REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

****

UNIVATION MOTOR PHILIPPINES, INC. (formerly NISSAN MOTOR PHILIPPINES, INC.),
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB No. 2178
(CTA Case No. 9575)

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COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus -

UNIVATION MOTOR PHILIPPINES, INC. (formerly NISSAN MOTOR PHILIPPINES, INC.),
Respondent.

CTA EB No. 2179
(CTA Case No. 9575)

Present:

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

Promulgated:

JAN 13 2021 3:51 p.m.

x - x

DECISION

UY, J.:

Before the Court *En Banc* are two (2) consolidated *Petitions for Review*, namely:

CTA EB No. 2178 entitled "*Univation Motor Philippines Inc., (formerly Nissan Motor Philippines, Inc.), Petitioner, vs. Commissioner of Internal Revenue, Respondent*", filed on December 4, 2019; and

CTA EB No. 2179, entitled "*Commissioner of Internal Revenue, Petitioner, vs. Univation Motor Philippines Inc., (formerly Nissan Motor Philippines, Inc.), Respondent*", filed on December 5, 2019.

Both Petitioners assail the Decision dated June 21, 2019[1] and Resolution dated October 29, 2019[2], rendered by the Special Second Division of this Court (Court in Division) in CTA Case No. 9575 entitled "*Univation Motor Philippines Inc., (formerly Nissan Motor Philippines, Inc.), Petitioner, vs. Commissioner of Internal Revenue, Respondent*", the dispositive portions of which respectively read:

<u>Decision dated June 21, 2019</u>:

> "**WHEREFORE**, premises considered, the instant Petition for Review is **PARTIALLY GRANTED.** Accordingly, respondent is **ORDERED TO ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the amount of **₱5,403,677.94**, representing petitioner's excess and unutilized CWT for CY 2014.
>
> **SO ORDERED.**"

<u>Resolution dated October 29, 2019</u>:

> "**WHEREFORE**, finding no cogent reason to reverse the ruling in the assailed Decision, petitioner's **Motion for Reconsideration (RE: Decision dated June 21, 2019)** and respondent's **Motion for Partial Reconsideration [re: Decision dated June 21, 2019]** are **DENIED** for lack of merit.
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> **SO ORDERED.**"

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[1] Penned by Associate Justice Catherine T. Manahan, and concurred by Associate Justice Juanito C. Castañeda, Jr., EB Docket (CTA EB No. 2178), pp. 60 to 76; and EB Docket (CTA EB No. 2179), pp. 21 to 36.

[2] *Id.*, EB Docket (CTA EB No. 2178), pp. 40 to 57; EB Docket (CTA EB No. 2179), pp. 37 to 54.

THE FACTS

Univation Motor Philippines, Inc. (formerly, Nissan Motor Philippines, Inc.) is a corporation duly organized and existing under the laws of the Republic of the Philippines, with principal place of business at Nissan Technopark, Barangay Pulong Sta. Cruz, Sta. Rosa, Laguna. It is also registered with the Large Taxpayers Service of the Bureau of Internal Revenue (BIR), with Taxpayer Identification No. 000-389-353-000.

As stated in its Amended Articles of Incorporation, the primary purpose of Univation Motor Philippines, Inc. is:

> To carry on business of buying, acquiring, manufacturing, assembling, producing, importing, holding, selling, disposing, distributing, dealing in motor trucks, cars, engines and other kinds of automobiles and mechanically propelled vehicles, means of transportation and industrial machinery, their bodies, spare parts, accessories; and to repair, maintain, service, condition and/or recondition said products.

On the other hand, the Commissioner of Internal Revenue (or CIR) is the duly appointed Commissioner of the Bureau of Internal Revenue who has the power to decide on disputed assessments, refunds of internal revenue taxes, fees, or other charges, penalties imposed in relation thereto, or other matters arising under the 1997 National Internal Revenue Code (NIRC), as amended, or other laws or portions thereof administered by the BIR. He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

Univation Motor Philippines, Inc. (Univation Motor Philippines for brevity) filed its Annual Income Tax Return (ITR) for Calendar Year (CY) 2014 through Electronic Filing and Payment System (eFPS) on April 15, 2015 and manually on April 30, 2015.

Thereafter, Univation Motor Philippines filed an Amended Annual ITR for CY 2014 through eFPS on July 7, 2016 and manually on July 11, 2016. On the face of the Original and the Amended Annual ITR for CY 2014, Univation Motor Philippines indicated its option to be issued a Tax Credit Certificate (TCC) for its alleged excess and unutilized Creditable Withholding Tax (CWT).

