Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

EN BANC

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**CTA EB NO. 1738** (CTA Case No. 8806)
-versus-	Present: DEL ROSARIO, *P.J.*, CASTAÑEDA, JR., UY, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN, and MANAHAN,*JJ.*
HONDA CARS MAKATI, INC., Respondent.	Promulgated: MAY 29 2019 3:06 p.m.

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RESOLUTION

MINDARO-GRULLA, J.:

This resolves the Commissioner of Internal Revenue's (CIR) "Motion for Reconsideration (Re: Decision dated 24 January 2019)" assailing the Court *En Banc's* January 24, 2019 Decision, the dispositive portion of which states:

> *"**WHEREFORE**, the Petition for Review is **DENIED,** for lack of merit. Accordingly, the Decision dated June 27, 2017, rendered by the Second Division of this Court in CTA Case No. 8806, and its Resolution dated October 18, 2017 are **AFFIRMED**. No pronouncement as to costs.*
>
> ***SO ORDERED."***

In assailing this Court's Decision, CIR asserts that the Court erred in ruling that it is not incumbent upon respondent to prove actual payment and remittance to the BIR of the withholding taxes claimed and to prove that respondent was liable for (Minimum Corporate Income Tax (MCIT) and not the normal income tax. CIR argued that proof of actual payment and remittance is indispensable in the claim for refund of excess creditable withholding taxes. Moreover, CIR argues that respondent's declaration that it is entitled to MCIT must be supported by sufficient evidence.

On March 14, 2019, the Court directed respondent to file Comment on the "Motion for Reconsideration (Re: Decision dated 24 January 2019)" within ten (10) days from receipt otherwise the motion shall be deemed submitted for resolution.

On March 8, 2019 respondent filed a Motion for Extension of Time to File Comment (Re: Petitioner's Motion for Reconsideration) which in the Minute Resolution date April 1, 2019, was granted an extension of fifteen (15) days from April 1, 2019 or until April 16, 2019 within which to file its Comment. In compliance respondent filed its Comment on April 16, 2019.

We resolve to deny CIR's "Motion for Reconsideration (Re: Decision dated 24 January 2019)".

After a careful examination of petitioner's motion for reconsideration, the Court finds that the issues and arguments raised in said motion had already been sufficiently passed upon and fully discussed not only by the Second Division's Decision dated June 22, 2017 and Resolution dated October18, 2017 but also by this Court *En Banc's* Decision dated January 24, 2019.

To reiterate, it is settled jurisprudence[1] that a taxpayer claiming for a tax credit or refund of creditable withholding tax must comply with the following requisites:

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[1] Banco Filipino Savings and Mortgage Bank vs. Court of Appeals, Court of Tax Appeals and Commissioner of Internal Revenue, G.R. No. 155682, March 27, 2007; Commissioner of Internal Revenue vs. Far East Bank & Trust Company (now Bank of the Philippine Islands), G.R. No. 173854, March 15, 2010; United International Pictures AB vs. Commissioner of Internal Revenue, G.R. No. 168331, October 11, 2012; Winebrenner & Iñigo Insurance Brokers, Inc. vs. Commissioner of Internal Revenue, G.R. No. 206526, January 28, 2015; Republic of the Philippines , represented by the Commissioner of Internal Revenue, vs. Team (Phils.) Energy Corporation (formerly Mirant (Phils.) Energy Corporation), G.R. No. 188016. January 14, 2015.

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1) The claim must be filed with the CIR within the two-year period from the date of payment of the tax;
2) It must be shown on the return that the income received was declared as part of the gross income; and
3) The fact of withholding must be established by a copy of a statement duly issued by the payor to the payee showing the amount paid and the amount of the tax withheld.

However, We shall no longer discuss the requirements since petitioner does not contest respondent's compliance with the requirements. As aptly found by this Court's Division, respondent complied with the requirements for claiming for refund of excess and unutilized Creditable Withholding Tax (CWT), to wit:

> *In the instant case, records show that petitioner electronically filed its CY 2011 Annual ITR on July 24, 2012. Counting from this date, petitioner had until July 24, 2014 within which to file its administrative claim as well as its judicial claim for the issuance of TCC. Thus, petitioner's administrative claim for refund filed on April 2, 2014 and the subsequent appeal via Petition for Review filed before this Court on April 14, 2014 are well within the two-year prescriptive period provided by law. Clearly, the first requisite has been satisfied.*
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> *In compliance with the second requisite, petitioner submitted a Schedule of Creditable Taxes Withheld for CY 2011 and various Certificates of Creditable Tax Withheld at Source (BIR Form No. 2307) to prove the fact of withholding of the subject claim in the amount of P22,415,723.00. The Court-commissioned Independent Certified Public Accountant, Ms. Ma. Milagros F. Padernal, examined the said documents and no exception was found, as noted in her Report dated December 8, 2014.*
>
> *xxx xxx xxx.*
>
> *In fine, petitioner was able to satisfy the second requisite but only to the extent of P22,360,650.65 (P22,415,723.00 less P55,072.35).*
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> *Anent the third requisite, petitioner must prove that the income payments from which the substantiated CWTs of P22,360,650.65 were withheld were included in the reported amount of income in its Annual ITR for CY 2011.*

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> *As corroborated by the Independent CPA, the CWTs of P22,415,723.37 correspond to the total income payments of P1,633,588,778.07, which comprised of sales of goods and services to corporate customers, insurance companies and "pass through" transactions paid through credit cards in the total amount of P1,587,360,565.53 and of other income, such as, rental, management fees, income as insurance agent and others-dealer's incentives in the total amount of P46,228,212.54.*
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> *Out of the P1,633,588,778.07 income payments, only the amount of P1,412,333,728.09, with the corresponding CWTs of P20,016,910.38, was traced to the general ledgers (GL) and/or invoices, journal vouchers (JV), official receipts (OR), production reports (PR) and check vouchers (CV) of petitioner for CYs 2010 and 2011, xxx:*
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> *xxx xxx xxx.*
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> *However, the CWTs of P20,016,910.38 related to the verified income payments of P1,412,333,728.09 included the amount of P27,146.38 that was already disallowed for not being properly supported by BIR Form No. 2307. Consequently, the amount of P27,146.38 should be deducted from the total CWTs of P20,016,910.38 to arrive at petitioner's substantiated CWTs of P19,989,764.00*
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> *As discussed earlier, since the prior year's excess credits did not cover the entire income tax due for CY 2011, the substantiated CWTs of P19,989,764.00 shall be utilized to pay the remaining tax liability of P2,375,653. 73. Thus, petitioner's substantiated unutilized excess CWTs for CY 2011 amounts to P17,614,110.27, xxx."*

Clearly, petitioner complied with requirements set by the Supreme Court in claiming for a refund of unutilized tax credits and proof of actual remittance and proof that the claimant was liable only for MCIT is not a condition to claim for a refund of unutilized tax credits.

In the case of *Commissioner of Internal Revenue vs. Philippine National Bank*[2], citing the case *Commissioner of Internal Revenue vs. Asian Transmission Corporation* [3], Supreme Court categorically ruled that proof of actual

[2] G.R. 180290, September 29, 2014.
[3] G.R. N. 179617, January 19, 2011.

remittance to the BIR is not a condition to claim for a refund of unutilized tax credits. To wit:

> *"**Petitioner's posture that respondent is required to establish actual remittance to the Bureau of Internal Revenue deserves scant consideration. 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.*
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> ***This court's ruling in Commissioner of Internal Revenue v. Asian Transmission Corporation, citing the Court of Tax Appeals' explanation, is instructive**:*
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> > *. . . proof 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 Regulation 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 Section 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 . . . has no control over the remittance of the taxes withheld from its income by 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." (Emphasis Supplied)*

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In sum, We found that no substantial argument was raised to merit reconsideration of our Decision promulgated on January 24, 2019.

WHEREFORE, premises considered, the "Motion for Reconsideration (Re: Decision dated 24 January 2019)" is hereby **DENIED** for lack of merit.

SO ORDERED.

CIELITO N. MINDARO-GRULLA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

(On Leave)
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice