**REPUBLIC OF THE PHILIPPINES**
**COURT OF TAX APPEALS**
**QUEZON CITY**

***EN BANC***

**COMMISSIONER OF INTERNAL REVENUE,**
*Petitioner,*

-*versus*-

**PPI PRIME VENTURE, INC.,**
*Respondent.*

**CTA *EB* NO. 1666**
(CTA Case No. 8795)

Present:

**DEL ROSARIO,** *P.J.,*
**CASTAÑEDA, JR.,**
**UY,**
**FABON-VICTORINO,**
**MINDARO-GRULLA,**
**RINGPIS-LIBAN,** *and*
**MANAHAN,** *JJ.*

Promulgated:

NOV 23 2018
2:40 p.m.

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# DECISION

***MANAHAN, J.:***

Before the Court of Tax Appeals *En Banc* is the instant Petition for Review[1] filed on June 2, 2017 via registered mail, seeking the reversal of the Decision dated November 16, 2016 and the Resolution dated May 22, 2017, promulgated by the First Division of this Court (Court in Division) in CTA Case No. 8795 entitled, *"PPI Prime Venture, Inc., vs. Commissioner of*

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[1] EB Docket,pp. 1-7.

*Internal Revenue,* the dispositive portions of which read as follows:

**Decision dated November 16, 2016**

> "**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 P31,425,887.88 representing petitioner's excess and unutilized creditable withholding taxes for calendar year 2011.
>
> **SO ORDERED.**

**Resolution dated May 22, 2017**

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

## THE FACTS

The facts, as found by the Court in Division, are as follows:

> "Petitioner PPI Prime Venture, Inc. is a corporation duly organized and existing under the laws of the Republic of the Philippines, with principal place of business located in Makati City. It is duly registered with the Revenue District Office (RDO) No. 50 of the Bureau of Internal Revenue (BIR), with Taxpayer Identification No. (TIN) 000-485-082-000. Petitioner is primarily engaged in the business of owning, holding, purchasing, acquiring, using, selling, transferring, and/or disposing real and personal properties of every kind and description.
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> Respondent is the duly appointed Commissioner of Internal Revenue empowered to perform the duties of her office, including, among others, to act on and approve claims for refund or tax credit as provided by law. She holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.
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> On April 13, 2012, petitioner filed its original Annual Income Tax Return (ITR) for CY 2011 with the BIR.

Petitioner reported gross income in the amount of P253,696,155.81 and net taxable income of P152,217,693.49. On January 27, 2014, petitioner filed its amended Annual ITR for CY 2011 in order to report its alleged excess and unutilized CWT in the amount of P31,425,888.00.

On February 27, 2014, petitioner filed with the BIR its administrative claim for refund or issuance of TCC in the amount of P31,425,888.00 allegedly representing its excess and unutilized CWT for CY 2011.

There being no action taken by respondent on petitioner's administrative claim for refund or issuance of TCC, petitioner filed the present Petition for Review before this Court on April 8, 2014.

Respondent filed her Answer through registered mail on June 5, 2014 and received by the Court on June 17, 2014, interposing the following Special and Affirmative Defenses:

4.Respondent reiterates and repleads the preceding paragraphs of the Answer as part of her Special and Affirmative Defenses which are discussed hereunder;

5. Petitioner's claim for refund is still subject to investigation by the Bureau of Internal Revenue;

6. Petitioner failed to demonstrate that the tax, which is the subject of this case, was erroneously or illegally collected;

7.It is explicitly stated under Section 76 of the Tax Code, as amended, that once a taxpayer chooses the option to carry over, it shall be irrevocable for that taxable period and no application for a tax refund or tax credit certificate shall be allowed. Petitioner, therefore, must prove that it did not carry over its 2011 alleged unutilized creditable withholding taxes to the succeeding taxable quarters/years otherwise, petitioner is precluded from claiming a cash refund or for issuance of tax credit certificate of its excess tax credit for taxable year 2011.

8. Taxes paid and collected are presumed to be made in accordance with the laws and regulations, hence not refundable;

9. In an action for tax credit or refund, the burden is upon the taxpayer to prove that he is entitled thereto, and failure to discharge the said burden is fatal to the claim.

10. It is incumbent upon petitioner to show that it has complied with the provisions of Section 76 in relation to Sections 204 and 229 of the 1997 Tax Code, as amended, including Revenue Regulations No. 2-98, as amended;

11. Claims for refund are construed strictly against the claimant, the same partake the nature of exemption from taxation and as such, they are looked upon with disfavor.

Respondent filed her Pre-Trial Brief through registered mail on August 19, 2014 and received by the Court on August 27, 2014; while petitioner filed its Pre-Trial Brief on September 29, 2014. The Pre-Trial Conference was scheduled on August 28, 2014, but was re-set to October 2, 2014.

The parties filed their Joint Stipulation of Facts and Issues on October 22, 2014, which was approved by the Court in the Resolution dated October 30, 20143. The Court issued the Pre-Trial Order on November 7, 2014.

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Petitioner filed an Omnibus Motion (I) for Reconsideration (Re: Resolution dated May 25, 2015); and (II) For Leave of Court to Present Additional Evidence on June 17, 2015. Respondent, however, failed to file her Comment to petitioner's Omnibus Motion.

On July 1, 2015, petitioner filed a Motion to Defer Filing of Memorandum in view of the pendency of its Omnibus Motion. The Court granted petitioner's Motion to Defer Filing of Memorandum via Resolution dated July 9, 2015.

In the Resolution dated September 16, 2015, the Court denied petitioner's Motion for Reconsideration (Re: Resolution dated May 25, 2015) and Motion for Leave of Court to Present Additional Evidence.

Petitioner filed a Motion for Extension of Time to File Memorandum on October 21, 2015. On the same date, petitioner likewise filed a Manifestation with Tender of Excluded Evidence.

> Respondent filed her Memorandum though registered mail on October 15, 2015 and received by the Court on October 22, 2015.
>
> In the Order dated October 26, 2015, the Court noted the submission of respondent's Memorandum and further granted petitioner's Motion for Extension of Time to File Memorandum. Thereafter, petitioner filed its Memorandum on November 23, 2015."

In the assailed Decision[2], promulgated on November 16, 2016, the Court in Division granted the Petition for Review and ordered the respondent (CIR) therein to issue a tax credit certificate in the amount of P31,425,887.88 representing petitioner's excess and unutilized creditable withholding taxes (CWT) for calendar year (CY) 2011.

Aggrieved, herein petitioner Commissioner of Internal Revenue filed on December 2, 2016, a Motion for Reconsideration, which was denied by the Court in a Resolution dated May 22, 2017.

On June 2, 2017, petitioner filed a Petition for Review with the Court *En Banc* via registered mail.

On August 17, 2017, the Court issued a Resolution ordering respondent to file its Comment on the Petition for Review within ten (10) days from receipt thereof, after which the parties were directed to submit their respective memoranda.

On September 15, 2018, respondent filed a *Motion for Additional Time to File Comment* which was granted by the Court.

On October 5, 2017, respondent filed its *Comment/Opposition*[3] to petitioner's Petition for Review.

On December 20, 2017, respondent submitted its Memorandum[4] while petitioner failed to file his Memorandum

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[2] EB Docket, pp.13-30.
[3] EB Docket, pp. 64-85.
[4] EB Docket, pp.91-113.

as indicated in the Records Verification of this Court dated January 4, 2018.

The instant Petition for Review was submitted for decision on January 29, 2018. [5]

Hence this Decision.

## THE ISSUE

The principal issue in this case is whether or not the Court in Division erred in granting the claim for refund of herein respondent consisting of alleged excess and unutilized CWT for CY 2011.

**Petitioner's Arguments:**

A careful perusal of the Petition for Review reveals that petitioner's main arguments against the grant of the claim for refund in the assailed Decision are as follows:

1. Respondent 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;
2. The certificates of creditable taxes withheld and accomplished by its withholding agents showing the amount deducted and withheld from its income do not constitute conclusive evidence of payment and remittance to the Bureau of Internal Revenue (BIR) of the withheld taxes on respondent's income.

We elaborate.

In claims for refund of excess CWT, the dispute most often centers on the sufficiency of the documentary evidence to prove the said excess and unutilized taxes and it is for this reason that petitioner disagrees with the assailed Decision which granted the claim for refund. Petitioner asserts that respondent failed to present documents such as official receipts, sales invoices, detailed general ledgers, sales register,

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[5] EB Docket, page 65.

reconciliation schedules to effectively show that the claimed CWT forms part of the taxable gross income as reflected in the Annual Income Tax Returns (ITRs) covered by the said claim.

Petitioner also claims that respondent failed to show adequate proof of actual remittance of the withheld taxes to the BIR. He maintains that the act of withholding is different from the act of remitting the said taxes and that the best evidence of remittance is a certification from the BIR's Revenue Accounting Division showing the fact of remittance of the taxes supposedly withheld. According to petitioner, respondent failed to prove that the creditable taxes withheld by the payors were indeed remitted to the BIR. Moreover, petitioner challenges the evidentiary value of the documents offered by respondent relegating them into mere hearsay because respondent failed to present the various payors and withholding agents to testify in Court in order to establish the fact of withholding and remittances made.

Petitioner belittles the probative weight of the testimony of respondent's Senior Manager for Corporate Accounting, Ms. Maria Susana C. Bables, because she was not the signatory to the certifications presented in Court. It is petitioner's position that Ms. Bables' testimony should have been limited to those facts of which she has personal knowledge hence any attempt to verify the contents of such documents through her, is again relegated to the category of hearsay evidence.