On July 28, 2016, Univation Motor Philippines filed with the BIR Excise Large Taxpayers Audit Division II (ELTAD II) an administrative claim for issuance of TCC for its alleged excess and unutilized CWT for CY 2014 in the amount of ₱6,795,629.00

In view of the CIR's inaction on Univation Motor Philippines' administrative claim for issuance of TCC, the latter filed a Petition for Review before the Court in Division on April 11, 2017 entitled "*Univation Motor Philippines, Inc. (formerly Nissan Motor Philippines, Inc.), Petitioner vs. Commissioner of Internal Revenue, Respondent*", docketed as CTA Case No. 9575.

Within the extended period granted by the Court in Division, the CIR filed his *Answer* on June 9, 2017, interposing, among others, the following arguments and defenses:

1) The CIR denies the allegations contained in paragraphs 15 to 20 and 23 in the Petition for Review in CTA Case No. 9575 for being false;

2) Univation Motor Philippines is not entitled to the claimed refund on the ground that it failed to comply with the requirements of Revenue Memorandum Order (RMO) No. 53-98 and Revenue Regulations (RR) No. 2-2006;

3) The rules and regulations partake the nature of a statute that have the force and effect of the law, and enjoy the presumption of constitutionality and legality until they are set with finality in an appropriate case by a competent court. Thus, Univation Motor Philippines must faithfully comply thereto; and

4) Although Univation Motor Philippines submitted documents to support its claim, it failed to fully substantiate its claim when it failed to comply with the abovementioned issuances. This failure to comply is fatal to its judicial claim.

After the Pre-Trial Conference held on July 6, 2017, the parties filed their *Joint Stipulation of Facts and Issues* on August 3, 2017. Thereafter, the Court in Division issued a *Pre-Trial Order* on August 4, 2017 and terminated the pre-trial.

During trial, Univation Motor Philippines presented two (2) witnesses, namely: Lourdes Y. Bautista, Financial Reporting Analyst, and Milagros F. Padernal, the Court-commissioned Independent

Certified Accountant (ICPA). Subsequently, Univation Motor Philippines filed its *Formal Offer of Evidence* on December 22, 2017. In the Resolution dated April 5, 2018, the Court in Division admitted Exhibits "P-1" to "P-32-220" and "P-34" to "P-36-a", inclusive of submarkings.

On the other hand, the CIR, through counsel, manifested that there is no report of investigation, and that will no longer present evidence in CTA Case No. 9575. Thereafter, CTA Case No, 9575 was deemed submitted for decision on July 4, 2018, after the filing of the CIR's *Memorandum* on June 20, 2018 and Univation Motor Philippines' *Memorandum* on June 29, 2018.

In the assailed Decision dated June 21, 2019,[3] the Court in Division partially granted the Petition for Review in CTA Case No. 9575, and ordered the CIR to issue a tax credit certificate in the amount of ₱5,403,677.94 representing Univation Motor Philippines' excess and unutilized CWT for CY 2014.

Univation Motor Philippines filed on July 9, 2019, a *Motion for Reconsideration (RE: Decision dated June 21, 2019)*; while the CIR filed on even date, a *Motion for Partial Reconsideration [re: Decision dated June 21, 2019]*. Thereafter on July 25, 2019, a *Comment (Re: Motion for Partial Reconsideration dated July 4, 2019)* was filed by Univation Motor Philippines.

In the assailed Resolution dated October 29, 2019,[4] the Court in Division denied both Univation Motor Philippines' *Motion for Reconsideration (RE: Decision dated June 21, 2019)* and the CIR's *Motion for Partial Reconsideration [re: Decision dated June 21, 2019]*, for lack of merit.

On November 19, 2019, Univation Motor Philippines filed a *Motion for Extension of Time to File Petition for Review*[5] before the Court *En Banc*, praying for an additional period of fifteen (15) days from November 19, 2019, or until December 4, 2019, within which to file the Petition for Review.

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[3] EB Docket (CTA EB No. 2178), pp. 60 to 76; and EB Docket (CTA EB No. 2179), pp. 21 to 36.; and Division Docket – Vol. II (CTA Case No. 9575), pp. 697 to 712.
[4] EB Docket (CTA EB No. 2178), pp. 40 to 57; EB Docket (CTA EB No. 2179), pp. 37 to 54; and Division Docket – Vol. II (CTA Case No. 9575), pp. 794 to 811.
[5] EB Docket (CTA EB No. 2178), pp. 1 to 4.

On even date, the CIR also filed a *Motion for Extension of Time to File Petition for Review*[6] before the Court *En Banc*, praying for an extension period of fifteen (15) days from November 20, 2019 or until December 5, 2019 within which to file his Petition for Review.

