REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

SPECIAL FIRST DIVISION

MCKINSEY & CO. (PHILS.),
Petitioner,

-*versus*-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 10281

Members:

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

Promulgated:

OCT 03 2023 2:15PM

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RESOLUTION

DEL ROSARIO, P.J.:

This resolves respondent's **Motion for Partial Reconsideration** filed *via* registered mail on June 29, 2023, with petitioner's **Comment/Opposition (Re: Motion for Partial Reconsideration dated 29 June 2023) with Motion to Expunge** filed on July 17, 2023, which was submitted for resolution in the Minute Resolution dated July 26, 2023.

Respondent seeks the partial reconsideration of the Court's Decision promulgated on May 30, 2023 (assailed Decision), the dispositive portion of which reads:

> "**WHEREFORE,** premises considered, the present Petition for Review is **PARTIALLY GRANTED**. Accordingly, respondent Commissioner of Internal Revenue is ordered to **REFUND or ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner McKinsey & Co. (Phils.) in the total amount of ₱66,027,287.10, representing its excess and unutilized Creditable Withholding Taxes for calendar years 2017 and 2018, respectively.
>
> **SO ORDERED.**"

Respondent faults the Court in granting the partial refund in favor of petitioner in the amount of ₱66,027,287.10. Respondent argues the following:

1. The Court has no jurisdiction to take cognizance of petitioner's judicial claim for refund for calendar year (CY) 2017 as petitioner filed its claim for refund beyond the prescriptive period; and,

2. Assuming that the Petition for Review is timely filed, petitioner is not entitled for a refund of creditable withholding tax (CWT) for CY 2017 due to following reasons:

   (i) The CWT in the amount of ₱9,921,287.10 from income payment of ₱66,141,914.00 was not mentioned nor discussed in the Judicial Affidavit of Ms. Elena Cabahug as being part of the amount of ₱104,000,000.00. Considering that petitioner failed to show that the income in the amount of ₱66,141,914.00 from which the withholding of the amount of ₱9,921,287.10 was made was declared as part of the gross income for CY 2017 or CY 2016, the same CWT in the amount of ₱9,921,287.10 must be disallowed; and,

   (ii) The Annual Income Tax Returns (Annual ITR) and the Certificates of Creditable Tax Withheld at Source [or BIR Form No.] 2307 for CYs 2017 and 2018 failed to show that they were executed under the pain of perjury and made under oath.

In its Comment/Opposition, petitioner prays for the Court to expunge or to deny respondent's motion. It counter-argues the following:

1. The Motion for Partial Reconsideration should be dismissed as it is a *pro forma* motion;

2. The Court has jurisdiction to take cognizance of petitioner's judicial claim for refund;

3. The Court correctly ruled that petitioner is entitled to the claim for refund;

4. The Court explained the basis of the refund of CWT in the amount of ₱9,921,287.10. The Court's assailed Decision is based on available evidence; and,

5. The Annual ITR and the Certificates of Creditable [Tax Withheld at Source] (Exhibits P-5 to P-39) were executed under pain of perjury.

THE COURT'S RULING

The first argument raised by respondent is a mere reiteration of his previous argument in his Memorandum filed on November 7, 2022 which was squarely addressed and settled on pages 6-10 of the assailed Decision.[1] There is no need to discuss the same argument again in resolving the present motion.

Respondent's contention questioning the refund of CWT in the amount of ₱9,921,287.10, as granted by the Court, is bereft of merit.

A judicious re-evaluation of the evidence presented by petitioner reveals that the income payment of ₱66,141,914.00 is derived by cross-referencing the appurtenant statements of Ms. Cabahug in her Judicial Affidavit[2] with the 2016 reconciliation schedule[3] presented therein and petitioner's 2016 General Ledger Transaction Detail (GLTD).[4]

In her Judicial Affidavit,[5] Ms. Cabahug discussed that for CY 2016, the audited Consultancy Services of ₱301,573,014.00 is reconciled with the CWT balance by: (1) deducting the total amount of ₱161,931,100.00 which comprises petitioner's accrued income in CY 2016 that was only collected in CY 2017 and CY 2016 income without CWT; and (2) adding back petitioner's income in CY 2015 amounting to ₱91,051,686.00 but was only collected in CY 2016 and forex adjustments amounting to ₱580,119.50, or for a total amount of ₱91,631,805.50, *viz:*

> **"Q85: Can you illustrate how the amount of Php104,818,843.00 was included in the amount of Php301,573,014.00, which represents revenue for Consultancy Services?**
>
> A85: Yes. From the amount of revenue from Consultancy Services per audited financial statements of Php301,573,014.00, we added the revenue accrued in 2015 but collected in 2016 in the total amount of Php91,051,686.00. We also added the foreign exchange adjustments in the total amount of Php580,119.50.
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> Then we deducted the amount of Php113,937,600.00 which represents income accrued in 2016 but collected in 2017. We also deducted the amount of Php47,993,500.00, which represents income collected but without the corresponding CWT certificates.

