REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

****

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus -

STATELAND, INC.,
Respondent.

CTA EB No. 1862
(CTA Case No. 8633)

Present:

DEL ROSARIO, P.J.,
CASTAÑEDA, JR.,
UY,
FABON-VICTORINO,
MINDARO-GRULLA,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA, and
MODESTO-SAN PEDRO, JJ.

Promulgated:
FEB 05 2020
1:00 p.m.

x - x

DECISION

UY, J.:

Before the Court *En Banc* is a *Petition for Review with Motion for Voluntary Inhibition* filed on June 11, 2018[1] by the Commissioner of Internal Revenue against Stateland, Inc., praying for the modification and setting aside of the Amended Decision dated January 10, 2018 and Resolution dated May 7, 2018[2], both rendered by the Special Second Division of this Court (Court in Division) in CTA Case No. 8633, entitled *"Stateland, Inc., Petitioner, vs. Commissioner of Internal Revenue, Respondent".* The dispositive portions thereof respectively read:

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[1] EB Docket, pp. 62 to 81

[2] Amended Decision dated January 10, 2018, and Resolution dated May 7, 2018, penned by Associate Justice Juanito C. Castañeda, and concurred by Associate Justice Caesar A. Casanova, EB Docket, pp. 88 to 106; and pp. 107-113, respectively.

Amended Decision dated January 10, 2018:

> "**WHEREFORE,** premises considered, petitioner's **Motion for Reconsideration (Re: Decision dated 12 July 2016)**, is **PARTIALLY GRANTED**. Accordingly, the assailed Decision dated July 12, 2016 is hereby amended to read as follows:
>
> > "**WHEREFORE**, the instant Petition for Review is **PARTIALLY GRANTED**. Accordingly, respondent is **ORDERED TO REFUND** or **ISSUE TAX CREDIT CERTIFICATE** to petitioner in the reduced amount of **₱12,934,749.05** for its unutilized excess CWT for the taxable year 2010.
> >
> > **SO ORDERED.**"

Resolution dated May 7, 2018:

> "**WHEREFORE**, premises considered, respondent's **Motion for Partial Reconsideration (Re: Amended Decision promulgated on 12 January 2018)** is hereby **DENIED** for lack of merit.
>
> **SO ORDERED.**"

THE FACTS

Petitioner is the duly appointed Commissioner of the Bureau of Internal Revenue (or Commissioner) empowered to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto or other matters arising under the National Internal Revenue Code or other laws or portions thereof administered by the BIR. The Commissioner holds office at the 5th Floor, BIR National Office Building, Agham Road, Diliman, Quezon City.

Respondent Stateland, Inc. (or Stateland), is a corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with principal office address at 3rd Floor, State Centre Bldg., 333 Juan Luna St., Binondo, Manila. It is a registered taxpayer with Revenue District Office (RDO) No. 30 of Revenue

Region No. 6 of the BIR, with Taxpayer Identification Number (TIN) 000-341-850-000. Stateland is primarily engaged in the business of developing real properties into subdivisions, and building houses on subdivision lots, or constructing residential or commercial units, townhouses and other similar units and offering these for sale. As a real estate developer, Stateland's property sales transactions are subject to the CWT ranging from 1 ½ % to 5% of gross selling price, depending on the amount per sales contract, which is classified either as cash sale, deferred payment plan or installment payment plan.

For taxable year ended December 31, 2010, Stateland had a total accumulated CWT amounting to ₱64,887,625.00 and an income tax due amounting only to ₱1,643,989.00.

On August 5, 2011, Stateland filed an administrative claim for refund through a letter dated August 4, 2011, requesting for the refund of the amount of ₱13,654,157.00, allegedly representing the amount of CWT excessively withheld for 2010.

Due to the Commissioner's inaction on its refund claim, Stateland filed a Petition for Review before the Court in Division on April 11, 2013 entitled *"Stateland, Inc., Petitioner, vs. Commissioner of Internal Revenue, Respondent"*, docketed as CTA Case No. 8633 before the Special Second Division of this Court (Court in Division).