On November 22, 2019, the Court *En Banc* granted both motions for extension of time to file Petition for Review filed by Univation Motor Philippines and the CIR. As prayed for, Univation Motor Philippines was granted a final and non-extendible period of fifteen (15) days from November 19, 2019, or until December 4, 2019, within which to file its Petition for Review;[7] while, the CIR was granted a final and non-extendible period of fifteen (15) days from November 20, 2019, or until December 5, 2019, within which to file his Petition for Review.[8]

On December 4, 2019, Univation Motor Philippines filed its *Petition for Review* before the Court *En Banc*, docketed as CTA EB No. 2178;[9] while the CIR filed his *Petition for Review* before the Court *En Banc* on December 5, 2019, docketed as CTA EB No. 2179.[10]

In its *Petition for Review* in **CTA EB No. 2178**, Univation Motor Philippines prays that the assailed Decision and Resolution of the Court in Division in CTA Case No. 9575 be set aside and a new decision be rendered ordering the CIR to refund the amount of ₱6,795,629.00 representing excess and unutilized CWT for 2014.

On the other hand, in his *Petition for Review* in **CTA EB No. 2179**, the CIR prays that the same Decision and Resolution be partially reconsidered and another decision be rendered denying the entire claim for refund.

Considering that both cases are appeals from the Court in Division's Decision and Resolution in CTA Case No. 9575, promulgated on June 21, 2019 and October 29, 2019, respectively, CTA EB No. 2179 was consolidated with CTA EB No. 2178 on December 6, 2019.[11]

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[6] EB Docket (CTA EB No. 2179), pp. 1 to 4.
[7] Minute Resolution dated November 22, 2019, EB Docket (CTA EB No. 2178), p. 5.
[8] Minute Resolution dated November 22, 2019, EB Docket (CTA EB No. 2179), p. 6.
[9] EB Docket (CTA EB No. 2178), pp. 6 to 36.
[10] EB Docket (CTA EB No. 2179), pp. 7 to 14.
[11] Minute Resolution dated December 6, 2019, EB Docket (CTA EB No. 2178), p. 81.

On January 6, 2020, the Court *En Banc* directed the CIR in CTA EB No. 2178, and Univation Motor Philippines in CTA EB No. 2179, to file their respective Comments to the corresponding Petitions for Review.[12] Univation filed its *Comment (Re: Petition for Review dated December 4, 2019)* on January 17, 2020.[13]

On January 20, 2020, the CIR *Motion for Extension of Time to File Comment*,[14] praying for an extension of ten (10) days from January 20, 2020 or until January 30, 2020, within which to file its *Comment*. The Court *En Banc* granted CIR a final and non-extendible period of ten (10) days from January 20, 2020 or until January 30, 2020, within which to file its *Comment*.[15] On January 31, 2020, CIR filed its *Comment [on Respondent's Petition for Review]*.[16]

Thereafter, the instant consolidated cases were submitted for decision on February 20, 2020.[17] Hence, this Decision.

ASSIGNMENTS OF ERROR

In **<u>CTA EB No. 2178</u>**, Univation Motor Philippines, Inc. raises the sole issue for resolution of the Court *En Banc*, to wit:

> "WHETHER OR NOT THE COURT IN DIVISION ERRED IN DISALLOWING ₱1,391,951.06 OUT OF PETITIONER'S TOTAL CLAIM FOR REFUND OF EXCESS AND UNUTILIZED CWT FOR CY 2014."[18]

In **<u>CTA EB No. 2179</u>**, the CIR likewise raises a sole issue for resolution of the Court *En Banc*, to wit:

> "WHETHER OR NOT THE HONORABLE COURT ERRED IN RULING THAT PETITIONER IS ENTITLED TO THE CLAIM FOR REFUND OF ALLEGED EXCESS AND UNUTILIZED CWT FOR CY 2014."[19]

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[12] Resolution dated January 6, 2020, EB Docket (CTA EB No. 2178), pp. 88 to 89.
[13] EB Docket (CTA EB No. 2178), pp. 90 to 110.
[14] EB Docket (CTA EB No. 2178), pp. 111 to 114.
[15] Minute Resolution dated January 21, 2020, EB Docket (CTA EB No. 2179), p. 116.
[16] EB Docket (CTA EB No. 2178), pp. 117 to 120.
[17] EB Docket (CTA EB No. 2178), pp. 123 to 124.
[18] *Petition for Review, p. 6,* EB Docket (CTA EB No. 2178), p. 11.
[19] *Petition for Review*, p.4, EB Docket (CTA EB No. 2179), p. 10.

THE PARTIES' ARGUMENTS

CTA EB No. 2178
Univation Motor's Arguments

In its Petition for Review in CTA EB No. 2178, Univation Motor argues that the Court in Division erred in in disallowing ₱1,391,951.06 out of its total claim for refund of excess and unutilized CWT for CY 2014. Such denial of its excess and unutilized CWT for CY 2014 constitutes unjust enrichment on the part of the government.

