REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

TULLETT PREBON (PHILIPPINES), INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 9804

Members:

CASTAÑEDA, JR., *Chairperson, and*
BACORRO-VILLENA, *JJ.*

Promulgated:
OCT 20 2020 1:05 PM

x- -x

RESOLUTION

CASTAÑEDA, JR., J.:

Submitted before this Court is respondent's **Motion for Partial Reconsideration (Re: Decision promulgated 15 June 2020)**, filed through registered mail on June 30, 2020 and received by the Court on July 6, 2020, with petitioner's **Comment (Re: Motion for Reconsideration dated June 29, 2020)**, filed through electronic mail on August 4, 2020.

On June 15, 2020, the Court promulgated a Decision partially granting petitioner's claim for refund of excess creditable withholding tax (CWT), the dispositive portion of which reads as follows:

> "**WHEREFORE**, in light of the foregoing considerations, the instant *Petition for Review* is **PARTIALLY GRANTED**. Accordingly, respondent is **ORDERED TO REFUND, or TO ISSUE A TCC** in favor of petitioner in, the reduced amount of **₱8,571,938.77**, representing its excess and unutilized CWT for CY 2015.

SO ORDERED."

In his Motion, respondent assails the aforesaid Decision on the ground that the Court erred in ruling that petitioner is entitled to refund any CWT for calendar year (CY) 2015. Respondent claims that petitioner must clearly show in its tax return that the income from which the withholding tax was withheld formed part of its gross income. Thus, respondent insists that by failing to provide supporting documents that would show the income – from which the CWT being claimed – was indeed declared in the Annual Income Tax Return (AITR), there is no direct linkage between the CWT and the income as reflected in the AITR.

Respondent continues that in claims for refund, the taxpayer-claimant should adduce every single document that will prove its entitlement to its claim. Apropos, respondent maintains that compliance with the mandatory requirements will not suffice if petitioner failed to comply with the prescribed *Checklist of Requirements* regarding claims for unutilized CWT pursuant to Revenue Memorandum Order (RMO) No. 53-98. Since a claim for refund is construed strictissimi juris against the claimant, it is therefore imperative to prove every minute aspect of its case, including compliance with the said RMO No. 53-98, as well as Revenue Regulations (RR) No. 2-06, to give support to the validity of its claim for unutilized CWT for CY 2015.

On the other hand, in its comment, petitioner claims that well-settled is the rule that presentation of *Certificates of Creditable Tax Withheld at Source (BIR Form No. 2307)* issued by withholding agents, already constitutes sufficient proof of the existence and validity of a taxpayer's CWT. Petitioner asserts that there is no law, jurisprudence or administrative regulation that requires proof of actual remittance as a requisite for claim for refund of excess CWT. In fact, petitioner argues that the law and jurisprudence on the matter only require the submission of a copy of a statement duly issued by the payer (withholding agent) to the payee, showing the amount paid and the amount of tax withheld therefrom, as proof of the fact of withholding.

Moreover, petitioner assails respondent's argument as to why the claim for refund should be denied for non-compliance with RMO No. 53-98 and RR No. 2-06 since it is already established that the documents mentioned in RMO No. 53-98 and RR No. 2-06 are not essential in proving entitlement to a claim for refund of excess and unutilized CWT. Nonetheless, petitioner claims that the rule "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, such as in the present case, wherein it was able to prove with indubitable evidence its compliance with all the legal requisites to be entitled to a refund of its excess and unutilized CWT.

Accordingly, respondent's Motion for Partial Reconsideration is bereft of merit.

In the case of *Commissioner of Internal Revenue v. Team Sual Corp.,*[1] the Supreme Court held that there is nothing in the law that requires submission of the complete documents enumerated in RMO No. 53-98[2] before being entitled to a refund, to wit:

> "The CIR's reliance on RMO 53-98 is misplaced. **There is nothing in Section 112 of the NIRC, RR 3-88 or 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.** 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 . . . .' 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'.
>
> 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

---

[1] G.R. No. 205055, July 18, 2014.

[2] "SUBJECT: Prescribes the Documents required for Submission by a Taxpayer upon Audit of his Tax Liabilities per Type of Tax, as well as the different Mandatory Audit Reporting requirements to be prepared, submitted and attached to a Tax Audit docket by a Revenue Officer", June 25, 1998.

> 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**." *(Emphases supplied)*

Applying the foregoing to the instant case, neither Section 204(C) nor Section 229 of the National Internal Revenue Code (NIRC) of 1997, as amended, requires the submission of the complete documents enumerated in RMO No. 53-98 for a grant of a refund or credit. Likewise, there is also nothing in RR No. 2-06[3] that states that the mandatory attachments mentioned therein are required to be submitted in order to grant a refund or credit.

Similarly, the Supreme Court in the case *Commissioner of Internal Revenue v. Univation Motor Philippines, Inc.,*[4] had the occasion to rule that the CTA is not precluded from considering evidence that was not presented in the administrative claim with the BIR, to wit:

> "Petitioner CIR argued that failure of the respondent to submit the required complete documents as required by Revenue Memorandum Order No. 53-98 and Revenue Regulations No. 2-2006 rendered the petition with the CTA dismissible on the ground of lack of jurisdiction. It reasoned out that when a taxpayer prematurely filed a judicial claim with the CTA, the latter has no jurisdiction over the appeal.
>
> In the instant case, respondent's failure to submit the complete documents at the administrative level did not render its petition for review with the CTA dismissible for lack of jurisdiction. At this point, it is necessary to determine the grounds relied upon by a taxpayer in filing its judicial claim with the CTA. The case of *Pilipinas Total*

---

[3] "SUBJECT: Mandatory Attachments of Summary of 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 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", December 1, 2005.