On July 15, 2013, the Commissioner filed his *Answer* in said case, interposing special and affirmative defenses. Allegedly, Stateland committed a fatal error when it failed to submit supporting documents necessary to substantiate its administrative claim for tax refund as prescribed under Revenue Memorandum Order (RMO) No. 53-98 and Revenue Regulations (RR) No. 2-2006. Because of such failure, Stateland was not able to thoroughly apply the administrative remedy that was available to it; and that Stateland's failure to exhaust its administrative remedies rendered the Court in Division without jurisdiction over its subject claim.

Thereafter, Stateland filed its *Reply to Answer* on August 2, 2013 alleging among others, that it has submitted all required documents during the course of its administrative claim for refund; that RMO No. 53-98 is not applicable to the case at bar; and that even on the assumption that it is mandatory to submit the purported documents, such failure to submit said documents will not affect this Court's jurisdiction.

After the Pre-Trial Conference held on September 12, 2013, the parties belatedly filed their *Joint Stipulation of Facts* on October 18, 2013, which was approved by the Court in the Pre-Trial Order dated October 24, 2013.

During trial, Stateland presented the following witnesses: Bienvenido S. Uy, its Senior Vice President for External Affairs; and Atty. Rosario S. Bernaldo, the Court-commissioned Independent Certified Public Accountant (ICPA).

On June 13, 2014, Stateland filed its *Formal Offer of Evidence*. In the Resolution dated August 1, 2014, the Court partially admitted some of Stateland's evidence. The other exhibits were denied for failure of the evidence to conform with what was actually marked; for not being found in the records; and for failure to submit the originals for comparison.

Thus, Stateland filed a *Tender of Excluded Evidence,* by registered mail on April 29, 2015 which was received by the Court in Division on May 4, 2015. The same was noted by the Court in Division in the Resolution dated July 23, 2015.

On the other hand, counsel for the Commissioner manifested in open court that he will not present any witness in CTA Case No. 8633. Thus, the Court in Division gave the Commissioner a period of thirty (30) days from February 18, 2015, and Stateland a period of twenty (20) days from notice, to file their respective memoranda.

On July 29, 2015, the Court in Division considered CTA Case No. 8633 submitted for decision, considering the filing of Stateland's *Memorandum* on May 8, 2015 and the Commissioner's failure to file his Memorandum as per Records Verification Report dated July 23, 2015.

In the Decision dated July 12, 2016[3], the Court in Division denied the *Petition for Review* in CTA Case No. 8633 for insufficiency of evidence. The Court in Division held that Stateland failed to comply with the requirements for refund or issuance of Tax Credit Certificates (TCC) of unutilized excess creditable withholding tax (CWT), more specifically, its failure to sufficiently establish that the income from which the subject taxes were withheld was duly reported in its Annual Income Tax return (AITR)

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[3] Division Docket (CTA Case No. 8633) – Vol. V, pp. 2994 to 3013.

On July 27, 2016, Stateland filed an *Omnibus Motion for Reconsideration and For Leave to Present/Admit Attached Evidence with Alternative Relief (Re: Decision dated July 12, 2016)*, stating that it has sufficiently proven that the income pertaining to the CWT sought to be refunded had been declared in its Income Tax Return as part of its gross income following the prescribed manner of reporting income pursuant to RR No. 2-98. Allegedly, a second hard look at the facts of the case and the evidence on record and a judicious application of pertinent laws will warrant the reconsideration prayed for. Stateland submitted additional documents consisting of breakdown of total withholding taxes subject of its petition for refund, the corresponding sales transactions, and the schedules of income reported from year 2004 to 2012 to prove that the gross income of the sales subject of the withholding taxes were actually reported. In the alternative, assuming that it is not entitled to a refund, Stateland contends that it should, however, be allowed to carry-over its unutilized CWT for 2010.

The Commissioner filed his *Opposition* on September 7, 2016, stating that Stateland cannot assume that the ICPA report should be taken as gospel truth; that the Court in Division has the final determination on whether Stateland is entitled to the refund based on all evidence presented. Allegedly, Stateland must prove every minute details of its claim; and that its attempt to present additional evidence after a Decision has already been rendered by the Court in Division is obnoxious to a system of orderly procedure.

In the Resolution dated September 9, 2016, the Court in Division granted Stateland's prayer to present additional evidence.

On November 16, 2016, Stateland presented its witness, Ann Celeste Mercado to establish its causes of action and reliefs set forth in its *Omnibus Motion for Reconsideration and For Leave to Present/Admit Attached Evidence with Alternative Relief*.

On December 22, 2016, Stateland filed its *Supplemental Formal Offer of Additional Evidence*. Thereafter on December 27, 2016, Stateland filed its *Ex-Parte Motion to Admit Attached Formal Offer of Evidence*, with attached *Amended Supplemental Formal Offer of Additional Evidence*.

In the Resolution dated August 30, 2017, the Court in Division admitted Stateland's *Amended Supplemental Formal Offer of*

Additional Evidence. The Court in Division admitted some of the evidence but denied the others for failure to present the originals for comparison, for not being found in the records and failure of the evidence to correspond with the documents actually marked.

On September 29, 2017, Stateland filed an *Urgent Omnibus Motion for Partial Reconsideration on the Resolution dated 30 August 2017 and to Admit attached Amendment to the Amended Supplemental Formal Offer of Additional Evidence dated 27 December 2016.*

In the Resolution dated October 12, 2017, the Court in Division recalled its Resolution dated August 30, 2017; granted the *Urgent Omnibus Motion for Partial Reconsideration on the Resolution dated 30 August 2017 and to Admit attached Amendment to the Amended Supplemental Formal Offer of Additional Evidence dated 27 December 2016; and* submitted anew for resolution Stateland's *Motion for Reconsideration (Re: Decision dated 12 July 2016)* filed on July 27, 2016.

On January 10, 2018, the Court in Division issued the assailed Amended Decision, partially granting Stateland's *Motion for Reconsideration (Re: Decision dated 12 July 2016)* and ordering the Commissioner to refund or issue a TCC to Stateland in the amount of ₱12,934,749.05 for its unutilized excess CWT for TY 2010.

On January 29, 2018, the Commissioner filed a *Motion for Partial Reconsideration (Re: Amended Decision promulgated on 12 January 2018).* Stateland thereafter filed its Comment/Opposition on February 21, 2018.

In the assailed Resolution dated May 7, 2018, the Court in Division denied the Commissioner's *Motion for Partial Reconsideration (Re: Amended Decision promulgated on 12 January 2018)* for lack of merit.

On May 25, 2018, the Commissioner filed before this Court *En Banc* a *Motion for Extension of Time to File Petition for Review,*[4] praying for an extension of fifteen (15) days from May 24, 2018, or until June 9, 2018, within which to file his *Petition for Review.* The same was granted and the Commissioner was given a final and non-

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[4] EB Docket, pp. 1 to 5.

extendible period of fifteen (15) days from May 24, 2018, or until June 8, 2018, within which to file the said *Petition for Review.*[5]

On June 11, 2018,[6] petitioner filed the instant *Petition for Review with Motion for Voluntary Inhibition.*

Subsequently, petitioner filed an *Ex Parte Manifestation and Submission* on June 13, 2018,[7] submitting additional nine copies of its *Petition for Review*, to ensure the timely receipt thereof by the Court *En Banc* and in compliance with the Revised Rules of the Court of Tax Appeals.

In the Resolution dated August 20, 2018,[8] the Court *En Banc* corrected the Minute Resolution dated May 28, 2018 as follows:

> "Subject to the condition that the motion for extension is filed on time, petitioner is granted a final and non-extendible period of fifteen (15) days from 25 May 2018 or until **09 June 2018**, within which to file his Petition for Review."

In the same Resolution, the Court *En Banc* held that the instant *Petition for Review with Motion for Voluntary Inhibition* was timely filed on June 11, 2018, which was the next working day after June 9, 2018, a Saturday. The Court likewise ordered respondent to file its Comment.

On September 13, 2018[9], respondent filed its *Comment/ Opposition (To Petition for Review with Motion for Voluntary Inhibition dated 5 June 2018).*

In the Resolution dated October 4, 2018,[10] the Court *En Banc* referred petitioner's *Motion for Voluntary Inhibition* to the Special Second Division for appropriate action.

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[5] Minute Resolution dated May 28, 2018, EB Docket, p. 6.
[6] EB Docket, pp. 62 to 81.
[7] EB Docket, pp. 7 to 8.
[8] EB Docket, pp. 116 to 118.
[9] EB Docket, pp. 119 to 134.
[10] EB Docket, pp. 136 to 137.