Allegedly, the Court in Division erred in disallowing its prior years' excess tax credits on the basis of failure to present the CWT certificates from prior years dating as far back as CY 2005, notwithstanding failure of the CIR to object to its Income Tax Returns reflecting the prior years' excess credits.

Univation Motors claims that it has proven by preponderant evidence its entitlement to its claim for refund of its excess and unutilized CWT for CY 2014. According to Univation Motors, the rule that "claims for refund of overpaid taxes are construed *strictissimi juris* against the taxpayer" does not apply to claims for refund of overpaid or erroneously paid taxes.

Lastly, Univation Motors submits that it has several cases decided by the CTA and that the Court may take judicial notice of substantiated prior years' excess tax credits in its other cases.

CIR's Counter-Arguments

On the other hand, the CIR counter-argues that Univation Motor failed to present sufficient proof to support its entitlement to the entire claim for refund and that its failure to present Certificates of Creditable Tax Withheld at Source is fatal to its claim.

Allegedly, the amount of ₱268,956.65 pertaining to CY 2013 should be disallowed for the claim for refund of such CWT should have been filed not later than April 15, 2016. However, petitioner's present claim was filed only on April 11, 2017.

The CIR also disagrees and concurs with the Court in Division that the ITR does not sufficiently establish prior years' credits and that it is the CWT that is the ultimate proof of the existence of prior years' credits. According to the CIR, the application of the rule of interpreting tax refunds against the taxpayers finds application in this case.

Finally, the CIR contends that the Court cannot take judicial notice of substantiated prior years' excess tax credits in other cases because courts are not authorized to take judicial knowledge of the contents of the record of other cases, in the adjudication of cases pending before them, even though the trial judge in fact knows or remembers the contents thereof, or even when said other cases have been heard or are pending in the same court and notwithstanding the fact that both cases may have been heard or are really pending before the same judge.

CTA EB NO. 2179
CIR's arguments

In his Petition for Review in CTA EB 2179, the CIR argues that Univation Motor is not entitled to the claim for refund of alleged excess and unutilized CWT for 2014. According to the CIR, Univation Motor failed to exhaust administrative remedies before elevating the case to the Court of Tax Appeals. Hence, the Petition for Review should have been dismissed for failure to exhaust administrative remedies.

The CIR further argues that Univation Motor claim for refund is subject to administrative investigation/examination. Pending the close of investigation, no grant of refund may be given to Univation Motor based on the filed claim. Additionally, Univation Motor failed to submit the required documents in support of its claim for refund.

Allegedly, Univation Motor's documentary evidence failed to sufficiently establish direct linkage between the creditable withholding tax and the income as reflected in the Annual Income Tax Return. It is incumbent upon Univation Motor to prove actual remittance of the alleged withheld taxes to the BIR as nothing should be refunded to Univation Motor where there was no remittance of the alleged CWT to the BIR.

Finally, according to the CIR, Univation Motor failed to comply with the requirements set forth under Revenue Memorandum Order (RMO) No. 53-98 and Revenue Regulations (RR) No. 2-2006.

Univation Motor's Counter-Arguments

On the other hand, Univation Motor counter-argues that the CIR's arguments are rehashed from his previous pleadings and has been fully and exhaustively resolved by the Court in Division.

Allegedly, it was constrained to file a judicial claim for refund to the CIR's inaction to preserve its right to judicially recover its CWT for CY 2014. Further, Univation Motor submits that the submission of complete and supporting documents in the administrative level is not a prerequisite to the grant of judicial claim for refund.

Lastly, Univation Motor contends that the rule that "claims for refund of overpaid taxes are construed *strictissimi juris* against the taxpayer" does not apply to claims for refund of overpaid and erroneously paid taxes.

THE COURT *EN BANC*'S RULING

Both Petitions for Review are unmeritorious.

CTA EB No. 2178

The Court in Division committed no error in disallowing the amount of ₱268,956.65.

Univation Motor avers that the Court in Division erred in disallowing its claim for refund in the amount of ₱268,956.65 for CY 2013 on the ground that the claimed CWTs were not supported by certificates and pertained to transactions in CY 2013. Even assuming that the amount of CWTs pertained to CY 2013 instead of CY 2014, this assumption does not allegedly remove the fact that these amounts represent actual payments by Univation Motor; that the amount of ₱268,956.65 formed part of the ₱6,795,629.00 claimed CWT credits in this case that was not carried over to the succeeding taxable year.

We are not convinced.

Section 2.58.3 of Revenue Regulations No. 02-98[20] states as follows:

> "*Sec. 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 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." (*Emphasis supplied)*

Based on the foregoing provision, it is clear that 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. Moreover, it must be shown that the income earned or received has been declared as part of the gross income of the payee and the fact of withholding must be 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.

