REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

<u>SPECIAL SECOND DIVISION</u>

UNIVATION MOTOR PHILIPPINES, INC. (formerly NISSAN MOTOR PHILIPPINES, INC.), Petitioner,	**CTA CASE NO. 9575**
	Members:
- versus -	**CASTAÑEDA, JR.,** *Chairperson, and* **MANAHAN,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: OCT 29 2019 4:15 pm

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RESOLUTION

MANAHAN, *J.*:

For the Court's resolution are the following:

1. petitioner's **Motion for Reconsideration (RE: Decision dated June 21, 2019)**, filed on July 9, 2019, without respondent's comment despite notice as per Records Verification dated July 31, 2019; and

2. respondent's **Motion for Partial Reconsideration [re: Decision dated June 21, 2019]**, filed on July 9, 2019, with petitioner's **Comment (Re: Motion for Partial Reconsideration dated July 4, 2019)**, filed on July 25, 2019.

The parties move for reconsideration of the Court's Decision dated June 21, 2019 (assailed Decision), the dispositive portion of which reads:

> **WHEREFORE**, premises considered, the instant Petition for Review is hereby **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.
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> **SO ORDERED**.

Petitioner's Motion for Reconsideration

Petitioner submits that the Court erred in disallowing the amount of ₱1,391,951.06 out of its claim for refund of excess and unutilized creditable withholding taxes (CWT) for the following reasons:

1. Denial of petitioner's excess and unutilized CWT for calendar year (CY) 2014 constitutes unjust enrichment on the part of the government;

2. Failure of respondent to contest the admissibility of prior year's income tax return (ITR) is an admission of the validity of these documents, including the correctness of prior year's excess credits; and

3. Petitioner has proven, by preponderance of evidence, its entitlement to the entire amount of its claimed refund.

A. Denial of petitioner's excess and unutilized CWT for CY 2014 constitutes unjust enrichment on the part of the government

In the Assailed Decision, this Court disallowed petitioner's claim for refund in the amount of ₱268,956.65 for CY 2014 because the claimed CWTs were not supported by certificates and pertained to transactions in CY 2013.

Petitioner argues that, even assuming that the amount of CWTs pertained to CY 2013, instead of CY 2014, this assumption does not remove the fact that these amounts represent actual payments by petitioner. More importantly, 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 years.

To reiterate, jurisprudence and pertinent revenue regulations provide that a taxpayer must satisfy the following requirements in order to be entitled to a refund or issuance of tax credit certificate for excess/unapplied CWT:

1. The claim for refund must be filed within the two-year prescriptive period as provided under Sections 204(C) and 229 of the National Internal Revenue Code (NIRC) of 1997, as amended;

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.

Relative thereto, in the case of *Commissioner of Internal Revenue vs. Philippine National Bank*[1], the Supreme Court held that:

> **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.

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

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> **Thus, upon presentation of a withholding tax certificate complete in its relevant details and with a written statement that it was made under the penalties of perjury**, the burden of evidence then shifts to the Commissioner of Internal Revenue to prove that (1) the certificate is not complete; (2) it is false; or (3) it was not issued regularly. (*Emphasis supplied*)

Also, the Court *En Banc* ruled in the case of *Mermac, Inc. vs. Commissioner of Internal Revenue*[2] that claims for refund of creditable tax withheld shall only be given due course upon submission of BIR Form No. 2307 issued by the income-payor to the recipient-payee, to wit:

> On the outset, the third condition is imposed by Section 2.58.3(B) of Revenue Regulations (RR) No. 2-98, which states:
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> > Sec. 2.58.3. Claim for Tax Credit or Refund. —
> >
> > xxx xxx xxx
> >
> > (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 provided)
>
> Corollary to the condition set forth, the same RR No. 2-98 establishes the requirement on the part of the payor to furnish the payee the withholding tax statement using the prescribed form (BIR Form No. 2307), which shows the income payments made and the amount of taxes withheld. Otherwise, the failure of the payor to

[2] CTA EB No. 699, July 27, 2011.

furnish the same shall be a ground for mandatory audit, *viz.*:

> Sec. 2.58. RETURNS AND PAYMENT OF TAXES WITHHELD AT SOURCE. —
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> xxx xxx xxx
>
> (B) Withholding tax statement for taxes withheld. — **Every payor required to deduct and withhold taxes under these regulations shall furnish, in triplicate, each payee, whether individual or corporate, with a withholding tax statement, using the prescribed form (BIR Form No. 2307) showing the income payments made and the amount of taxes withheld therefrom**, for every month of the quarter, within twenty (20) days following the close of the taxable quarter employed by the payee in filing his/its quarterly income tax return. The payor, nonetheless, should always retain a copy of duly issued BIR Form 2307. Failure to furnish the same shall be a ground for the mandatory audit of payor's income tax liabilities (including withholding tax) upon verified complaint of the payee.

