REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

PPI PRIME VENTURE, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 8795

Members:

DEL ROSARIO, *P.J.*,
UY, *and*
MINDARO-GRULLA, *JJ.*

Promulgated:

MAY 22 2017 ; 9:41 a.m.

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RESOLUTION

MINDARO-GRULLA, ***J.*:**

For the Court's resolution is respondent's **Motion for Reconsideration** filed through registered mail on December 2, 2016 and received by the Court on December 27, 2016, with petitioner's **Comment/Opposition (To Respondent's Motion for Reconsideration dated December 2, 2016)** filed on February 6, 2017.

Respondent moves for the reconsideration of the Decision promulgated on November 16, 2016, the dispositive portion of which is quoted as follows:

> "**WHEREFORE**, premises considered, the instant Petition for Review is **GRANTED**. Accordingly, respondent is hereby **ORDERED TO ISSUE A TAX CREDIT CERTIFICATE** in the amount of **₱31,425,887.88** representing petitioner's excess and

unutilized creditable withholding taxes for calendar year 2011.

SO ORDERED."

Respondent contends that: (a) petitioner failed to present the necessary documents whereby the income payments related to the claimed creditable withholding taxes may be traced and confirmed as forming part of the taxable gross income in the income tax return; (b) proof of actual remittance to the Bureau of Internal Revenue (BIR) of the withheld taxes and testimonial evidence of the payors and withholding agents are required; and (c) claim for refund/tax credit is by nature a tax exemption and is construed *strictissimi juris* against petitioner.

Petitioner, on the other hand, states that: (a) petitioner presented sufficient evidence to prove its entitlement to a tax credit certificate (TCC) for its excess and unutilized creditable withholding taxes (CWTs) for calendar year (CY) 2011; (b) the presentation of certificates of creditable tax withheld at source (BIR Form 2307) issued by withholding agents constitutes sufficient proof of the existence and validity of a taxpayer's CWT; and (c) 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.

Respondent's motion lacks merit.

Respondent argues that petitioner's failure to present documents such as, but not limited to, official receipts, sales invoices, detailed general ledger, sales register, reconciliation schedules or any other document whereby the income payments related to the claimed creditable withholding taxes may be traced and confirmed as forming part of the taxable gross income reflected in the Annual Income Tax Returns, is fatal to its claim.

Apparently, the foregoing is basically a reiteration of the arguments previously set forth in respondent's Memorandum[1] filed before this Court, and which the latter had already considered, weighed, and resolved before it rendered its decision now sought to be reconsidered.

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[1]Docket, Vol. II, pp. 768-773.

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It bears emphasis that petitioner was able to prove, by relevant supporting documents, its compliance with the third requisite, that is, the income upon which the taxes were withheld must be included in the return of the recipient, as found by the Court in the assailed Decision, as follows:

> "However, in addition to the requisite provided under Section 76 of the NIRC of 1997, as amended, a taxpayer must also satisfy the following requirements in order to be entitled to a refund or issuance of TCC for unapplied excess CWTs:
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> 1. The claim for refund must be filed within the two-year prescriptive period as provided under Sections 204(C) and 229 of the NIRC of 1997, as amended;
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> 2. The fact of withholding must be established by a copy of a statement duly issued by the payor (withholding agent) to the payee, showing the amount paid and the amount of tax withheld therefrom; and
>
> 3. The income upon which the taxes were withheld must be included in the return of the recipient.
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> xxx xxx xxx
>
> As to the third requisite, records show that the tax credits earned by petitioner in CY 2011 arose from a sale of land to DMCI Project Developers, Inc. with a selling price of ₱263,432,000.00, exclusive of twelve percent (12%) value-added tax (VAT), pursuant to the Deed of Absolute Sale executed by petitioner with the latter in December 2011.
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> The corresponding six percent (6%) withholding tax amounting to ₱15,805,920.00 was withheld by DMCI as evidenced by BIR Form No. 2307. However, since the fair market value of the land was ₱787,196,800.00 as assessed by respondent, DMCI was required to withhold a

total of ₱47,231,808.00. Hence, DMCI remitted an additional ₱31,425,888.00 withholding tax on September 17, 2013 and issued to petitioner another BIR Form No. 2307 for the said amount.

The said sale pertains to petitioner's Investment Property with book value amounting to ₱10,546,744.00 which when deducted from the selling price of ₱263,432,000.00 resulted in a gain on sale amounting to ₱252,885,256.00. This gain on sale formed part of the ₱255,639,005.00 Revenues reflected in petitioner's Statement of Comprehensive Income for CY 2011.

However, petitioner's declared income in its ITR for CY 2011 amounted only to ₱253,696,155.81. The ₱1,942,849.19 difference was traced to the Interest Income already subjected to final tax pursuant to Section 27(D)(1) of NIRC of 1997, as amended, hence, must no longer be declared as part of gross income for normal income tax computation purposes.

From the foregoing, petitioner likewise satisfied the third requisite for claiming refund of its unutilized excess CWTs for CY 2011."[2]

Thus, the Court had already ruled, upon examination of relevant supporting documents, that petitioner was able to prove its entitlement to the claim for issuance of TCC in the amount of ₱31,425,887.88 representing petitioner's excess and unutilized CWTs for CY 2011.

Respondent further claims that petitioner is not entitled to the refund as the evidence it presented, i.e., certificates of creditable taxes withheld accomplished by its withholding agents showing the amount deducted and withheld from its income in support of the tax refund, does not constitute conclusive evidence of payment and remittance to the BIR of the withheld taxes on petitioner's income. Respondent claims that the act of withholding is one thing while the act of remittance is another thing. Respondent alleges that the best evidence or proof of remittance is the certification from the BIR's Revenue Accounting Division as to the fact of remittance of the tax

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[2] Decision promulgated on November 16, 2016, pp. 13-19.

withheld. It allegedly failed to prove that the creditable taxes withheld by the payors were indeed remitted to the BIR. Moreover, respondent claims that petitioner failed to present the various payors and withholding agents in order to establish the fact of withholding and remittances made.

In the case of *Commissioner of Internal Revenue vs. Philippine National Bank*[3], the Supreme Court stressed that proof of actual remittance is not a condition to claim for a refund of unutilized tax credits, as follows:

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

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

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> 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."

Moreover, in the same case, the Supreme Court ruled that it is not required for the person who executed and prepared the certificate of creditable tax withheld at source to be presented to prove the authenticity of the certificates, as follows:

> "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."

The Supreme Court has also addressed the issue regarding the presentation of the various withholding agents/payors to testify on the validity of the contents of the certificates of creditable tax withheld at source in the case of *Commissioner of Internal Revenue vs. Team [Philippines] Operations Corporation [formerly Mirant (Phils) Operations Corporations*[4], adopting the factual and legal findings of the CTA in Division and CTA En Banc as follows:

> "On the first ground, [petitioner] argues that [respondent] failed to present the various withholding agents/payors to testify on the validity of the contents of the Certificates of Creditable Tax Withheld at Source ("certificates"). Thus, the certificates presented by [respondent] are not valid. And even assuming that the

[4]G.R. No. 179260, April 2, 2014.

> certificates are valid, this Court cannot entertain the claim for refund/tax credit certificates because the certificates were not submitted to [petitioner].
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> [Petitioner's] arguments are untenable **since the certificates presented (*Exhibits "R", "S", "T", "U", "V", "W", and "X"*) were duly signed and prepared under penalties of perjury, the figures appearing therein are presumed to be true and correct. Thus, the testimony of the various agents/payors need not be presented to validate the authenticity of the certificates.**"

Hence, proof of actual remittance to the BIR of the taxes withheld as well as the testimonial evidence of the payors/withholding agents are not necessary to establish or prove the fact of withholding and remittance of taxes to BIR.

Substantial justice, equity and fair play take precedence over technicalities and legalisms. The government must keep in mind that it has no right to keep the money not belonging to it, thereby enriching itself at the expense of the law-abiding citizen or entities who have complied with the requirements of the law in order to forward the claim for refund. Under the principle of *solutio indebiti* provided in Article 2154 of the Civil Code, the CIR must return anything it has received.[5] If the State expects its taxpayers to observe fairness and honesty in paying their taxes, so must it apply the same standard against itself in refunding excess payments of such taxes. Indeed, the State must lead by its own example of honor, dignity and uprightness.[6]

Based on the foregoing considerations, the Court finds no cogent reasons to reverse its assailed Decision, finding petitioner entitled to the issuance of TCC in the amount of ₱31,425,887.88 representing petitioner's excess and unutilized CWTs for CY 2011.

WHEREFORE, premises considered, respondent's **Motion for Reconsideration** is **DENIED** for lack of merit.

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[5] *Winebrenner & Iñigo Insurance Brokers, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 206526, January 28, 2015.
[6] *BPI-Family Savings Bank, Inc. vs. Court of Appeals, et al.*, G.R. No. 122480, April 12, 2000.

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SO ORDERED.

CIELITO N. MINDARO-GRULLA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

ERLINDA P. UY
Associate Justice