basis. Petitioner is of the view that it need not prove this fact under the Rules of Court (Section 2, Rule 129) which applies suppletorily to the proceedings of the Court. Petitioner likewise opposes the finding that only BIR Form 2307 may be presented to prove entitlement to refund.

Finally, petitioner claims that it is part of the Government, being a government-owned water utility; and that monies unjustifiably retained by respondent would be used directly by petitioner in its improvement and expansion programs which will immediately benefit the public in the form of improved public services.

Respondent's counter-arguments:

Respondent counter-argues that petitioner should not and cannot assume that the ICPA's Report should be taken as gospel truth and that the Court in Division is compelled to admit the said report without necessarily examining the same.

Moreover, respondent points out that the Court is not bound by the findings of the ICPA; that the ICPA Report is but a tool or guide to aid the Court in the resolution of the case; and that the determination of the merit or the probative value of such Report is still within the province of the Court.

It is allegedly incumbent upon petitioner to lay down the foundation and prove convincingly the allegations it wishes to present; and that bare allegations without any substantiation to support and corroborate its claim are not enough to prove its cause.

Moreover, petitioner cannot insist that the ICPA Report is sufficient to prove its right to claim for refund, and thus, it is no longer necessary for it to submit its evidence such as BIR Form 2307 or the Certificates of Creditable Tax Withheld at Source to prove that the filing of the petition is within the 2-year period. In this connection, petitioner must have proven every minute details of its claim, since the claimant has the burden of proof to establish the factual basis of his claim for tax credit or refund. Also, tax refunds, like tax exemptions, are construed strictly against the taxpayer.

THE COURT *EN BANC*'S RULING

The instant *Petition for Review* lacks merit.

While We find that the two-year prescriptive period could be determined in this case, and that the consolidated *Petitions for Review* in CTA Case Nos. 8505 and 8575 were timely filed, We agree with the Court in Division that petitioner's claim must be denied for insufficiency of evidence.

The administrative and judicial claims for refund were filed within the two-year prescriptive period provided by law.

Sections 204(C) and 229 of the NIRC of 1997 provide the two-year prescriptive period in filing an administrative and judicial claims for tax refunds or credits, to wit:

> "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 <u>within two (2) years after the payment of the tax or penalty</u>**: *Provided, however*, That a return filed showing an overpayment shall be considered as a written claim for credit or refund." *(Emphasis supplied)*
>
> "SEC. 229. *Recovery of Tax Erroneously or Illegaly 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.
>
> **In any case, no such suit or proceeding shall be filed after the expiration of <u>two (2) years from the date of payment of the tax or penalty</u> 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." *(Emphasis and underscoring supplied)*

These provisions are clear: within two years from the date of payment of tax, the claimant must first file an administrative claim with respondent before filing its judicial claim with the courts of law. Both claims must be filed within a two-year reglementary period. Timeliness of the filing of the claim is mandatory and jurisdictional. The court cannot take cognizance of a judicial claim for refund either prematurely or out of time.[18]

Notably in the consolidated cases before the Court in Division, petitioner's refund claims pertain to creditable withholding taxes as opposed to final withholding taxes. As explained by the Supreme Court's in the case of *Chamber of Real Estate and Builders' Associations, Inc. vs. The Hon. Executive Secretary Alberto Romulo, et al.*[19], final withholding tax and creditable withholding tax are distinguished as follows:

---

[18] *Commissioner of Internal Revenue vs. United Cadiz Sugar Farmers Association Multi-Purpose Cooperative*, G.R No. 209776, December 7, 2016.

[19] G.R. No. 160756, March 9, 2010.

Final Withholding Tax	*Creditable Withholding Tax*
a) The amount of income tax withheld by the withholding agent is constituted as a full and final payment of the income tax due from the payee on the said income.	a) Taxes withheld on certain income payments are intended to equal or at least approximate the tax due of the payee on the said income.
b) The liability for payment of the tax rests primarily on the payor as a withholding agent.	b) Payee of income is required to report the income and/or pay the difference between the tax withheld and the tax due on the income. The payee also has the right to ask for a refund if the tax withheld is more than the tax due.
c) The payee is not required to file an income tax return for the particular income.	c) The income recipient is still required to file an income tax return, as prescribed in Sections 51 and 52 of the NIRC of 1997, as amended.