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The rules are clear. The income-payor, as the withholding agent, is required to furnish the recipient-payee of the statement of withholding or BIR Form No. 2307. And for purposes of claims for refund or tax credit of creditable income tax, the claim shall only be given due course when the income and withholding are established by a copy of the withholding tax statement or BIR Form No. 2307 issued by the income-payor to the recipient-payee.

Thus, it is clear from the foregoing that presentation of CWT certificates is crucial to petitioner's claim.

Basic is the rule that tax refunds are in the nature of tax exemptions and are to be construed *strictissimi juris* against the entity claiming the same.[3] The pieces of evidence presented entitling a taxpayer to an exemption are also *strictissimi* scrutinized and must be duly proven.[4] Hence, an applicant for a claim for tax refund or tax credit must not only prove entitlement to the claim but also compliance with all the documentary and evidentiary requirements.[5]

B. Failure of respondent to contest the admissibility of prior year's ITR is an admission of the validity of these documents, including the correctness of prior year's excess credits

Petitioner posits that the Court erred in disallowing petitioner's prior year's excess tax credits on the basis of petitioner's failure to present the CWT certificates from prior years dating as far back as CY 2005, notwithstanding failure of respondent to object to petitioner's ITRs reflecting the prior year's excess tax credits.

In the assailed Decision, the Court held as follows:

> To substantiate the CWTs from prior years, petitioner submitted in evidence various Certificates of Creditable Tax Withheld at Source (BIR Form No. 2307) but pertaining to CY 2008 only. While petitioner was able to substantiate the entire CWTs for CY 2008 in the amount of ₱16,024,713.13, the same is not sufficient to cover the total taxes due for the years 2008 to 2013, as shown below:

CWTs for 2008		₱ 16,024,714.00
Less: Income Taxes Due		
CY 2008	₱ 6,188,219.00	
CY 2009	2,527,717.78	
CY 2010	2,341,683.48	

[3] *Philippine Geothermal, Inc., vs. The Commissioner of Internal Revenue*, G.R. No. 154028, July 29, 2005.
[4] *Kepco Philippines Corporation vs. Commissioner of Internal Revenue*, G.R. No. 179961, January 31, 2011.
[5] *Eastern Telecommunications Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 183531, March 25, 2015.

CY 2011	1,344,538.02	
CY 2012	1,698,158.90	
CY 2013	₱2,089,710.00	16,190,028.08
Tax Still Due		**₱(165,314.08)**

However, petitioner argues that its prior year's tax credits are duly supported by its ITRs. These ITRs, having been made under the penalty of perjury, are allegedly presumed correct and thus, sufficient to prove petitioner's prior year's excess credits in the absence of proof to the contrary. Citing the case of *SMI-ED Philippines Technology, Inc. vs. Commissioner of Internal Revenue*[6], petitioner claims that no less than the Supreme Court ruled that tax returns filed with the Bureau of Internal Revenue (BIR) are presumed correct and made in accordance with the law.

Moreover, petitioner points out that the CWT certificates were not absent *per se*. In the interest of time and preservation of the Court's resources, petitioner deemed it sufficient to provide the Court with its ITRs instead of presenting all of the prior years' CWT certificates from 2005 to 2008, which are allegedly impossible to retrieve.

According to petitioner, considering that for CY 2008 alone, petitioner's documentary evidence amount to two hundred and twenty exhibits ("P-32-1" to "P-32-220"), requiring petitioner to submit all documents starting CY 2005 might give the Court difficulty in storing such documents and assessing each one of them.

Further, petitioner insists that respondent's failure to object or contest the admissibility of the prior year's ITR constitutes as an admission of the validity of these documents.

Petitioner also points out that as explained by the Court's Presiding Justice Del Rosario in his Concurring Opinion in the case of *Marionnaud Philippines, Inc. vs. Commissioner of Internal Revenue*[7], the presentation of CWT certificates is not indispensable in proving the existence of prior year's excess tax credits, since the existence of prior year's excess tax credits is not the actual subject of the claim for refund. Furthermore, he opined that the fact that the CIR failed to make any objection to petitioner's offer of prior year's ITR renders them admissible.

