REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

First Division

MCKINSEY & CO. (PHILS.),
Petitioner,

CTA Case No. 9807

Members:

-versus-

DEL ROSARIO, *P.J.*, *Chairperson*
and
MANAHAN, *J.*

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
JUL 2 9 2021 ; 11:05a.m.

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RESOLUTION

MANAHAN, *J.:*

This resolves respondent's **Motion for Reconsideration**[1] posted on February 5, 2021 and received by this Court on February 17, 2021 seeking for the reconsideration and setting aside of the Court's *Decision* dated January 8, 2021 (Assailed Decision), and the issuance of a new one denying petitioner's claim for refund or issuance of tax credit certificate. The dispositive portion of said Assailed Decision reads as follows, to wit:

> "**WHEREFORE**, in light of the foregoing considerations, the instant *Petition for Review* is **GRANTED**. Accordingly, respondent is **ORDERED TO REFUND, or TO ISSUE A TCC** in favor of petitioner in the amounts of **₱79,043,655.00** and **₱34,691,058.00**, representing its excess and unutilized CWTs for CYs 2015 and 2016, respectively.
>
> **SO ORDERED**."

Respondent argues that the instant petition for tax refund for calendar years (CYs) 2015 and 2016 were filed out of time.

[1] Docket, CTA Case No. 9807, Vol. II, pp. 908-920.

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Respondent insists that petitioner failed to submit the required documentary requisites under Revenue Regulations (RR) No. 2-98, as amended by RR No. 2-2006 relative to the latter's claim for refund of its excess/unutilized Creditable Withholding Taxes (CWTs) for CYs 2015 and 2016.

Respondent further insists that proof of actual remittance to the Bureau of Internal Revenue (BIR) as well as testimonial evidence of payors and withholding agents are necessary.

Respondent also argues that petitioner failed to prove that its Annual and Quarterly Income Tax Returns (ITRs) were executed under the pain of perjury and made under oath.

On the other hand, petitioner in its **Comment to Respondent's Motion for Reconsideration**[2] counter argues that its judicial claim for refund was filed within the two (2)-year period under the 1997 National Internal Revenue Code (NIRC), as amended, and that it complied with all the requisites to be entitled to such claim for refund of its excess CWTs.

Petitioner insists that proof of execution under oath of its Annual and Quarterly ITRs are not necessary.

We deny the instant motion.

As cited in the Assailed Decision, the claims for refund pertains to CYs 2015 and 2016 for which petitioner filed its Annual ITRs on April 13, 2016 and April 13, 2017, respectively. Counting from these dates, petitioner had until April 13, 2018 and April 13, 2019, respectively, within which to file a claim for refund of its excess CWTs both in the administrative and judicial levels. Thus, petitioner seasonably filed with the BIR its administrative claim for refund on April 6, 2018 and its judicial claim for refund through the present Petition for Review on April 11, 2018 pursuant to Sections 204 and 229 of the 1997 NIRC, as amended.

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[2] Docket, Vol. II, pp. 925-930.

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The Assailed Decision categorically stated in its factual findings that petitioner complied all the requisites of said claims for refund, as we reiterate:[3]

> "Petitioner marked the circle beside the words "To be refunded" which signified its intention to claim for refund the creditable taxes withheld for the CYs 2015 and 2016 in the total amount of ₱113,734,713.00. Furthermore, a perusal of petitioner's Annual ITRs for CYs 2016 and 2017 shows that for both years, the amount of prior year's excess credits is only ₱75,126,319.00 instead of the respective amounts of ₱154,169,974.00 and ₱109,817,377.00.
>
> Evidently, the claimed CWTs for CY 2015 and 2016 of ₱79,043,655.00 and ₱34,691,058.00, respectively, or in the total amount of ₱113,734,713.00 were not included therein. Consequently, the CWTs being claimed by petitioner may be allowed for refund under Section 76 of the NIRC of 1997, since it is clearly shown that petitioner opted to refund the same, and not to carry-over the excess amount to the succeeding taxable quarters/years.
>
> xxx xxx xxx
>
> Considering that, as already shown, petitioner seasonably filed its administrative and judicial claims, i.e., within the two-year prescriptive period, petitioner is deemed to have exhausted the administrative remedies.
>
> xxx xxx xxx
>
> To prove the fact of withholding of the subject claim, petitioner submitted various *Certificates of Creditable Tax Withheld at Source* (BIR Form No. 2307) duly issued by its various withholding agents covering CYs 2015 and 2016, reflecting CWTs in the amounts of ₱79,043,655.24 and ₱34,691,057.88, respectively, or in the aggregate amount of ₱113,734,713.12, detailed as follows:
>
> xxx xxx xxx
>
> The Court finds the foregoing in order. Parenthetically, the probative value of BIR Form 2307, which is basically a statement showing the amount paid for the subject transaction and the amount of tax withheld therefrom, is to establish only the fact of withholding of the claimed creditable withholding tax.
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> Thus, petitioner was able to satisfy the *second* requisite.
>
> With regard to the *third requisite*, the certificates show that the claimed CWTs for CYs 2015 and 2016 were withheld on income payments of ₱526,957,701.59 and ₱231,273,719.18, respectively, as shown in the previous table. These amounts were declared in petitioner's Annual ITRs for the same years which disclosed higher gross *"Sales/*

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[3] Docket, Vol. II, *Decision* dated January 8, 2021, pp. 899-906.