In the instant case, upon review and verification of the submitted CWT certificates, together with report of the ICPA, the Court *En Banc* finds the disallowance of the amount of ₱268,956.65 by the Court in Division appropriate, considering that the following transactions[21] pertain to transactions incurred in CY 2013, which is

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[20] 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.

[21] EB Docket (CTA EB No. 2178), pp. 69 to 70; EB Docket (CTA EB No. 2179), pp. 29 to 30; Division Docket (CTA Case No. 9575) – Vol. II, pp. 705 to 706.

outside the period of claim and that no valid CWT certificates supported the amounts, to wit:

Period Covered	Payor	Tax Identification Number	Amount	
			Income Payments	Tax Withheld
4th Quarter of 2013	Broadway Motor Sales Corp.	000-343-464-000	₱1,273,599.11	₱12,735.99
3rd Quarter of 2013	Nissan Cebu Distributors Inc	002-329-844-000	14,352,857.14	143,528.57
2nd Quarter of 2013	Nissan Cebu Distributors Inc	002-329-844-000	331,218.38	3,312.17
2nd Quarter of 2013	Nissan Cebu Distributors Inc	002-329-844-000	2,302,857.14	23,028.57
2nd Quarter of 2013	Nissan Cebu Distributors Inc	002-329-844-000	4,605,714.29	46,057.14
2nd Quarter of 2013	Nissan Cebu Distributors Inc	002-329-844-000	1,842,285.71	18,422.86
2nd Quarter of 2013	Nissan Cebu Distributors Inc	002-329-844-000	1,842,285.71	18,422.85
4th Quarter of 2013	Smart Communications, Inc.	001-901-673-000	68,970.00	3,448.50
TOTAL			**₱26,619,787.48**	**₱268,956.65**

Univation Motor failed to prove that it has sufficient prior year's excess tax credits upon which the income tax due for CY 2014 may be applied.

Univation Motor questions the Court in Division's disallowance of its prior year's excess tax credits on the basis of failure to present the CWT certificates from prior years dating as far back as CY 2005. According to Univation Motor, its prior year's tax credits are duly supported by Income Tax Returns, which are presumed correct, thus sufficiently showing its prior year's excess tax credits in the absence of proof to the contrary and notwithstanding the failure of CIR to object to its Income Tax Returns reflecting the prior year's excess tax credits.

We do not agree.

In the case of *Commissioner of Internal Revenue vs. Philippine National Bank,*[22] The Supreme Court explained the evidentiary value of CWT certificates, to wit:

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

> "The certificate of creditable tax withheld at source 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."

Based on the foregoing, the CWT certificate or BIR Form No. 2307 is the competent proof to establish the fact that taxes are withheld. It is complete in relevant details that would aid the court in evaluating a taxpayer's claim for refund of excess creditable withholding taxes.

In contrast, the Income Tax Return, though indeed, reveals the amount of a claimant's prior year's excess credits, does not, in any way, substantiate each of the items composing the said amount. The requirement to substantiate prior year's excess CWT is grounded on the principle that a taxpayer must prove every minute aspect of the case by presenting, formally offering and submitting its evidence to the CTA.[23]

Hence, the Court *En Banc* cannot give credence to Univation Motor's argument that its Income Tax Returns are sufficient to prove its prior year's excess credits in the absence of proof to the contrary. For Univation Motor to properly claim that it has enough creditable tax withheld to cover the income tax liabilities for CY 2014, it has the duty to prove the validity of its excess CWT, not only those incurred in CY 2014, but also those incurred in prior years.

Moreover, there is also no merit to Univation Motor's contention that failure of the CIR to contest Univation Motor's Income Tax Returns constitutes an admission of the validity of these documents.

In the case of *Commissioner of Internal Revenue vs. Far East Bank & Trust Company,*[24] the Supreme Court ruled as follows:

> "Entitlement to a tax refund is for the taxpayer to prove and not for the government to disprove.
>
> xxx xxx xxx

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[23] *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue,* G.R. No. 145526, March 16, 2007.
[24] G.R. No. 173854, March 15, 2010.

> Moreover, **the fact that the petitioner failed to present any evidence or to refute the evidence presented by respondent does not *ipso facto* entitle the respondent to a tax refund.** It is not the duty of the government to disprove a taxpayers claim for refund. Rather, **the burden of establishing the factual basis of a claim for a refund rests on the taxpayer.**
>
> And while the petitioner (the CIR in the instant cases) has the power to make an examination of the returns and to assess the correct amount of tax, his failure to exercise such powers does not create a presumption in favor of the correctness of the returns. **The taxpayer must still present substantial evidence to prove his claim for refund. As we have said, there is no automatic grant of tax refund."** (*Emphasis supplied)*

Based on the foregoing, it is not the duty of the government to disprove a taxpayer's claim for refund. Thus, failure of the CIR to present evidence to contradict the claim of Univation Motor, does not automatically entitle the latter to its claim. The latter must still discharge its burden of proving the factual basis of its refund claim.