On October 12, 2018[11], a Resolution (on the Motion for Voluntary Inhibition) signed by Associate Justice Juanito C. Castañeda, Jr. and Associate Justice Catherine Manahan was issued denying petitioner's *Motion for Voluntary Inhibition*. In the Records Verification Report dated February 13, 2019[12], it is stated that no Motion for Reconsideration on the Resolution dated October 12, 2018 has been filed by petitioner.

Thereafter, on March 14, 2019[13], this case was submitted for decision. Hence, this Decision.

GROUNDS FOR THE PETITION

Petitioner invokes several grounds in the instant *Petition for Review*, to wit:

"GROUNDS FOR THE PETITION

I.

THE HONORABLE COURT SECOND DIVISION ERRED IN CONSIDERING THE ADDITIONAL EVIDENCE PRESENTED BY RESPONDENT AS THESE WERE NOT NEWLY DISCOVERED BUT IN FACT WERE FORGOTTEN EVIDENCE.

II.

THE HONORABLE COURT SECOND DIVISION ERRED IN RULING THAT RESPONDENT IS ENTITLED TO REFUND OR ISSUANCE OF TAX CREDIT CERTIFICATE FOR ALLEGED UNUTILIZED EXCESS CREDITABLE WITHHOLDING TAX FOR THE TAXABLE YEAR 2010 IN THE REDUCED AMOUNT OF ₱12,934,749.05 DESPITE NO EVIDENCE OF ACTUAL REMITTANCE TO THE BIR.

III.

THE INSTANT CLAIM FOR TAX REFUND SHOULD BE DENED FOR RESPONDENT'S FAILURE TO SUBMIT

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[11] EB Docket, pp. 140 to 142

[12] EB Docket, p. 143.

[13] EB Docket, pp. 145 to 146.

COMPLETE DOCUMENTS IN SUPPORT OF ITS ADMINISTRATIVE CLAIM."[14]

Petitioner's arguments:

Petitioner argues that the Court in Division erred in considering the additional evidence presented by respondent as these were not newly discovered, but in fact were forgotten evidence; that the additional evidence were not presented due to fraud, accident, mistake or excusable negligence which would merit the setting aside of the Decision promulgated on July 12, 2016.

According to petitioner, proof of actual remittance of the taxes withheld is indispensable in a claim for refund of excess CWT pursuant to RR No. 2-2006.

Allegedly, the instant claim should be denied due to respondent's failure to submit complete documents in support of its administrative claim. Respondent must first prove its compliance with RMO No. 53-98 and RR No. 2-2006 to give support to the validity of the subject claim.

Respondent's counter-arguments:

Respondent claims that the additional evidence presented with the Court in Division were mere clarificatory evidence to explain the documents already adduced during trial proper; that these additional evidence are not forgotten evidence; and that the said evidence was rightfully allowed for the orderly disposition of this case.

On the assumption that the presentation of additional evidence can be construed as new trial, the same is not violative of any procedural principle. Even conceding that the additional evidence were not newly discovered evidence, the presentation of the same as additional evidence, is not barred or prohibited as the same can be allowed in the paramount interest of justice.

Further, respondent contends that petitioner cannot legally be permitted to continue to assail respondent's additional evidence and resurrect anew the so-called "forgotten evidence" argument on the

[14] *Petition for Review*, EB Docket, p. 66.

grounds of estoppel and the finality of the resolutions allowing the presentation and admission of respondent's additional evidence. Furthermore, petitioner actively participated in the proceedings and was not denied due process.

As regards petitioner's allegation that proof of actual remittance of the taxes withheld is indispensable in a claim for refund of excess CWT, respondent points out that the said allegation was never raised by petitioner in his *Answer, Pre-Trial Brief* and *Opposition to Omnibus Motion for Reconsideration and for Leave to Present/Admit Additional Evidence*; and that it was only in his *Motion for Partial Reconsideration Re: Amended Decision* that petitioner raised the same for the first time.

Moreover, respondent claims that the remittance to the BIR is easily discernible from the *Certificates of Creditable Tax Withheld at Source* - BIR Form No. 2307 and BIR Form No. 1616, which respondent submitted in evidence. In the bottom part thereof, the details of payment were duly indicated. Respondent also offered in evidence the *Alpha List of Payors of Creditable Withholding Tax for Year 2010* which is *prima facie* proof of actual payments to the government through its withholding agents. Granting *arguendo* that proof of actual remittance has not been proven, the same does not prejudice respondent's entitlement for refund considering that proof of actual remittance to the BIR is unnecessary in a claim for tax refund.