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> *Revenues/ Receipts/ Fees"* in the amounts of ₱822,267,453.00 and ₱785,116,255.00, respectively.
>
> xxx xxx xxx
>
> The foregoing statements of Ms. Cabahug were corroborated by petitioner's documentary evidence, such as its General Ledgers Transaction Detail (GLTD) for 2014, 2015 and 2016, which show that the income payments from which the creditable taxes were withheld are sourced from the same amount of revenues from Consultancy Services reflected in its AFS; and the Reconciliation Schedules of Revenues, which show the reconciliation of the revenue per General Ledger and revenue per CWT certificates both for the years 2015 and 2016. Hence, petitioner duly established that it declared in its Annual ITRs for the CYs 2015 and 2016 from which the total amount of ₱113,734,713.00 CWTs were deducted.
>
> Verily, petitioner is considered to have complied with the *third requisite*."

As to respondent's argument that proof of actual remittance to the BIR as well as testimonial evidence of payors and withholding agents are necessary, it must be emphasized that proof of actual remittance by the petitioner is not needed in order to prove withholding and remittance of taxes to respondent because the proof of remittance is the responsibility of the withholding agent and not of the taxpayer-refund claimant as held in *Commissioner of Internal Revenue v. Philippine National Bank*[4] citing *Commissioner of Internal Revenue v. Asian Transmission Corporation*[5], to wit:

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

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[4] G.R. No. 180290, September 29, 2014.
[5] G.R. No. 179617, January 19, 2011.

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> 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."

The certificate of creditable tax withheld at source (BIR Form No. 2307) is the competent proof to establish the fact that taxes are withheld. 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.[6]

As to respondent's argument that proof of execution under oath of its Annual and Quarterly ITRs are necessary, a perusal of the Assailed Decision relative to his Answer as well as his Memorandum, shows that such matter was not raised therein.

Section 1, Rule 9 of the Rules on Civil Procedure provides:

> "Section 1. *Defenses and objections not pleaded.* — **Defenses and objections not pleaded either in a motion to dismiss or in the answer are deemed waived**. However, when it appears from the pleadings or the evidence on record that the court has no jurisdiction over the subject matter, that there is another action pending between the same parties for the same cause, or that the action is barred by a prior judgment or by statute of limitations, the court shall dismiss the claim." (*Emphasis supplied*)

Further, respondent cannot raise a matter or an issue which neither was alleged in the pleadings nor raised during the proceedings but ventilated only for the first time in a

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[6] *Supra*, Note 4.

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motion for reconsideration as held in *Development Bank of the Philippines v. West Negros College, Inc.*[7], to wit:

> "…. Moreover, it is a fundamental rule of procedure that higher courts are precluded from entertaining matters neither alleged in the pleadings nor raised during the proceedings below, but ventilated for the first time only in a motion for reconsideration or on appeal. On appeal, only errors specifically assigned and properly argued in the brief will be considered, with the exception of those affecting jurisdiction over the subject matter as well as plain and clerical errors."

Thus, this Court shall not discuss the merit of such argument.

WHEREFORE, premises considered, the instant *Motion for Reconsideration* is hereby **DENIED** for lack of merit.

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

I CONCUR:

(See Concurring Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

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[7] G.R. No. 152359, May 21, 2004.

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CONCURRING OPINION

DEL ROSARIO, P.J.:

I concur in the denial of respondent's Motion for Reconsideration for lack of merit.

In his Motion, respondent argues that petitioner's claim for refund must be denied as petitioner failed to submit proof that its Quarterly Income Tax Returns (Exhibits P-4, P-5, P-12, P-12-a, P-13, and P-13-a) were executed under the pain of perjury and made under oath.

A perusal of aforesaid Quarterly Income Tax Returns reveals that the same were filed through the Bureau of Internal Revenue's (BIR) Electronic Filing and Payment System (EFPS). The upper right hand portions of said Quarterly Income Tax Returns show their respective "reference numbers." Attached to said Quarterly Income Tax Returns are the eSubmission Validation Reports which state that the BIR has validated the submission in compliance with existing BIR Regulations. The eSubmission Validation Reports further indicate that no errors were encountered anent petitioner's submissions.

Since respondent ought to know the tax records of all taxpayers, respondent could have easily proved that petitioner's Quarterly Income

Tax Returns were not duly filed using the BIR's EFPS; and, that the same were not executed under the penalties of perjury and made under oath.

There being no evidence to the contrary, petitioner's Quarterly Income Tax Returns are deemed duly filed and compliant with all the requirements of existing BIR Regulations.

All told, I VOTE to DENY respondent's Motion for Reconsideration.

ROMAN G. DEL ROSARIO
Presiding Justice