Tax Refund or credit is strictly construed and the burden is on the taxpayer to prove its entitlement to the refund.

Univation Motor also contends that to require the presentation of CWT certificates in support of its prior year's excess tax credits constitutes undue burden on Univation Motor and would cause injustice. According to Univation Motor, Section 235 of the NIRC, as amended, only requires that books of the accounts and other accounting records be preserved only until the last day of the period prescribed under Section 203 of the NIRC, within which the CIR is authorized to make an assessment. Thus, as a general rule, Univation Motor is only required to keep its records, including the CWT certificates, for only a period of three (3) years from the date of filing of the returns.

Nonetheless, according to Univation Motor, even if the Court considers the ten (10) year prescriptive period covered under Section 222 of the NIRC, Univation Motor would still be excused from the obligation to retain its CWTs which dates back from 2008 and prior years. Not being required to keep its records which are more than 10 years old, the denial of Univation Motor's CWT refund on the basis of the non-presentation of prior year's excess tax credits dating back to twelve (12) years (from 2005 to 2017) constitutes undue burden on Univation Motor and the height of injustice.

Again, We do not agree.

It should be noted that this case involves a claim for refund of excess CWT. Jurisprudence dictates that in a claim for tax refund or tax credit, the applicant must prove not only entitlement to the claim but also compliance with all the documentary and evidentiary requirements therefor.[25] The Supreme Court discussed the importance of submitting supporting documents in a claim for refund, as follows:

> "xxx First, a judicial claim for refund or tax credit in the CTA is by no means an original action but rather an *appeal* by way of petition for review of a previous, unsuccessful administrative claim. Therefore, as in every appeal or petition for review, a **petitioner has to convince the appellate court that the quasi-judicial agency *a quo* did not have any reason to deny its claims. In this case, it was necessary for petitioner to show the CTA, not only that it was entitled under substantive law to the grant of its claims but also that it satisfied all the documentary and evidentiary requirements for an administrative claim for refund or tax credit.** Second, cases filed in the CTA are litigated *de novo.* Thus, a **petitioner should prove every minute aspect of its case by presenting, formally offering and submitting its evidence to the CTA.** Since it is crucial for a petitioner in a judicial claim for refund or tax credit to show that its administrative claim should have been granted in the first place, part of the evidence to be submitted to the CTA must necessarily include whatever is required for the successful prosecution of an administrative claim."[26] (*Emphasis supplied)*

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[25] *JRA Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 171307, August 28, 2013 citing the case of *Western Mindanao Power Corporation vs. Commissioner of Internal Revenue*, G.R. No. 181136, June 13, 2012.

[26] *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue,* G.R. No. 145526, March 16, 2007.

In this case, We affirm the findings of the Court in Division that Univation Motor failed to substantiate that it has sufficient prior year's excess tax credits upon which the income tax due for CY 2014 may be applied.

Univation Motor has not proven by preponderant evidence all of its prior year's excess credits

Univation Motor claims that it was able to prove with preponderant evidence that it is entitled to refund of its excess and unutilized CWT for CY 2014.

The Court *En Banc* recognizes that the standard of proof in civil cases (such as judicial claims for refund) is only preponderance of evidence. However, it bears stressing that the strict construction in the appreciation of evidence will still apply in cases where compliance with documentary requirements is an important aspect to determine whether or not a taxpayer is entitled to the claim for refund like the instant case.

Here, Univation Motor fell short in discharging said burden. We quote with approval the findings of the Court in Division in the assailed Resolution, to wit:

> "Applying all the foregoing, petitioner was not successful in discharging its burden of proving its right to the entire claim of refund as it fell short of presenting sufficient and competent evidence to prove all of its prior year's excess credits. To our mind, petitioner (Univation Motor) failed to meet the preponderance of evidence threshold. Hence, petitioner having failed to prove that it has sufficient prior year's excess tax credits upon which the income tax due for CY 2014 may be applied, then, a portion of the substantiated CWT shall be applied against its income tax liability for CY 2014."

The Court En Banc cannot take judicial notice of the substantiated prior year's excess tax credits in Univation Motor's other CTA cases.