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[1] CTA Docket, Vol. II, pp. 1170-1174.
[2] Exhibit "P-153", CTA Docket, Vol. II, pp. 419-461.
[3] Exhibit "P-153", CTA Docket, Vol. II, p. 438.
[4] Exhibit "P-52", CTA Docket, Vol. II, p. 637.
[5] Exhibit "P-153", CTA Docket, Vol. II, pp. 437-438.

This is illustrated below:

Revenue reported in Tax Returns and Financial Statements		301,573,014.00
Add:		
2015 revenue collected in 2016	53,193,600.00	
Accrued revenue in 2015 pertaining to several invoices, collected in 2016	37,858,086.00	
Forex adjustments	580,119.50	91,631,805.50
Less:		
2016 revenue collected in 2017		
Invoice 1552	104,000,000.00	
Accrued Revenue - ADB	9,937,600.00	
2016 Income without CWT		
Invoice 1543	6,250,000.00	
Invoice 1542	13,993,500.00	
Invoice 1548	1,250,000.00	
Invoice 1546	2,500,000.00	
Invoice 1538	24,000,000.00	(161,931,100.00)
		Php231,273,719.18[6]

As can be gleaned from the above reconciliation, petitioner recorded ₱104,000,000.00 of accrued income from PLDT, Inc. in CY 2016. However, the Court noted that when cross-referenced with petitioner's GLTD for CY 2016,[7] the amount of ₱37,858,086.00 was deducted from ₱104,000,000.00 as the former was already recognized as accrued revenue in CY 2015 but was only collected in CY 2016:

Accounting Date	Client Name	Invoice Date	Invoice No.	Amount in PHP
12/31/2016	PLDT	12/23/2016	PHD0161552	104,000,000.00
12/31/2016	PLDT	12/31/2016	Accrued Revenue	
12/31/2016	PLDT	12/31/2016	Accrued Revenue	(37,858,086.00)
12/31/2016	PLDT	12/31/2016	Accrued Revenue	
Total				66,141,914.00

Thus, the Court was able to verify that the amount of ₱66,141,914.00 is that portion of ₱104,000,000.00 income payment which pertains to accrued revenue in CY 2016.

With respect to the ₱9,921,287.10 amount of refund granted to petitioner for CY 2017, the same is derived by multiplying the traceable

[6] With ₱0.32 difference.
[7] Exhibit "P-52", CTA Docket, Vol. II, p. 637.

income payment of ₱66,141,914.00 to the CWT rate of 15% as used in the corresponding Certificate of Creditable Tax Withheld at Source.[8] The CWT rate of 15% represents tax withheld to the income payments for professional fees to consultants who are juridical entities and whose gross income for the current year exceeds ₱720,000.00.[9] Such fact is duly stated in the pertinent Certificate of Creditable Tax Withheld at Source.

The last argument of respondent that the Annual ITR and the Certificates of Creditable Tax Withheld at Source failed to show that they were executed under the pain of perjury and made under oath is belied by the records of this case. As correctly pointed out by petitioner, the concerned Annual ITR and Certificates of Creditable Tax Withheld at Source[10] were executed under pain of perjury.

All told, the Court finds no cogent reason to warrant a modification or reversal of the assailed Decision.

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

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

WE CONCUR:

CATHERINE T. MANAHAN
Associate Justice

MARIAN IVY F. REYES-FAJARDO
Associate Justice

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[8] Exhibit "P-6", CTA Docket, Vol. II, p. 512.
[9] Revenue Regulations (RR) No. 02-98, as amended RR No. 30-03 provides:
"Sec. 2.57.2. Income payments subject to creditable withholding tax and rates prescribed thereon. — xxx
(B) Professional fees, talent fees, etc., for services of taxable juridical persons. — On the gross professional, promotional and talent fees, or any other form of remuneration enumerated in the preceding subparagraph for the services of taxable juridical persons — Fifteen percent (15%), if the gross income for the current year exceeds P720,000; and Ten percent (10%), if otherwise[.]
[10] Exhibits "P-4" to "P-39", CTA Docket, Vol. II, pp. 503-554.