[4] G.R. No. 231581, April 10, 2019.

Gas, Inc. v. Commissioner of Internal Revenue is instructive, thus:

> A distinction must, thus, be made between administrative cases appealed due to inaction and those dismissed at the administrative level due to the failure of the taxpayer to submit supporting documents. If an administrative claim was dismissed by the CIR due to the taxpayer's failure to submit complete documents despite notice/ request, then the judicial claim before the CTA would be dismissible, not for lack of jurisdiction, but for the taxpayer's failure to substantiate the claim at the administrative level. When a judicial claim for refund or tax credit in the CTA is an appeal of an unsuccessful administrative claim, the taxpayer has to convince the CTA that the CIR had no reason to deny its claim. It, thus, becomes imperative for the taxpayer to show the CTA that not only is he entitled under substantive law to his claim for refund or tax credit, but also that he satisfied all the documentary and evidentiary requirements for an administrative claim. It is, thus, crucial for a taxpayer in a judicial claim for refund or tax credit to show that its administrative claim should have been granted in the first place. Consequently, a taxpayer cannot cure its failure to submit a document requested by the BIR at the administrative level by filing the said document before the CTA.

In this case, it was the inaction of petitioner CIR which prompted respondent to seek judicial recourse with the CTA. Petitioner CIR did not send any written notice to respondent informing it that the documents it submitted were incomplete or at least require respondent to submit additional documents. As a matter of fact, petitioner CIR did not even render a Decision denying respondent's administrative claim on the ground that it had failed to submit all the required documents.

> Considering that the administrative claim was never acted upon, there was no decision for the CTA to review on appeal *per se*. However, this does not preclude the CTA from considering evidence that was not presented in the administrative claim with the BIR. Thus, RA No. 1125 states:
>
> > Section 8. *Court of record; seal; proceedings.*— The Court of Tax Appeals shall be a court of record and shall have a seal which shall be judicially noticed. It shall prescribe the form of its writs and other processes. It shall have the power to promulgate rules and regulations for the conduct of the business of the Court, and as may be needful for the uniformity of decisions within its jurisdiction as conferred by law, but such proceedings shall not be governed strictly by technical rules of evidence.
>
> 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.
>
> Cases filed in the CTA are litigated *de novo* as such, respondent 'should prove every minute aspect of its case by presenting, formally offering and submitting x x x to the Court of Tax Appeals all evidence x x x required for the successful prosecution of its administrative claim.' Consequently, the CTA may give credence to all evidence presented by respondent, including those that may not have been submitted to the CIR as the case is being essentially decided in the first instance."

As ruled by this Court, petitioner was able to comply with the requisites for refund of excess CWT for CY 2015 but only to the extent of ₱10,987,193.77.[5] gr

[5] See Decision, p. 16.

As to the issue that petitioner failed to provide supporting documents to show that income from which the CWT being claimed was declared in the AITR, the same has already been extensively discussed and resolved in the Decision assailed, to wit:

> "This brings US to the *third* requisite, which is whether or not the income upon which the subject taxes were withheld was included and reported by petitioner in its Annual ITR.
>
> The certificates show that the claimed CWT were withheld on income payments amounting to ₱137,083,359.45 representing gross commissions or service fees of customs, insurance, stock, real estate, immigration, and commercial brokers.
>
> On the other hand, petitioner's *Audited Financial Statements* (AFS) for CY 2015 has disclosed that the principal activity of petitioner is to operate as a broker between market participants in foreign exchange, deposits and fixed income securities, among others. Brokerage fees-net derived from such activity in 2015 amounted to ₱135,729,752.00. This is the same amount reflected as *'Net Sales/Revenues/Receipts/Fees'* from *Sales of Services* in petitioner's AITR for CY 2015.
>
> As ascertained by the ICPA, petitioner's revenue subjected to withholding tax at the rates of 2%, 10%, or 15% was lodged under *'Account 60005 – Gross Brokerage Name Give Up'* which shows a total amount of ₱135,729,752.42 per petitioner's general ledger.
>
> To verify that the ₱137,083,359.45 income payments per certificates indeed formed part of petitioner's declared income per Annual ITR, the ICPA traced in the revenue general ledger of *'Account 60005 – Gross Brokerage Name Give Up'* the related income amount of the claimed creditable withholding tax based on petitioner's *Schedule of Creditable Withholding Taxes*, billing invoices, and official receipts for CY 2015. The ICPA's detailed analysis is presented as follows:
>
> x x x

The Court could not verify the CWTs traced to CY 2014 Gross Brokerage Account General Ledger by the ICPA as petitioner failed to present the same, thus, shall be denied.

Correspondingly, petitioner has been able to prove that the income payments of ₱123,433,851.71, with corresponding CWT of ₱10,987,193.77, formed part of the income declared in its Annual ITR for CY 2015, as shown below:

x x x

In sum, petitioner has complied with the three (3) requisites for refund of excess CWT for CY 2015 only to the extent of ₱10,987,193.77." *(Citations omitted)*[6]

WHEREFORE, in view of the foregoing, respondent's Motion for Partial Reconsideration (Re: Decision promulgated 15 June 2020) is **DENIED** for lack of merit.

SO ORDERED.

JUANITO C. CASTAÑEDA, JR.
Associate Justice

I Concur:

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

---

[6] *Id.*, pp. 12 to 16.