Univation Motor argues that the Court may take judicial notice of substantiated prior year's excess tax credit in its other cases. Allegedly, it has several cases decided by the CTA in which the substantiated prior year's excess tax credits, particularly for CYs 2006 and 2007, were examined by an ICPA and presented to the Court. Thus, Univation Motor invites the Court *En Banc* to take judicial notice of the prior year's excess tax credits for CYs 2006 and 2007 that were presented in CTA Case Nos. 8420, and 9027, CTA EB Nos. 1333 and 1789.

Univation Motor's argument is untenable.

Judicial notice is found under Rule 129 of the Rules of Evidence, as amended by the A.M. No. 19-08-15-SC,[27] which is titled "What Need Not be Proved". The pertinent provisions thereof read as follows:

> " **Section 1.** *Judicial notice, when mandatory.* — A court shall take judicial notice, without the introduction of evidence, of the existence and territorial extent of states, their political history, forms of government and symbols of nationality, the law of nations, the admiralty and maritime courts of the world and their seals, the political constitution and history of the Philippines, the official acts of legislative, executive and judicial departments of the National Government of the Philippines, the laws of nature, the measure of time, and the geographical divisions. (1a)
>
> **Section 2.** *Judicial notice, when discretionary.* — A court may take judicial notice of matters which are of public knowledge, or are capable to unquestionable demonstration, or ought to be known to judges because of their judicial functions. (2)
>
> **Section 3.** *Judicial notice, when hearing necessary.* — During the pre-trial and the trial, *motu proprio* or upon

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[27] 2019 Proposed Amendments to the Revised Rules on Evidence.

motion, shall hear the parties on the propriety of taking judicial notice of any matter.

Before judgment or on appeal, the court, *motu proprio* or upon motion, may take judicial notice of any matter and shall hear the parties thereon if such matter is decisive of a material issue in the case."

The taking of judicial notice is a matter of expediency and convenience for it fulfills the purpose that the evidence is intended to achieve, and in this sense, it is equivalent to proof. Generally, courts are not authorized to "take judicial notice of the contents of the records of other cases even when said cases have been tried or are pending in the same court or before the same judge. They may, however, take judicial notice of a decision or the facts prevailing in another case sitting in the same court if: (1) the parties present them in evidence, absent any opposition from the other party; or (2) the court, in its discretion, resolves to do so. In either case, the courts must observe the clear boundary provided by Section 3, Rule 129 of the Rules of Court.[28]

Upon careful review of the proceedings held in CTA Case No. 9575, it appears that: (a) Univation Motor failed to present in evidence its alleged substantiated prior year's excess tax credits during trial thereof, particularly for CYs 2006 and 2007, examined by an ICPA and allegedly presented in CTA Case Nos. 8420, and 9027, CTA EB Nos. 1333 and 1789 decided by the Court of Tax Appeals, and (b) CIR has registered his opposition to the taking of judicial notice in this case.

Additionally, petitioner failed to comply with the requisite set forth under Section 3 of Rule 129 of the Rules of Court which necessitates that "the parties be heard thereon if such matter is decisive of a material issue in the case."

Hence, taking judicial notice of Univation Motor's alleged substantiated prior year's excess tax credit for CYs 2006 and 2007 that were presented in CTA Case Nos. 8420, and 9027, CTA EB Nos. 1333 and 1789, under the premises is not justified.

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[28] *Land Band of the Philippines v. Yatco Agricultural Enterprises,* G.R. No. 172551, January 15, 2014

CTA EB No. 2179

A taxpayer-claimant need not wait for the decision of the CIR before filing a judicial claim when the 2-year prescriptive period is about to expire.

The CIR argues that Univation Motor failed to exhaust administrative remedies before elevating the case to the Court in Division.

We disagree.

Section 229 of the National Internal Revenue Code (NIRC) of 1997 provides as follows:

> "SEC. 229. *Recovery of Tax Erroneously or Illegally 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 two (2) years from the date of payment of the tax or penalty 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 supplied)*

Clearly from the foregoing provisions, the judicial claim for tax refund must be made within two (2) years from the date of payment of the tax or penalty, regardless of any supervening cause that may arise after such payment.

And when the two-year prescriptive period is about to end, a taxpayer-claimant need not wait for the decision of the CIR before filing a case with this Court.

Moreover, in no wise does Section 229 of the NIRC of 1997 imply that the CIR must first act upon the taxpayer's claim, and that the taxpayer shall not go to court before such taxpayer is notified of the CIR's action.[29] It must be emphasized that the claim with the CIR was intended primarily as a notice of warning that unless the tax or penalty alleged to have been collected erroneously or illegally is refunded, court action will follow.[30]

In this case, there is no showing that the CIR has acted upon the administrative claim for refund of Univation Motor from the time it was filed on July 28, 2016[31] up to the filing of its judicial claim on April 11, 2017,[32] when the two-year prescriptive period was about to end. Thus, Univation Motor was correct in elevating its judicial claims before the expiration of the said two-year prescriptive period under Section 229 of the NIRC of 1997.