Jurisprudentially, the Supreme Court laid down the rule as to when the said two-year period under Sections 204(C) and 229 of the NIRC of 1997 should commence insofar as **creditable withholding taxes** are concerned, *i.e.*, from the time of the filing of the final adjustment return or the Annual Income Tax Return (ITR). In *Philippine Bank of Communications vs. Commissioner of Internal Revenue, et al.*,[20] the High Court held as follows:

> "The rule states that the taxpayer may file a claim for refund or credit with the Commissioner of Internal Revenue, within two (2) years after payment of tax, before any suit in CTA is commenced. **The two-year prescriptive period provided, should be computed from the time of filing the Adjustment Return and final payment of the tax for the year.**
>
> In *Commissioner of Internal Revenue vs. Philippine American Life Insurance Co.*,[21] this Court explained the application of Section 230 of the 1977 NIRC[22], as follows:

[20] G.R. No. 112024, January 28, 1999.
[21] 224 SCRA 446 (1995).
[22] Now Section 229 of the NIRC of 1997.

> '**Clearly, the prescriptive period of two years should commence to run only from the time that the refund is ascertained, which can only be determined after a final adjustment return is accomplished. In the present case, this date is April 16, 1984, and two years from this date would be April 16, 1986.** x x x As we have earlier said in the TMX Sales case, Sections 68, 69, and 70 on Quarterly Corporate Income Tax Payment and Section 321 should be considered in conjunction with it.'" *(Emphases supplied)*

With regard to **final withholding taxes**, however, the Supreme Court, in the very recent case of *Metropolitan Bank & Trust Company vs. The Commissioner of Internal Revenue*,[23] clarified, in effect, that unlike the rule on creditable withholding taxes, the two-year period under Sections 204(C) and 229 of the NIRC of 1997 commences from the time the taxes are paid, to wit:

> "In this case, Metrobank insists that the filing of its administrative and judicial claims on December 27, 2002 and September 10, 2003, respectively, were well-within the two (2)-year prescriptive period. Citing *ACCRA Investments Corporation v. Court of Appeals*,[24] *CIR v. TMX Sales, Inc.*,[25] *CIR v. Philippine American Life Insurance, Co.*,[26] and *CIR v. CDCP Mining Corporation*,[27] Metrobank contends that the aforesaid prescriptive period should be reckoned not from April 25, 2001 when it remitted the tax to the BIR, but rather, from the time it filed its Final Adjustment Return or Annual Income Tax Return for the taxable year of 2001, or in April 2002, as it was only at the time when its right to a refund was ascertained.
>
> Metrobank's contention cannot be sustained.
>
> As correctly pointed out by the CIR, the cases cited by Metrobank involved corporate income taxes, in which

---

[23] G.R. No. 182582, April 17, 2017.
[24] 281 Phil. 1060 (1991).
[25] 282 Phil. 199 (1992).
[26] 314 Phil. 349 (1995).
[27] 362 Phil. 75 (1999).

the corporate taxpayer is required to file and pay income tax on a quarterly basis, with such payments being subject to an adjustment at the end of the taxable year. As aptly put in *CIR v. TMX Sales, Inc.*, 'payment of quarterly income tax should only be considered [as] mere installments of the annual tax due. These quarterly tax payments which are computed based on the cumulative figures of gross receipts and deductions in order to arrive at a net taxable income, should be treated as advances or portions of the annual income tax due, to be adjusted at the end of the calendar or fiscal year. x x x Consequently, the two-year prescriptive period x x x should be computed from the time of filing of the Adjustment Return or Annual Income Tax Return and final payment of income tax.' Verily, since quarterly income tax payments are treated as mere 'advance payments' of the annual corporate income tax, there may arise certain situation where such 'advance payments' would cover more than said corporate taxpayer's entire income tax liability for a specific taxable year. Thus, it is only logical to reckon the two (2)-year prescriptive period from the time the Final Adjustment Return or the Annual Income Tax Return was filed, since it is only at that time that it would be possible to determine whether the corporate taxpayer had paid an amount exceeding its annual income tax liability.