**Respondent's Counter-Arguments:**

Respondent posits that it presented sufficient evidence to prove entitlement to the refund of its excess and unutilized CWT for CY 2011 and disputes the claim of petitioner that the Certificates of Creditable Taxes Withheld at Source do not constitute conclusive evidence of payment and remittance to the BIR of the withheld taxes. On the contrary, petitioner counters that these certifications are sufficient proof of the existence and validity of a taxpayer's CWT, as proven by relevant jurisprudence.

Respondent submits that the subject CWT refers to income reported in respondent's original and amended Annual ITR for CY 2011 derived from respondent's sale of a parcel of land located at Lots 10 and 11 National Road, Pamplona Uno, Las Pinas (the "Property") to DMCI Project Developers, Inc.

(DMCI) with a selling price of Php263,432,000.00, pursuant to the Deed of Absolute Sale executed by respondent with the latter in December 2011.[6] As further alleged by respondent, the CWT in the amount of Php47,231,808.00 was derived from the CWT on the sale of the property to DMCI on December 14, 2011 which was reported in its Annual ITR for CY 2011.

In its Memorandum, respondent listed down the relevant documentary evidence to prove that the income from which the CWTs being claimed and withheld was reported as part of the gross income declared in respondent's amended Annual ITR for CY 2011, which the Court in the assailed Decision found sufficient, leading to the grant of the instant claim for refund.

Lastly, respondent proposes that the rule on strict construction of claims for refund against the taxpayer does not apply to claims for refund of erroneous or overpaid taxes because they do not partake of the nature of tax exemption, rather they are founded on the legal principle of *solutio indebiti* which obligates the return or retribution of what has been wrongly received.

On the basis of the foregoing reasons, respondent prays that the Petition for Review filed by the Commissioner of Internal Revenue be denied for lack of merit.

## RULING OF THE COURT EN BANC

Let us first look at the timeliness of the filing of the Petition for Review.

On November 18, 2016 petitioner CIR received the Decision of the Court in Division dated November 16, 2018. On December 2, 2016, petitioner CIR filed a Motion for Reconsideration of the said Decision via registered mail. On May 22, 2017, the Court in Division issued a Resolution denying the Motion for Reconsideration which was received by petitioner CIR on May 24, 2017.

From receipt of the said Resolution on May 24, 2017, the petitioner had fifteen (15) days within which to file the Petition for Review.

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[6] Paragraph 17 of petitioner's Memorandum, EB Docket, page 96.

On June 2, 2017, the CIR filed the instant Petition for Review via registered mail. Hence this Petition for Review was timely filed.

We now proceed with the determination of the merits of the case.

Claims for refund of alleged excess and/or unutilized CWT finds legal basis in Section 76 of the 1997 National Internal Revenue Code (NIRC), quoted hereunder for reference:

> Section 76. *Final Adjustment Return* . – Every corporation liable to tax under Section 27 shall file a final adjustment return covering the total taxable income for the preceding calendar or fiscal year. If the sum of the quarterly tax payments made during the said taxable year is not equal to the total tax due on the entire taxable income of that year, the corporation shall either:
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> (A) Pay the balance of the tax still due; or
> (B) Carry over the excess credit; or
> (C) Be credited or refunded with the excess amount paid, as the case may be.
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> In case the corporation is entitled to a tax credit or refund of the excess estimated quarterly income taxes paid, the excess amount shown on its final adjustment return may be carried over and credited against the estimated quarterly income tax liabilities for the taxable quarters of the succeeding taxable years. Once the option to carry over and apply the excess quarterly income tax due for the taxable quarters of the succeeding taxable years has been made, such option shall be considered irrevocable for that taxable period and no application for cash refund or issuance of a tax credit certificate shall be allowed therefor."

As implemented by Section 2.58.3 of Revenue Regulations (RR) No. 02-98, the requisites for claiming refund or a TCC for unutilized CWT are as follows:

1. The claim for refund must be filed with the Commissioner of Internal Revenue within the two-year prescriptive period from the date of payment of the tax, as prescribed under Section 204 ( C ), in relation to Section 229 of the 1997 NIRC, as amended;
2. It must be shown in the return of the recipient that the income payment received was declared as part of the gross income; and

3. The fact of withholding must be established by a copy of a statement duly issued by the payor to the payee showing the amount paid and the amount of the tax withheld therefrom.

The above requisites have been affirmed and applied by a myriad of cases through the years but the types of evidence to prove compliance with said requisites have evolved as new issues arise largely due to the peculiar circumstances of each case brought before the courts.

In its Petition for Review, petitioner does not question the legal merits of the claim for refund of excess and unutilized CWT but instead harps on the insufficiency of the evidence to prove compliance with some of the aforementioned requisites. Neither does the petitioner take issue with the timeliness of the filing of the claim for refund both in the administrative and judicial levels.

First, petitioner alleges that respondent failed to present the documents to prove that the income payments related to the CWT formed part of the taxable gross income in the income tax return which refers to the aforementioned second requisite.

The records and the evidence of this case belie the claim of petitioner.

It is well-settled that in claims for refund of excess tax credits, the income upon which taxes were withheld must be included in the return of the recipient in compliance with the second requisite mentioned earlier. It is also well to point out that it is incumbent upon the taxpayer to prove compliance with the aforesaid requisites.

From the evidence adduced by respondent, the Court in Division was able to trace the income declared in respondent's Statement of Comprehensive Income as part of its Audited Financial Statements for CY 2011 and presented as Exhibit "P-16-2".[7] We quote relevant portions of the assailed Decision as follows:

> "As to the third requisite, records show that the tax credits earned by petitioner in CY 2011 arose form a sale of land to DMCI Project Developers, Inc. with a selling

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[7] Court Docket, Volume I, page 569.

> price of P263,432,000.00, 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 P15,805,920.00 was withheld by DMCI as evidenced by BIR Form No. 2307. However, since the fair market value of the land was P787,196,800.00 as assessed by respondent DMCI was required to withhold a total of P47,231,808.00. Hence, DMCI remitted an additional P31,425,888.00 withholding tax on September 17, 2013 and issued to petitioner another BIR Form No. 2307 for the said amount.
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> The said sale pertains to petitioner's Investment Property with book value amounting to P10,546,744.00 which when deducted from the selling price of P263,432,000.00 resulted in a gain on sale amounting to P252,885,256.00. **The gain on sale formed part of the P255,639,005.00 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 P253,696,155.81. The P1,942,849.19 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 the gross income for normal income tax computation purposes." (emphasis supplied)

The second argument of petitioner involves the alleged failure of respondent to prove the fact of remittance of the taxes withheld to the BIR. Petitioner maintains that the certificates of creditable tax withheld do not constitute conclusive evidence of payment and remittance to the BIR and that the testimonies of the various payors and withholding agents are required to prove remittance, which respondent failed to do.

The Court *En Banc* does not agree with the contention of petitioner.

Sections 2.58 (B) and 2.58.3 of Revenue Regulations No. 2-98 which implemented Section 76 of the 1997 NIRC provides for the ways and means to establish the fact of withholding, thus:

> Section 2.58. *Returns and Payment of Taxes Withheld at Source.* – ~~~

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(B) *Withholding tax statement for taxes withheld.* – Every payor required to deduct and withhold taxes under these regulations shall furnish each payee, whether individual or corporate, with a withholding tax statement, using the prescribed form (BIR For 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. Upon request of the payee, however, the payor must furnish such statement to the payee simultaneously with the income payment. For final withholding taxes, the statement should be given to the payee on or before January 31 of the succeeding year.

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Section 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.

**Proof of remittance is the responsibility of the withholding agent."** (emphasis supplied)

It is clear from the aforequoted provisions that the taxpayer does not have to prove actual remittance of the taxes to the BIR. It is sufficient that the certificate of creditable tax withheld at source is presented in evidence to prove that taxes were indeed withheld. The Supreme Court, in the case of *Commissioner of Internal Revenue vs. PNB*,[8] ruled on the matter, in this wise, thus:

"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**

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

**presented and to testify personally to prove authenticity of the certificates.**

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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."** (emphasis supplied)

**WHEREFORE,** in light of the foregoing considerations, the Petition for Review filed by the Commissioner of Internal Revenue in CTA EB No. 1666 is **DENIED** for lack of merit. The assailed Decision dated November 16, 2016 and the Resolution dated May 22, 2017 are hereby **AFFIRMED.**

**SO ORDERED.**

Catherine T. Manahan

**CATHERINE T. MANAHAN**
Associate Justice

**WE CONCUR:**

**ROMAN G. DEL ROSARIO**
Presiding Justice

Juanito C. Castañeda, Jr.

**JUANITO C. CASTAÑEDA, JR.**
Associate Justice

**(On Leave)**

**ERLINDA P. UY**
Associate Justice

**(On Leave)**

**ESPERANZA R. FABON-VICTORINO**
Associate Justice

Cielito N. Mindaro-Grulla

**CIELITO N. MINDARO-GRULLA**
Associate Justice

**MA. BELEN M. RINGPIS-LIBAN**
Associate Justice

## CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the conclusions in the above Decision have been reached in consultation with the members of the Court *En Banc* before the case was assigned to the writer of the opinion of the Court.

**ROMAN G. DEL ROSARIO**
Presiding Justice