Proof of actual remittance of alleged withheld taxes to the BIR is not necessary.

The CIR argues that Univation Motor's documentary evidence failed to sufficiently establish direct linkage between the CWT and the income as reflected in the Annual Income Tax Return, and failure to show that the income from which the CWT is attributed was not declared by Univation Motor results to the disallowance of the refund of CWT. Likewise, the CIR alleges that it is incumbent upon Univation Motor to prove actual remittance of the alleged withheld taxes to the BIR as nothing should be refunded to Univation Motor where there was no remittance of the alleged CWT to the BIR.

We are not persuaded.

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[29] *CBK Power Company Limited vs. Commissioner of Internal Revenue, etseq.*, G.R. Nos. 193383-84 and 193407-08, January 14, 2015, citing *P.J. Kiener Co., Ltd vs. David,* 92 Phil. 945 (1953).
[30] *Ibid.*
[31] Exhibits "P-13" and "P-13-a", Division Docket (CTA Case No. 9575) – Vol. II, pp. 622 to 624.
[32] Division Docket (CTA Case No. 9575) – Vol. I, pp. 12 to 19. *(initials)*

To reiterate, the certificate of creditable tax withheld at source is the competent proof to establish the fact that taxes are withheld. In *Commissioner of Internal Revenue vs. Philippine National Bank*,[33] it was categorically stated that proof of actual remittance is not a condition to a claim for 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 Section 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's Appeal's explanation, is instructive:
>
> > "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 Regulations 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

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

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> . . . has no control over the remittance of the taxes withheld from its income by the withholding agent or payor who is the agent of 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 foregoing pronouncement clearly explains that a withholding tax certificate, complete in its relevant details, and with a written statement that it was made under the penalties of perjury, is sufficient and competent proof that taxes are withheld. Such taxes withheld by the withholding agent are deemed to be the full and final payment of the income tax due from the income earner or payee.[34] Hence, proof of remittance is not necessary, as the proof of remittance is the responsibility of the withholding agent, and not the taxpayer who is claiming for a refund.

Accordingly, the Court *En Banc* finds no merit in the CIR's argument that Univation Motor is obliged to prove the fact of remittance of the subject withholding tax.

The CIR is incorrect in invoking RMO No. 53-98 and RR No. 2-2006.

According to the CIR, Univation Motor failed to comply with the requirements set forth under RMO No. 53-98 and RR No. 2-2006.

The CIR's argument is specious.

A cursory reading of RMO No. 53-98[35] and RR No. 2-2006[36] reveals that nowhere is it stated therein that the non-submission of

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[34] *Philippine Airlines, Inc. (PAL) vs. Commissioner of Internal Revenue,* G.R. Nos. 206079-80 and 206309, January 17, 2018, citing BIR Revenue Regulations No. 2-98 (1998), Sec. 2.57.

[35] 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.

[36] 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 documents enumerated therein would *ipso facto* result to the denial of 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 the case of *Pilipinas Total Gas, Inc. vs. Commissioner of Internal Revenue,*[37] the Supreme Court, citing *Commissioner of Internal Revenue vs. Team Sual Corporation (Formerly Mirant Sual Corporation),*[38] pointed out that the there is nothing under RMO 53-98 which requires the submission of complete document for a grant of 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 53-88 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 xxx.' 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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> xxx xxx xxx

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[37] G.R. No. 207112, December 8, 2015.
[38] G.R. No. 205055, July 18, 2014.

> **<u>Indeed, a taxpayer's failure (to comply) 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.</u>** This holds especially true when the application for tax credit or refund of excess unutilized 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 of the Court. (*Emphasis and underscoring supplied)*

While the foregoing case involves a claim for tax refund or credit of unutilized VAT, the Court *En Banc* finds that the principle pronounced therein is applicable to a claim for tax refund or issuance of TCC of unutilized CWT.

Based on 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. Furthermore, 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 this case, the CIR cannot validly invoke RMO No. 53-98 and RR No. 2-2006 as legal basis in concluding that Univation Motor failed to present relevant documents at the administrative level.

In sum, the Court *En Banc* finds no reversible error committed by the Court in Division that would warrant the modification or reversal of the assailed Decision and Resolution.

WHEREFORE, in light of the foregoing considerations, the *Petition for Review* in CTA EB No. 2178 filed by Univation Motor Philippines, Inc. and the *Petition for Review* in CTA EB No. 2179 filed by the CIR are both **DENIED** for lack of merit.

Accordingly, the Decision dated June 21, 2019 and the Resolution dated October 29, 2019 rendered by the Court in Division in CTA Case No. 9575, 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

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

Catherine T. Manahan
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 cases were assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice