REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

TULLET PREBON (PHILIPPINES), INC.,
Petitioner,

-*versus*-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 9562

Members:

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

Promulgated:
FEB 24 2022 2:53 pm

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RESOLUTION

MANAHAN, *J.*:

For this Court's resolution is respondent Commissioner of Internal Revenue's (CIR) *Motion for Partial Reconsideration (Decision promulgated 17 June 2021)* filed on July 8, 2021, with petitioner's *Comment (Re: Motion for Reconsideration dated July 5, 2021)* filed on November 22, 2021.

Respondent seeks reconsideration of the Court's Decision promulgated on June 17, 2021 (Assailed Decision), the dispositive portion of which reads:

> "**WHEREFORE,** in light of the foregoing considerations, the instant Petition for Review is **PARTIALLY GRANTED.** Accordingly, respondent is **ORDERED TO ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner, in the reduced amount of Php5,310,177..10, representing its excess and unutilized CWTs for CY 2014.
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> **SO ORDERED**."

Respondent assails this Court's Decision based on a single ground, and we quote:

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> "The Honorable Court erred in ruling that petitioner is entitled to refund in the amount of P5,310,177.10 representing alleged excess and unutilized CWTs for calendar year 2014."

Respondent contravenes the Court's ruling and asserts that petitioner is not entitled to a partial grant of refund of alleged excess creditable withholding tax (CWT) for taxable year (TY) 2014 based on the following allegations, to wit:

a. Petitioner failed to provide supporting documents to show that the income from which the CWT claimed was declared in its Annual Income Tax Return (ITR) for TY 2014, as such there is no direct linkage between the CWT and the income as reflected in said Annual ITR;
b. Petitioner did not submit the documents to prove excess CWT payments in accordance with the list provided under Revenue Memorandum Order (RMO) No. 53-98 or the "Checklist of Documents to be submitted by a Taxpayer Upon Audit of his Tax Liabilities; and
c. Petitioner was not able to prove actual remittance of the alleged excess taxes to the Bureau of Internal Revenue (BIR).

Respondent maintains that petitioner's failure to submit all the relevant documents in the administrative level to support its claim renders the administrative claim for refund *pro forma* and should be construed as if no claim was filed with the BIR. Respondent argues that the judicial appeal with the Court becomes an attempt by the taxpayer to circumvent his role in evaluating the instant claim for refund and propounds the theory that judicial review is limited to ascertaining whether the taxpayer has sufficiently discharged the burden of proving its claim in the administrative level. Following this reasoning, respondent believes that the concept of trial *de novo* proceeds only upon the taxpayer's procedural compliance with the requirements in the administrative level.

Lastly, respondent cites the oft-repeated doctrine that claims for refund are strictly construed against the claimant and that based on the evidence on record, petitioner failed to fully discharge the burden of sufficiently establishing its entitlement to the refund sought.

In its Comment to respondent's Motion for Reconsideration, petitioner disputes the allegation of respondent that it failed to show that the income from which the CWT claimed was declared in its Annual Income Tax Return (ITR) for TY 2014. Petitioner points to the Independent Certified Public Accountant's Report (ICPA Report) and offered as Exhibit "P-15" which allegedly shows that such income from which the CWT emanated formed part of its gross income which was reported in in its Annual ITR for 2014.

Petitioner disregards the importance of respondent's allegation that it failed to comply or submit documents enumerated under RMO 53-98 and Revenue Regulations (RR) No. 2-2006 and claims that such compliance is not necessary or vital to prove entitlement to claims for refund of excess and unutilized CWT. It further maintains that said RMO 53-98 is merely a directive addressed to the revenue officers advising them of the documents to be requested from taxpayers in case of audit of their tax liabilities. Likewise, petitioner belittles the argument of respondent that it was not able prove actual remittance of the alleged withheld taxes to the BIR and dismisses the same as not necessary because neither the law nor jurisprudence impose the same as a requirement in claims of this nature. It alleges that the presentation of the CWT Certificates of Creditable Tax Withheld at Source or BIR Form No. 2307 issued by the withholding agents constitute sufficient proof of a taxpayer's CWT.

RULING OF THE COURT

We deny the motion.

The argument of respondent that the role of the Court in the instant case is confined to reviewing the taxpayer's procedural compliance with all the documentary requirements in the administrative level, negates the concept of trial *de novo* where the judicial determination of a taxpayer's entitlement to a claim for refund is not limited to the documents it submitted or (failed to submit) in the administrative level. We reiterate the ruling embodied in the assailed Decision where the Court quoted the Supreme Court decision in the case of *CIR vs.*

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Univation Motor Philippines, Inc.[1], where it cleanly disposes of said issue and we quote:

> "The law creating the CTA specifically provides that proceedings before it shall not be governed strictly by the technical rules of evidence. The paramount consideration remains the ascertainment of truth. **Thus, the CTA is not limited by the evidence presented in the administrative claim in the Bureau of Internal Revenue. The claimant may present new and additional evidence to the CTA to support its case for tax refund."** (emphasis supplied)

We likewise find the allegation of respondent that the income from which the CWT is attributed was not declared by petitioner, bereft of merit as the assailed Decision comprehensively resolved this issue after a thorough examination of the documents offered by petitioner leading to a partial grant of the refund.

As regards the contention of respondent that petitioner failed to prove actual remittance of the withheld taxes, this Court rules that this is not a requirement pursuant to the ruling of the Supreme Court in the case of *CIR vs. Philippine National Bank,*[2] and we quote:

> "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 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."**

Using the rationale of the aforequoted SC decision, it is clear that the withholding agent's receipt of the tax withheld may be considered as equivalent to the receipt by the BIR of the taxes, hence, proof of actual remittance is no longer necessary.

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[1] G.R. No. 231581, April 10, 2019.
[2] G.R. No. 180290, September 29, 2014.

Lastly, this Court rules that the non-submission of the documents under RMO 53-98 and RR No. 2-2006 is not fatal to petitioner's claim as succinctly but clearly resolved in the assailed Decision, and we quote:

> "A cursory reading of RMO 53-98 and RR No. 2-2006 shows that nowhere is it stated that the non-submission of the documents enumerated therein would ipso facto result in the denial of the claim for tax refund or credit. In fact, RR No. 2-2006 merely imposes a penalty of a fine for non-submission of the information or statements required therein but not the outright denial of any claim for tax refund or credit.
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> xxx xxx xxx
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> Moreover, the Supreme Court categorically ruled that the failure of the taxpayer to submit the requirements listed under RMO 53-98 is not fatal to the claim for tax credit or refund."

WHEREFORE, premises considered, respondent's Motion *for Partial Reconsideration (Decision promulgated 17 June 2021)* filed on July 8, 2021, is **DENIED** for lack of merit.

Accordingly, the Decision of the Court in the above-captioned case dated June 17, 2021, is hereby **AFFIRMED.**

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

MARIAN IVY F. REYES-FAJARDO
Associate Justice