As regards petitioner's contention that it was not able to submit complete documents in support of its administrative claim, respondent points out that the recommendation of Revenue District Officer of RDO No. 30, Lorna S. Tobias, to approve the refund or issuance of TCC to respondent confirms that all requisite documents for refund were duly submitted.

Respondent likewise asserts that its claim for refund with the CTA is not dependent on the submission of complete documents at the administrative level; and that petitioner's reliance on RMO No. 53-98 and RR No. 2-2006 is misplaced.

THE COURT *EN BANC*'S RULING

The instant *Petition for Review* lacks merit.

The Court in Division committed no error in admitting petitioner's supplemental evidence.

Petitioner claims that the additional evidence should not have been considered by the Court in Division as these were not newly discovered nor were omitted through inadvertence or mistake; and that these additional evidence should be considered as forgotten evidence.

We are not persuaded.

In the case of *Commissioner of Internal Revenue vs. De La Salle University, Inc.*,[15] the Supreme Court sustained the CTA's admission of supplemental evidence even after the rendition of a decision, *to wit*:

> "III. The CTA correctly admitted the supplemental evidence formally offered by DLSU.
>
> The Commissioner objects to the CTA Decision's admission of DLSU's supplemental pieces of documentary evidence.
>
> To recall, DLSU formally offered its supplemental evidence upon filing its motion for reconsideration with the CTA Division. The CTA Division admitted the supplemental evidence, which proved that a portion of DLSU's rental income was used actually, directly and exclusively for educational purposes. Consequently, the CTA Division reduced DLSU's tax liabilities.
>
> We uphold the CTA Division's admission of the supplemental evidence on distinct but mutually reinforcing grounds, to wit: **(1) *the Commissioner failed to timely object to the formal offer of supplemental evidence***; and **(2) *the CTA is not governed strictly by the technical rules of evidence.***

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[15] G.R. Nos. 196596, 198841, and 198941, November 9, 2016.

<u>First, the failure to object to the offered evidence renders it admissible, and the court cannot, on its own, disregard such evidence</u>.

The Court has held that if a party desires the court to reject the evidence offered, it must so state in the form of a timely objection and it cannot raise the objection to the evidence for the first time on appeal. Because of a party's failure to timely object, the evidence offered becomes part of the evidence in the case. As a consequence, all the parties are considered bound by any outcome arising from the offer of evidence properly presented.

As disclosed by DLSU, the Commissioner did not oppose the supplemental formal offer of evidence despite notice. The Commissioner objected to the admission of the supplemental evidence only when the case was on appeal to the CTA *En Banc*. By the time the Commissioner raised her objection, it was too late; the formal offer, admission, and evaluation of the supplemental evidence were all *fait accompli.*

We clarify that while the Commissioner's failure to promptly object had no bearing on the materiality or sufficiency of the supplemental evidence admitted, she was bound by the outcome of the CTA Division's assessment of the evidence.

<u>Second, the CTA is not governed strictly by the technical rules of evidence. The CTA Division's admission of the formal offer of supplemental evidence, without prompt objection from the Commissioner, was thus justified</u>.

Notably, this Court had in the past admitted and considered evidence attached to the taxpayer's motion for reconsideration.

In the case of *BPI-Family Savings Bank v. Court of Appeals*, the tax refund claimant attached to its motion for reconsideration with the CTA its Final Adjustment Return. The Commissioner, as in the present case, did not

> oppose the taxpayer's motion for reconsideration and the admission of the Final Adjustment Return. We thus admitted and gave weight to the Final Adjustment Return although it was only submitted upon motion for reconsideration.
>
> We held that while it is true that strict procedural rules generally frown upon the submission of documents after the trial, the law creating the CTA specifically provides that proceedings before it shall not be governed strictly by the technical rules of evidence and that the paramount consideration remains the ascertainment of truth. We ruled that procedural rules should not bar courts from considering undisputed facts to arrive at a just determination of a controversy." (*Emphasis and underscoring supplied.*)

Based on the foregoing jurisprudential pronouncements, the presentation of supplemental evidence may be allowed even after a decision had been rendered, if there is failure on the part of the Commissioner to promptly object to the offer of evidence. The Supreme Court likewise emphasized that the CTA is not governed strictly by technical rules of evidence and that procedural rules should not bar courts from considering undisputed facts to arrive at a just determination of a controversy.