On the other hand, the tax involved in this case is a ten percent (10%) final withholding tax on Metrobank's interest income on its foreign currency denominated loan extended to LHC. In this regard, Section 2.57 (A) of Revenue Regulations No. 02-98 explains the characterization of taxes of this nature, to wit:

> Section 2.57. *Withholding of Tax at Source*
>
> (A) *Final Withholding Tax.* — **Under the final withholding tax system[,] the amount of income tax withheld by the withholding agent is constituted as a full and final payment of the income tax due from the payee on the said income.** The liability for payment of the tax rests primarily on the payor as a withholding agent. Thus, in case of his failure to withhold the tax or in case of under

> withholding, the deficiency tax shall be collected from the payor/withholding agent. The payee is not required to file an income tax return for the particular income.
>
> The finality of the withholding tax is limited only to the payee's other tax liability on the particular income. It does not extend to the payee's other tax liability on said income, such as when the said income is further subject to a percentage tax. For example, if a bank receives income subject to final withholding tax, the same shall be subject to a percentage tax. (Emphasis and underscoring supplied)

From the foregoing, it may be gleaned that final withholding taxes are considered as full and final payment of the income tax due, and thus, are not subject to any adjustments. Thus, the two (2)-year prescriptive period commences to run from the time the refund is ascertained, ***i.e.*, the date such tax was paid**, and not upon the discovery by the taxpayer of the erroneous or excessive payment of taxes.

In the case at bar, it is undisputed that Metrobank's final withholding tax liability in March 2001 was remitted to the BIR on **April 25, 2001**. As such, it only had until **April 25, 2003** to file its administrative and judicial claim for refund. However, while Metrobank's administrative claim was filed on December 27, 2002, its corresponding judicial claim was only filed on **September 10, 2003**. Therefore, Metrobank's claim for refund had clearly prescribed."

As mentioned earlier, the subject of the refund in the consolidated cases before the Court *a quo* are creditable withholding taxes. This fact is established in petitioner's evidence, which were admitted by the Court in Division, without objection on the part of respondent. The Judicial Affidavit of Annabelle I. Opamin,[28] the ICPA, and her Report,[29] clearly referred to the amounts being refunded as *"Creditable Withholding Tax"*. Furthermore, the said amounts were reported in petitioner's Annual ITRs under the category

---

[28] Exhibit "P-1", Division Docket (CTA Case No. 8505) – Vol. 2, pp. 759 to 767.
[29] Exhibit "P-2", Division Docket (CTA Case No. 8505) – Vol. 2, pp. 769 to 771.

of *"Tax Credits/Payments",*[30] which show the creditable nature thereof. Moreover, as a corollary, there is no showing or any indication that the tax withheld constituted a full and final payment of the income tax due from the payee; that the liability for payment of the subject taxes rests primarily on the payors of the income as withholding agents; and that the payee (petitioner) is not required to file an income tax return for the particular income which are circumstances indicative that the withheld taxes fell under the category of final withholding taxes.

Thus, in light of the foregoing legal provisions and jurisprudence, We hereby rule that as regards petitioner's claim for refund for taxable year 2010, the two-year prescriptive period began upon the filing of its Annual ITR for the said year on April 6, 2011[31] and ended on April 6, 2013; while that of its claim for refund for taxable year 2011, the two-year prescriptive period began upon the filing of its Annual ITR for the same year on April 2, 2012[32] and ended on April 2, 2014.

Correspondingly, since the administrative claims for the said taxable years were successively filed on December 6, 2011 and April 18, 2012, and the judicial claims for the same taxable years (CTA Case Nos. 8505 and 8575) were filed on June 21, 2012 and November 12, 2012, respectively, the said administrative and judicial claims were timely filed.

Be that as it may, the finding of the timely filing of the judicial claims is one thing, while the question as to whether or not petitioner was able to prove its subject claims is another. As already stated, the Court in Division is correct in ruling that petitioner failed to show sufficient evidence to prove its refund claims.

The ICPA Report is not conclusive upon this Court. The competent proof to establish the fact that taxes are withheld is the certificate of creditable tax withheld at source (BIR Form 2307).

[30] Exhibits "P-16" and "P-17", Division Docket (CTA Case No. 8505) – Vol. 2, pp. 1076 to 1083.
[31] Exhibit "P-16", Division Docket (CTA Case No. 8505) – Vol. 2, p. 1076.
[32] Exhibit "P-17", Division Docket (CTA Case No. 8505) – Vol. 2, p. 1077.

Petitioner points heavily to the ICPA Report in seeking to overturn the ruling of the Court in Division. It likewise contests the latter's finding that it is only the pertinent BIR Form 2307 which can establish the fact of withholding.