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[6] G.R. No. 175410, November 12, 2014.
[7] CTA Case No. 8807, February 8, 2017.

The Court disagrees.

It is clear that the subject claim pertains to "overpaid taxes" which the petitioner/taxpayer would like to refund based on the relevant provisions of the law. First and foremost, the overpayment must be proven. The excess credits may be sourced from prior year's excess credits and those that may have been withheld in the current year. The remaining balance after these tax credits have been applied to the current income tax liability is, strictly speaking, the overpaid and refundable amount. Hence, if the Court requires the substantiation of the current year's tax credit, the same requirement should be similarly applied to the prior year's excess credit.[8]

Again, a claim for tax refund or credit, like a claim for tax exemption, is construed strictly against the taxpayer.[9] In this case, since petitioner opted to claim a refund of its excess CWT for CY 2014 in its entirety, *i.e.*, undiminished by any income tax liability, it becomes incumbent upon petitioner to prove that it has sufficient prior year's excess CWT to cover its income tax liability for CY 2014. Failing to do so, the income tax liability for CY 2014 shall be offset with the substantiated unutilized CWT for 2014.

Furthermore, even if petitioner submitted the prior years' ITRs, the same is not enough to prove that petitioner had prior year's excess credits. A cursory examination thereof would reveal that it merely reflects the amounts of the purported CWTs, but, it does not, in any way, substantiate every minute aspect of each of the items composing the said amounts. Without the corresponding CWT certificates to support its prior years' tax credits, the said amount cannot be applied against the reported income tax liability of petitioner for the CY 2014.

In other words, there is a need to substantiate its claim for refund despite respondent's failure to object or contest the submitted annual ITRs of the petitioner.

The general rule is that claimants of tax refunds bear the burden of proving the factual basis of their claims. This is because tax refunds are in the nature of tax exemptions, the statutes of which

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[8] *Commissioner of Internal Revenue vs. Philippine National Bank,* CTA EB Case Nos. 1615 & 1617 (CTA Case No. 8636), April 25, 2018.

[9] *Silicon Philippines, Inc. (formerly Intel Philippines Manufacturing, Inc.) vs. Commissioner of Internal Revenue,* G.R. Nos. 184360 & 184361 and 184384, February 19, 2014.

are construed *strictissimi juris* against the taxpayer and liberally in favor of the taxing authority.[10]

C. Petitioner has proven, by preponderance of evidence, its entitlement to the entire amount of its claimed refund

Petitioner points out that being civil in nature, the quantum of evidence required to sustain petitioner's claim for CWT refund is a mere preponderance of evidence. This concept was allegedly explained by the Supreme Court in *Republic of the Philippines vs. Court of Appeals*[11].

Indeed, only the preponderance of evidence threshold as applied in ordinary civil cases is needed to substantiate a claim for tax refund proper.[12] Likewise, well-settled is the rule that the burden of proof rests upon the taxpayer to establish by *sufficient* and *competent* evidence, its entitlement to a claim for refund.[13] Hence, as applied to a claim for tax refund, the preponderance of evidence threshold is met when sufficient and competent evidence is presented to prove such claim. The taxpayer claiming a tax credit or refund has the burden of proof to establish the factual basis of that claim. In the case of *Commissioner of Internal Revenue vs. Far East Bank & Trust Company (now Bank of the Philippine Islands)*[14], the Supreme Court held that:

> ***The burden is on the taxpayer to prove its entitlement to the refund.***
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> 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

[10] *Philippine Phosphate Fertilizer Corporation vs. Commissioner of Internal Revenue*, G.R. No. 141973, June 28, 2005.
[11] G.R. No. 84966, November 21, 1991.
[12] *AT&T Communications Services Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 182364, August 3, 2010.
[13] *Philippine Geothermal, Inc. vs. The Commissioner of Internal Revenue*, G.R. No. 154028, July 29, 2005.
[14] G.R. No. 173854, March 15, 2010.

disprove a taxpayer's 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 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 a tax refund.

Hence, for failing to prove its entitlement to a tax refund, respondent's claim must be denied. Since tax refunds partake of the nature of tax exemptions, which are construed *strictissimi juris* against the taxpayer, evidence in support of a claim must likewise be *strictissimi* scrutinized and duly proven.