In this case, petitioner made no objection to respondent's *Supplemental Formal Offer of Additional Evidence*[16] and *Amended Supplemental Offer of Additional Evidence*[17]. Petitioner even filed a *Manifestation*[18] stating that he has **no objection to the admission of respondent's supplemental evidence**, except as to the manner they were identified in open court and subject to the condition that the same have faithfully complied with the necessity of comparison with original documents. The records of the case is likewise bereft of any showing that petitioner contested the Court in Division's Resolution[19] admitting respondent's supplemental evidence. Evidently, petitioner was amiss in promptly objecting to the presentation and subsequent admission of respondent's supplemental evidence.

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[16] Division Docket (CTA Case No. 8633) – Vol. VIII, pp. 3742 to 3752.
[17] Division Docket (CTA Case No. 8633) – Vol. VIII, pp. 4130 to 4148.
[18] Division Docket (CTA Case No. 8633) – Vol. VIII, pp. 4152 to 4154.
[19] Division Docket (CTA Case No. 8633) – Vol. VIII, pp. 4206 to 4209.

Moreover, under Section 8 of Republic Act No. 1125[20], as amended, proceedings before the CTA are not governed strictly by the rules of evidence. Litigations should, as much as possible, be decided on the merits and not on technicalities. Every party-litigant must be afforded ample opportunity for the proper and just determination of his case, free from the unacceptable plea of technicalities.[21]

Thus, in view of the pronouncement of the Supreme Court in the *De La Salle case*, We find that the Court in Division did not err in allowing respondent to present supplemental evidence and in admitting the same.

Proof of actual remittance of taxes withheld is not a pre-requisite in claiming refund of unutilized creditable withholding tax.

Petitioner insists that proof of actual remittance of taxes withheld to the BIR is indispensable in a claim for refund of excess CWTs pursuant to RR No. 2-2006.

We disagree.

Section 2.58.3 (B) of Revenue Regulations (RR) No. 2-98,[22] as amended provides as follows:

> "Sec. 2.58.3. Claim for tax credit or refund. —
>
> xxx xxx xxx
>
> (B) Claims for tax credit or refund of any creditable income tax which was deducted and withheld on income payments shall be given due course only when it is shown that the income payment has been declared

[20] Otherwise known as *"An Act Creating the Court of Tax Appeals."*

[21] *Alfredo Jaca Montajes vs. People of the Philippines*, G.R. No. 183449, March 12, 2012.

[22] SUBJECT: *Implementing Republic Act No. 8424, 'An Act Amending the National Internal Revenue Code, as amended' relative to the Withholding on Income subject to the Expanded Withholding Tax and Final Withholding Tax, Withholding of Income Tax on Compensation, Withholding of Creditable Value-Added Tax and Other Percentage Taxes.*

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." (Emphases supplied)

Clearly, in claims for tax credit or refund, the payee-refund claimant need only prove the fact of withholding of taxes, which is established by a copy of the withholding tax statement; and not its actual remittance to the BIR. The proof of remittance of withholding taxes is the responsibility of the withholding agent and not of the payee.

In *Commissioner of Internal Revenue v. Philippine National Bank,*[23] the Supreme Court affirmed that proof of actual remittance is not a condition to claim for a refund of unutilized tax credits, *to wit:*

"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.

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**.

This court's ruling in *Commissioner of Internal Revenue v. Asian Transmission Corporation*, citing the Court of Tax Appeals' explanation, is instructive:

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

> xxx xxx xxx 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 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 . . . 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, citations omitted)

Based on the foregoing, proof of actual remittance is not a pre-requisite to claim for a refund of unutilized excess creditable withholding tax credits; and that it is the payor-withholding agent, and not the payee-refund claimant, who is vested with the responsibility of withholding and remitting income taxes.

Moreover, in the case of *Commissioner of Internal Revenue v. Asian Transmission Corporation*[24], the Supreme Court ruled that the Certificates of Creditable Tax Withheld at Source issued by the withholding agents of the government are *prima facie* proof of actual payment by the payee-refund claimant to the government itself through its withholding agent.

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

Clearly therefore, the Court *En Banc* finds no merit in petitioner's argument that proof of actual remittance is indispensable in respondent's claim for refund or issuance of a TCC for its unutilized excess CWT for taxable year 2010.

Moreover, respondent was able to prove the fact of withholding through its Certificates of Tax Withheld at Source (BIR Form No. 2307)[25] and Withholding Tax Remittance Returns (BIR Form No. 1606)[26] and Certificates Authorizing Registration for the Year 2010.[27] We find these documents as competent proof to establish the fact that the subject taxes were withheld.

Non-submission of complete documents enumerated under RMO No. 53-98 and RR No. 2-2006 at the administrative level is <u>not</u> fatal to a claim for refund at the judicial level.

Petitioner argues that the instant claim for tax refund should be denied for respondent's failure to submit complete documents in support of its administrative claim. Allegedly, respondent must first prove its compliance with RMO No. 53-98 and RR No. 2-2006 to give support to the validity of its claim for unutilized creditable withholding tax.

We disagree.

A cursory reading of RMO No. 53-98[28] and RR No. 2-2006[29] shows that nowhere is it stated that the non-submission of the documents enumerated therein would *ipso facto* result to the denial of

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[25] Exhibits "P-8" to "P-311".

[26] Exhibits "P-584" to P-618", "P-620" to "P-634", "P-636" to "P-715", "P-717" to "P-720", "P-722" to "P-777", "P-779" to "P-793", "P-796" to "P-803", "P-805" to "P-828", and "P-830" to "P-886".

[27] Exhibits "P-619", "P-635", "P-716", "P-721", "P-778", "P-794", "P-795", "P-804" and "P-829".

[28] *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.*

[29] *Mandatory Attachments of the Summary 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 and of the Monthly Alphalist of Payees (MAP) Whose Income Received Have Been Subjected to Withholding Tax to the Withholding Tax Remittance Return Filed by the Withholding Agent/Payor of Income Payments.*

the claim for tax refund or credit. Further, it bears noting that RR No. 2-2006 merely imposes a penalty of fine for non-submission of the information or statement required therein, but not the outright denial of the claim for tax refund or credit.

In *Pilipinas Total Gas, Inc. vs. Commissioner of Internal Revenue*,[30] the Supreme Court, citing *Commissioner of Internal Revenue vs. Team Sual Corporation (Formerly Mirant Sual Corporation)*,[31] pointed out that the there is nothing under RMO No. 53-98 that requires the submission of complete documents for a grant of a refund or credit, *to wit*:

> "As can be gleaned from the above, **RMO No. 53-98 is addressed to internal revenue officers and employees, for purposes of equity and uniformity, to guide them as to what documents they may require taxpayers to present upon audit of their tax liabilities. Nothing stated in the issuance would show that it was intended to be a benchmark in determining whether the documents submitted by a taxpayer are actually complete to support a claim for tax credit or refund of excess unutilized excess VAT**. As expounded in *Commissioner of Internal Revenue v. Team Sual Corporation* (formerly Mirant Sual Corporation):
>
>> The CIR's reliance on RMO 53-98 is misplaced. <u>There is nothing</u> in Section 112 of the NIRC, RR 3-88 or <u>RMO 53-98 itself that requires submission of the complete documents enumerated in RMO 53-98 for a grant of a refund or credit of input VAT.</u> The subject of RMO 53-98 states that it is a 'Checklist of Documents to be Submitted by a Taxpayer upon Audit of his Tax Liabilities x x x.' In this case, TSC was applying for a grant of refund or credit of its input tax. There was no allegation of an audit being conducted by the CIR. Even assuming that RMO 53-98 applies, it specifically states that some documents are required to be submitted by the taxpayer 'if applicable.'

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[30] G.R. No. 207112, December 8, 2015.
[31] G.R. No. 205055, July 18, 2014.

> Moreover, if TSC indeed failed to submit the complete documents in support of its application, the CIR could have informed TSC of its failure, consistent with Revenue Memorandum Circular No. (RMC) 42-03. However, the CIR did not inform TSC of the document it failed to submit, even up to the present petition. The CIR likewise raised the issue of TSC's alleged failure to submit the complete documents only in its motion for reconsideration of the CTA Special First Division's 4 March 2010 Decision. Accordingly, we affirm the CTA EB's finding that TSC filed its administrative claim on 21 December 2005, and submitted the complete documents in support of its application for refund or credit of its input tax at the same time.

As explained earlier and underlined in Team Sual above, taxpayers cannot simply be faulted for failing to submit the complete documents enumerated in RMO No. 53-98, absent notice from a revenue officer or employee that other documents are required. Granting that the BIR found that the documents submitted by Total Gas were inadequate, it should have notified the latter of the inadequacy by sending it a request to produce the necessary documents in order to make a just and expeditious resolution of the claim.

Indeed, a taxpayer's failure with the requirements listed under RMO No. 53-98 is not fatal to its claim for tax credit or refund of excess unutilized excess VAT. This holds especially true when the application for tax credit or refund of excess unutilized excess VAT has arrived at the judicial level. After all, in the judicial level or when the case is elevated to the Court, the Rules of Court governs. Simply put, the question of whether the evidence submitted by a party is sufficient to warrant the granting of its prayer lies within the sound discretion and judgment of the Court." (*Emphasis and underscoring supplied*)

While the foregoing case involves a claim for tax refund or credit of unutilized VAT, We find the principle enunciated therein as applicable in a claim for tax refund or issuance of tax credit certificate of unutilized CWT.

Based from the afore-cited jurisprudence, RMO No. 53-98 is merely a guide to revenue officers as to what documents they may require taxpayers to present upon audit of their tax liabilities and is never intended as a benchmark in determining whether the documents submitted by a taxpayer are actually complete to support a claim for tax credit or refund. It is further stated that the failure of the taxpayer to submit the requirements listed under RMO No. 53-98 is not fatal to the taxpayer's claim for tax credit or refund.

In view thereof, the Court *En Banc* finds that petitioner cannot validly invoke the alleged non-compliance with RMO No. 53-98 and RR No. 2-2006 as legal basis to deny the instant claim for tax refund or credit.

Moreover, it must be emphasized that the submission of complete supporting documents by the taxpayer-claimant is presumed, in the absence of contrary evidence, as held in the case of *CBK Power Company Limited vs. Commissioner of Internal Revenue*,[32] to wit:

> "Bearing in mind that the burden to prove entitlement to a tax refund is on the taxpayer, **it is presumed that in order to discharge its burden, petitioner had attached complete supporting documents necessary to prove its entitlement to a refund in its application, absent any evidence to the contrary**."

In view of this presumption and there being no evidence to the contrary, the documents attached to respondent's administrative claim for refund filed on August 5, 2011[33] are deemed complete documents.

But even granting that We can validly ignore the said presumption and find that respondent indeed did not present or attach the complete supporting documents in its administrative claims, petitioner can always immediately decide a refund claim, in view of the recognized principle that petitioner ought to know the records of all taxpayers.[34]

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[32] G.R. Nos. 198729-30, January 15, 2014.
[33] Exhibit "P-1"; Par. 14, *Joint Stipulation of Facts*, Division Docket (CTA Case No. 8633) - Vol. II, p. 1057.
[34] *BPI-Family Savings Bank, Inc. vs. Court of Appeals*, et al., G.R. No. 122480, April 12, 2000; and *Commissioner of Internal Revenue vs. Ironcon Builders and Development*

More importantly, the CTA being a court of record, the cases filed before it are litigated *de novo* and party litigants should prove every minute aspect of its case.[35] It is not precluded from accepting respondent's evidence assuming these were not presented at the administrative level.[36] The question of whether the evidence submitted by a party is sufficient to warrant the granting of its prayer lies within the sound discretion and judgment of the Court.[37]

WHEREFORE, in light of the foregoing considerations, the *Petition for Review* is **DENIED** for lack of merit. Accordingly, the assailed Amended Decision dated January 10, 2018 and Resolution dated May 7, 2018, both rendered by the Court in Division in CTA Case No. 8633 are **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

ESPERANZA R. FABON-VICTORINO
Associate Justice

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

Ma. Belen
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

Corporation, G.R. No. 180042, February 8, 2010.
[35] *Commissioner of Internal Revenue vs. Manila Mining Corporation*, G.R. No. 153204, August 31, 2005.
[36] *Commissioner of Internal Revenue vs. Philippine National Bank,* G.R. No. 180290, September 29, 2014.
[37] *Pilipinas Total Gas, Inc. vs. Commissioner of Internal Revenue,* G.R. No. 207112, December 8, 2015.

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
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