We disagree with petitioner.

Section 3, Rule 13 of the Revised Rules of the Court of Tax Appeals (RRCTA) provides:

> "SEC. 3. *Findings of independent CPA.* — The submission by the independent CPA of pre-marked documentary exhibits shall be subject to verification and comparison with original documents, the availability of which shall be the primary responsibility of the party possessing such documents and, secondarily, by the independent CPA. **The findings and conclusions of the independent CPA** may be challenged by the parties and **shall not be conclusive upon the Court**, which may, in whole or in part, adopt such findings and conclusions subject to verification." *(Emphases supplied)*

It is clear from the foregoing provisions that the findings and conclusions of the ICPA are not conclusive upon the Court. In other words, this Court can make its own determination apart from the findings and conclusions of the ICPA.

Moreover, it is noteworthy that the subject ICPA Report[33] is to the effect that one of the *"Audit Methodology"* adopted by the ICPA is to *"(c)ompare the BAMs/List of creditable withholding tax against actual supporting documents (BIR form 2307) to verify its existence"* and that most of the *"Result of the Audit"* referred to certain defects in certain BIR Form 2307, or the lack of these Forms. It is interesting, however, that petitioner never presented any of the BIR Forms 2307 (Certificates of Creditable Tax Withheld at Source) issued to it which the ICPA supposedly examined. This is fatal to petitioner's refund claims.

Section 5, Rule 12 of the RRCTA provides:

> "SEC. 5. *Presentation of voluminous documents or long accounts.* — In the interest of speedy administration of justice, the following rules shall govern the presentation

[33] Exhibit "P-2", Division Docket (CTA Case No. 8505) – Vol. 2, pp. 769 to 770.

of voluminous documents or long accounts, such as receipts, invoices and vouchers, as evidence to establish certain facts."

xxx xxx xxx

(b) *Pre-marking and availability of originals.* — The receipts, invoices, vouchers or **other documents** covering the said accounts or payment to be introduced in evidence **must be** pre-marked by the party concerned and **submitted to the Court in order to be made accessible to the adverse party who desires to check and verify the correctness of the summary and CPA certification. The original copies of the voluminous receipts, invoices or accounts must be ready for verification and comparison in case doubt on its authenticity is raised during the hearing or resolution of the formal offer of evidence.**" *(Emphases and underscoring supplied)*

Relative thereto, in *Philippine Long Distance Telephone Company vs. Commissioner of Internal Revenue*,[34] the Supreme Court held as follows:

"*Atlas Consolidated Mining and Development Corporation v. Commissioner of Internal Revenue*,[35] citing *Commissioner of Internal Revenue v. Manila Mining Corporation*[36] explains the need for the promulgation of the immediately-cited Circular[37] and its effect:

x x x The circular, in the interest of speedy administration of justice, was promulgated to avoid the time-consuming procedure of presenting, identifying and marking of documents before the Court. It **does not relieve respondent of its imperative task** of *premarking* photocopies of sales receipts and invoices and *submitting the same to the court* after the independent CPA shall have examined and compared them with

[34] G.R. No. 157264, January 31, 2008.
[35] G.R. No. 145526, March 16, 2007, 518 SCRA 425.
[36] G.R. No. 153204, August 31, 2005, 468 SCRA 571.
[37] Referring to CTA Circular No. 1-95, the precursor of the above-quoted Section 5, Rule 12 of the RRCTA.

> the originals. Without presenting these pre-marked documents as evidence – from which the summary and schedules were based, **the court cannot verify the authenticity and veracity of the independent auditor's conclusions.** (Italics in the original; Emphasis and underscoring supplied)."

Furthermore, in *Commissioner of Internal Revenue vs. Philippine National Bank*,[38] the Supreme Court said:

> **"The certificate of creditable tax withheld at source[39] is the competent proof to establish the fact that taxes are withheld.[40] It is not necessary for the person who executed and prepared the certificate of creditable tax withheld at source to be presented and to testify personally to prove the authenticity of the certificates.[41]**
>
> In *Banco Filipino Savings and Mortgage Bank v. Court of Appeals*,[42] this court declared that **a certificate is complete in the relevant details that would aid the courts in the evaluation of any claim for refund of excess creditable withholding taxes**:
>
> xxx xxx xxx
>
> Moreover, as correctly held by the Court of Tax Appeals En Banc, **the figures appearing in the**

[38] G.R. No. 180290, September 29, 2014.
[39] Now BIR Form No. 2307.
[40] Citing Sec. 10 of Revenue Regulation No. 6-85, as amended by Revenue Regulations No. 12-94, which provides as follows: *Sec. 10. Claim for Tax Credit or Refund.*— (a) Claims for Tax Credit or Refund of income tax deducted and withheld on income payments shall be given due course only when it is shown on the return that the income payment received has been declared as party of the gross income and ***the fact of withholding is established by a copy of the Withholding Tax Statement duly issued by the payor to the payee showing the amount paid and the amount of tax withheld therefrom***. (Emphasis supplied) *Far East Bank and Trust Company vs. Court of Appeals*, 513 Phil. 148, 155, (2005) [Per J. Azcuna, First Division].
[41] Citing *Commissioner of Internal Revenue vs. Team (Philippines) Operations Corporation*, G.R. No. 179260, April 2, 2014 [Per J. Perez, Second Division]; *Commissioner of Internal Revenue vs. Team (Philippines) Operations Corporation*, G.R. No. 185728, October 16, 2013 [Per J. Villarama, Jr., First Division]; and *Commissioner of Internal Revenue vs. Mirant (Philippines) Operations Corporation*, G.R. No. 171742, June 15, 2011 [Per J. Mendoza, Second Division].
[42] 548 Phil. 32 (2007) [Per J. Austria-Martinez, Third Division].

> **withholding tax certificates can be taken at face value since these documents were executed under the penalties of perjury**, pursuant to Section 267 of the 1997 National Internal Revenue Code, as amended, which reads:
>
> > SEC. 267. Declaration under Penalties of Perjury. — Any declaration, return and other statements required under this Code, shall, in lieu of an oath, contain a written statement that they are made under the penalties of perjury. Any person who willfully files a declaration, return or statement containing information which is not true and correct as to every material matter shall, upon conviction, be subject to the penalties prescribed for perjury under the Revised Penal Code.
>
> Thus, upon presentation of a withholding tax certificate complete in its relevant details and with a written statement that it was made under the penalties of perjury, the burden of evidence then shifts to the Commissioner of Internal Revenue to prove that (1) the certificate is not complete; (2) it is false; or (3) it was not issued regularly." *(Emphases and underscoring supplied)*

Thus, the Court in Division committed no reversible error in ruling that for purposes of establishing the fact of withholding, only BIR Form 2307 issued by the withholding agent may be introduced.

Moreover, it must be emphasized that respondent's failure to challenge the ICPA Report is inconsequential. The fact that respondent failed to present any evidence or to refute the evidence presented by the taxpayer does not *ipso facto* entitle such taxpayer to a tax refund. It is not the duty of the government to disprove a taxpayer's claim for refund. Rather, the burden of establishing the factual basis of a claim for a refund rests on the taxpayer.[43]

As cases filed before this Court are litigated *de novo*, party-litigants should prove **every minute aspect** of their cases.[44]

---

[43] *Commissioner of Internal Revenue vs. Far East Bank & Trust Company, etc.*, G.R. No. 173854, March 15, 2010.

[44] *Dizon vs. Court of Tax Appeals, et al.*, G.R. No. 140944, April 30, 2008; *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal*

In fine, We reiterate our consistent ruling that actions for tax refund, as in the instant case, are in the nature of a claim for exemption and the law is not only construed in *strictissimi juris* against the taxpayer, but also the pieces of evidence presented entitling a taxpayer to an exemption is *strictissimi* scrutinized and must be duly proven.[45]

WHEREFORE, in light of the foregoing considerations, the Petition for Review is **DENIED** for lack of merit. Accordingly, the assailed Decision dated October 12, 2015 rendered by the Court in Division in CTA Case Nos. 8505 and 8575 is **AFFIRMED**.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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

LOVELL R. BAUTISTA
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

Revenue, G.R. No. 145526, March 16, 2007; and *Commissioner of Internal Revenue vs. Manila Mining Corporation,* G.R. No. 153204, August 31, 2005.

[45] *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue*, G.R. No. 159490, February 18, 2008.

CIELITO N. MINDARO-GRULLA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 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.

ROMAN G. DEL ROSARIO
Presiding Justice