In relation thereto, in the case of *Winebrenner & Iñigo Insurance Brokers, Inc. vs. Commissioner of Internal Revenue*[15], the Supreme Court discussed the concept of preponderance of evidence in relation to the taxpayer's burden of proof to establish its entitlement to a refund in this manner:

It must be emphasized that once the requirements laid down by the NIRC have been met, a claimant should be considered successful in discharging its burden of proving its right to refund. Thereafter, the burden of going forward with the evidence, as distinct from the general burden of proof, shifts to the opposing party, that is, the CIR. It is then the turn of the CIR to disprove the claim by presenting contrary evidence which could include the pertinent ITRs easily obtainable from its own files.

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This mindset ignores the rule that the CIR has the equally important responsibility of contradicting petitioner's claim by presenting proof readily on hand

[15] G.R. No. 206526, January 28, 2015.

> once the burden of evidence shifts to its side. **Claims for refund are civil in nature and as such, petitioner, as claimant, though having a heavy burden of showing entitlement, need only prove preponderance of evidence in order to recover excess credit in cold cash.** To review, "[P]reponderance of evidence is [defined as] the weight, credit, and value of the aggregate evidence on either side and is usually considered to be synonymous with the term 'greater weight of the evidence' or 'greater weight of the credible evidence.' It is evidence which is more convincing to the court as worthy of belief than that which is offered in opposition thereto. (*Emphasis supplied*)

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 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.

Considering the foregoing, the Court finds no cogent reason to modify or reverse the assailed Decision, with respect to petitioner's motion.

Respondent's Motion for Partial Reconsideration

In his motion, respondent argues that the Court erred in ruling that petitioner is entitled to the claim for refund of alleged excess and unutilized CWT for CY 2014. Respondent claims that petitioner failed to exhaust administrative remedies before elevating the case to this Court. Hence, respondent contends that the Court should have dismissed the instant petition for failure of petitioner to exhaust administrative remedies. According to respondent, the filing of the petition for review to this Court must be due to the denial by respondent of petitioner's claim or respondent's inaction which is tantamount to a denial of petitioner's claim.

Moreover, respondent claims that petitioner failed to submit the required documents in support of its claim for refund. Respondent also submits that petitioner's documentary evidence failed to sufficiently establish the direct linkage between the creditable withholding tax and the income as reflected in the Annual Income Tax Return. Likewise, respondent argues that it is incumbent upon petitioner to prove actual remittance of the alleged withheld taxes to the BIR. Respondent also avers that petitioner failed to comply with the requirements set forth under Revenue Regulations (RR) No. 53-98 and RR No. 2-2006. Respondent stresses that statutes that grant tax exemptions are construed *strictissimi juris* against the taxpayer.

In its comment, petitioner counters that it was constrained to file a judicial claim for refund due to respondent's inaction. Petitioner also argues that the presentation of the Certificates of Creditable Tax Withheld at Source (BIR Form No. 2307) issued by the withholding agents constitutes sufficient proof of the existence and validity of a taxpayer's CWT and that the submission of complete supporting documents in the administrative level is not a prerequisite to the grant of the judicial claim for refund. Moreover, petitioner avers 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 or erroneously paid taxes.

The Court finds respondent's arguments unmeritorious.

Contrary to respondent's argument, it would have been fatal for petitioner not to file its judicial claim within 2 years from the date of payment of the tax as the same is required under Section 229 of the NIRC of 1997, as amended. In the case of *CBK Power Company Ltd. vs. Commissioner of Internal Revenue*[16], the Supreme Court explained that both the administrative and judicial claims for refund of excess and unutilized CWT must be filed within the two-year prescriptive period provided under Sections 204(C) and 229, NIRC of 1997, to wit:

> Sections 204 and 229 of the NIRC pertain to the refund of erroneously or illegally collected taxes. Section 204 applies to administrative claims for refund, while Section 229 to judicial claims for refund. In both instances, the taxpayer's claim must be filed within two (2) years from the date of payment of the tax or penalty.

[16] G.R. Nos. 193383-84 & 193407-08, January 14, 2015.

However, Section 229 of the NIRC further states the condition that a judicial claim for refund may not be maintained until a claim for refund or credit has been duly filed with the Commissioner. xxx

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With respect to the remittance filed on March 10, 2003, **the Court agrees with the ratiocination of the CTA *En Banc* in debunking the alleged failure to exhaust administrative remedies. Had CBK Power awaited the action of the Commissioner on its claim for refund prior to taking court action knowing fully well that the prescriptive period was about to end, it would have lost not only its right to seek judicial recourse but its right to recover the final withholding taxes it erroneously paid to the government thereby suffering irreparable damage**.

