20-000118-0073

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL FIRST DIVISION

CTA CASE NO. 10273

TULLETT PREBON (PHILIPPINES) INC.,
Petitioner,

- versus -

NOTICE OF RESOLUTION

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

To:

OFFICE OF THE SOLICITOR GENERAL
134 Amorsolo Street, Legazpi Village
Makati City

ATTY. SYLVIA R. ALMA JOSE
ATTY. AYESHA HANIA B. GUILING-MATANOG
ATTY. MARVEEN B. DE LA PAZ
Bureau of Internal Revenue
Room 703, Litigation Division, BIR National Office Building
Sen. Miriam P. Defensor-Santiago Avenue
Diliman, Quezon City

SALVADOR LLANILLO & BERNARDO
Units 1706-1711, 17th Floor, Tower One & Exchange Plaza
Ayala Triangle, Ayala Avenue
1226 Makati City

GREETINGS:

You are hereby notified by these presents that on **October 8, 2024,** a Resolution was rendered in the above-entitled case, copy of which is attached hereto.

Quezon City, Philippines, **October 9, 2024.**

Atty. Maria Johoanna F. Chan-Te
Executive Clerk of Court II

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL FIRST DIVISION

TULLETT PREBON (PHILIPPINES), INC.,
Petitioner,

-*versus*-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 10273

Members:

DEL ROSARIO, *P.J., Chairperson,*
MANAHAN, *and*
REYES-FAJARDO, *JJ.*

Promulgated:

OCT 08 2024 ; 3:40PM

x- -x

RESOLUTION

MANAHAN, *J.*:

Before the Court is respondent Commissioner of Internal Revenue ("**CIR**")'s *Motion for Partial Reconsideration (Re: Amended Decision dated 28 June 2024)* filed on July 18, 2024 ("***Motion***"),[1] with petitioner Tullett Prebon (Philippines) Inc. ("**Tullett**")'s *Comment (Re: CIR's Motion for Reconsideration dated July 18, 2024)* filed on August 20, 2024 ("***Comment***").[2]

The *Motion* assails this Court's ***Amended Decision*** dated June 28, 2024,[3] which ordered the CIR to refund Tullett the adjusted amount of ₱7,456,064.79 representing the latter's excess and unutilized creditable withholding taxes for calendar year 2017.

In his *Motion,* the CIR argues that: 1.) Tullett's evidence failed to establish direct linkage between the creditable withholding taxes and the income reflected in its Annual Income Tax Return; 2.) Tullett failed to comply with Revenue Memorandum Order No. 53-98 which provides the checklist of

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[1] Docket – Vol. II, pp. 812-822.
[2] Docket – Vol. II, pp. 828-843.
[3] Docket – Vol. II, pp. 800-811.

documentary requirements for refund of unutilized creditable withholding tax; 3.) it is incumbent upon Tullett to prove actual remittance of the subject creditable withholding taxes to the Bureau of Internal Revenue ("**BIR**"); and 4.) considering the appellate nature of the present case, the Court should have received in evidence only those documents presented by Tullett in support of its administrative claim for refund.

We deny the *Motion* for lack of merit.

The Court notes that the arguments raised in the *Motion* are substantially the same arguments raised by the CIR in his *Motion for Partial Reconsideration (Re: Decision dated 30 January 2024)* filed on February 19, 2024.[4] Although a motion for reconsideration may reiterate arguments, there must be *bona fide* effort on the part of the movant to present them in a different light so as to convince the court that its ruling was erroneous.[5] Here, the CIR fails to convince. Since his arguments have already been exhaustively discussed and settled in the assailed *Amended Decision*, the Court finds it futile to entertain the same once more.

The Court shall therefore now proceed to address only the CIR's additional argument: that it is incumbent upon Tullett to prove actual remittance of the creditable withholding taxes claimed for refund.

Section 2.58.3 of Revenue Regulations (RR) No. 2-98 explicitly instructs otherwise:

> SECTION 2.58.3. *Claim for Tax Credit or Refund.* —
>
> (A) The amount of creditable tax ***withheld*** shall be allowed as a tax credit against the income tax liability of the payee in the quarter of the taxable year in which income was earned or received.
>
> (B) Claims for tax credit or refund of any creditable income tax which was ***deducted and withheld*** on income payments shall be given due

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[4] Docket – Vol. II, pp. 751-758.
[5] *Philippine National Bank v. Hon. Jose G. Paneda, et al.*, G.R. No. 149236, February 14, 2007 [Per J. Austria-Martinez, Third Division].

> course only when it is shown that the income payment has been declared as part 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.
>
> ***Proof of remittance is the responsibility of the withholding agent.***[6]

Jurisprudence affirms that proof of actual *remittance* of creditable withholding tax to the BIR is not the responsibility of the taxpayer-claimant but of the withholding agent.[7] The taxpayer has no control over the remittance of taxes withheld from its income by the payor. It is the payor who is constituted as the agent of government; hence, the Certificates of Creditable Tax Withheld at Source issued by the payor or withholding agent are *prima facie* proof of actual payment by the taxpayer to the government itself, through said agents.[8] Section 2.57 of RR No. 2-98 also provides:

> 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/or the particular income.

All told, the taxpayer has no obligation to remit, let alone prove remittance of, the withheld taxes. To claim a refund thereof, the taxpayer only needs to prove that the taxes were

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[6] *Emphasis supplied.*
[7] *Commissioner of Internal Revenue v. Asian Transmission Corporation*, G.R. No. 179617, January 19, 2011 [Per J. Mendoza, Second Division].
[8] *Commissioner of Internal Revenue v. Philippine National Bank*, G.R. No. 180290, September 29, 2014 [Per J. Leonen, Second Division].

withheld.[9] As found by the Court in the *Amended Decision*, Tullett was able to prove the same.

ACCORDINGLY, respondent's *Motion for Partial Reconsideration (Re: Amended Decision dated 28 June 2024)* filed on July 18, 2024 is **DENIED** for lack of merit.

SO ORDERED.

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

Marian Ivy F. Reyes-Fajardo
MARIAN IVY F. REYES-FAJARDO
Associate Justice

[9] *Philippine Airlines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 206079-80, January 17, 2018 [Per J. Leonen, Third Division].