Also, while it may be argued that, for the remittance filed on June 10, 2003 that was to prescribe on June 10, 2005, CBK Power could have waited for, at the most, three (3) months from the filing of the administrative claim on March 4, 2005 until the last day of the two-year prescriptive period ending June 10, 2005, that is, if only to give the BIR at the administrative level an opportunity to act on said claim, the Court cannot, on that basis alone, deny a legitimate claim that was, for all intents and purposes, timely filed in accordance with Section 229 of the NIRC. **There was no violation of Section 229 since the law, as worded, only requires that an administrative claim be priorly filed.**

In the foregoing instances, attention must be drawn to the Court's ruling in *P.J. Kiener Co., Ltd. v. David* (*Kiener*), wherein it was held that in no wise does the law, *i.e.*, Section 306 of the old Tax Code (now, Section 229 of the NIRC), imply that the Collector of Internal Revenue first act upon the taxpayer's claim, and that the taxpayer shall not go to court before he is notified of the Collector's action. In *Kiener*, the Court went on to say that the claim with the Collector of Internal Revenue 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, *viz.*:

> The controversy centers on the construction of the aforementioned section of the Tax Code which reads:
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>> SEC. 306. 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 excessive or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Collector of Internal Revenue; 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 begun after the expiration of two years from the date of payment of the tax or penalty.
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> The preceding provisions seem at first blush conflicting. It will be noticed that, whereas the first sentence requires a claim to be filed with the Collector of Internal Revenue before any suit is commenced, the last makes imperative the bringing of such suit within two years from the date of collection. But the conflict is only apparent and the two provisions easily yield to reconciliation, which it is the office of statutory construction to effectuate, where possible, to give effect to the entire enactment.

> To this end, and bearing in mind that the Legislature is presumed to have understood the language it used and to have acted with full idea of what it wanted to accomplish, it is fair and reasonable to say without doing violence to the context or either of the two provisions, that by the first is meant simply that the Collector of Internal Revenue shall be given an opportunity to consider his mistake, if mistake has been committed, before he is sued, but not, as the appellant contends that pending consideration of the claim, the period of two years provided in the last clause shall be deemed interrupted. **Nowhere and in no wise does the law imply that the Collector of Internal Revenue must act upon the claim, or that the taxpayer shall not go to court before he is notified of the Collector's action. x x x. We understand the filing of the claim with the Collector of Internal Revenue to be 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.** x x x. (Emphases supplied)

> That being said, the foregoing refund claims of CBK Power should all be granted, and, the petition of the Commissioner in G.R. Nos. 193407-08 be denied for lack of merit. (*Emphasis supplied*)

Moreover, the Court does not agree with respondent's argument that it is incumbent upon petitioner to prove actual remittance of the alleged withheld taxes.

In *Commissioner of Internal Revenue vs. Philippine National Bank*[17], the Supreme Court held that 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 NIRC, as amended, it is the payor-

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

withholding agent, and not the payee-refund claimant, who is vested with the responsibility of withholding and remitting income taxes.

The reason for such ruling was extensively discussed in *Commissioner of Internal Revenue vs. Asian Transmission Corporation*[18], where the Supreme Court, citing the Court *En Banc's* explanation, held that:

> x x x 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 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, x x x 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.** We stress that the pertinent provisions of law and the established jurisprudence evidently demonstrate that **there is no need for the claimant, respondent in this case, to prove actual remittance by the withholding agent (payor) to the BIR**. (*Emphasis Supplied*)

As pointed out by petitioner, RR No. 53-98 cited by respondent is non-existent. Even if respondent was referring to Revenue

[18] G.R. No. 179617, January 19, 2011.

Memorandum Order (RMO) No. 53-98, or the "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", the same is not applicable. First, there was no allegation of an audit being conducted on petitioner; second, even if RMO No. 53-98 is applicable, there is nothing therein that requires submission of the complete documents enumerated in RMO No. 53-98 for a grant of a refund or credit and third, if indeed petitioner failed to submit complete documents, there is nothing in the records which would show that the BIR informed petitioner that the submitted documents are incomplete or that petitioner is required to submit additional documents. In *Pilipinas Total Gas, Inc. vs. Commissioner of Internal Revenue*[19], the Supreme Court held that:

> 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)*:
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>> The CIR's reliance on RMO 53-98 is misplaced. <u>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.</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 x x x." 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

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[19] G.R. No. 207112, December 8, 2015.

> documents are required to be submitted by the taxpayer "if applicable."
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> 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 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.

In view of the foregoing, the Court likewise denies respondent's motion.

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.

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

I CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice