REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-versus-

UNIVATION MOTOR PHILIPPINES, INC. (FORMERLY NISSAN MOTOR PHILIPPINES, INC.),
Respondent.

CTA EB No. 1789
(CTA Case No. 9027)

Present:

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

Promulgated:

NOV 22 2019 3:02 p.m.

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RESOLUTION

Fabon-Victorino, J.:

Assailed in petitioner's *Motion for Partial Reconsideration*[1] dated July 23, 2019 is the Decision[2] of July 5, 2019, the dispositive portion of which states:

> **WHEREFORE**, the petition for review dated February 20, 2018, filed by petitioner Commissioner of Internal Revenue is **DENIED**. The impugned Decision and Resolution dated September 22, 2017 and January 31, 2018, respectively, both rendered by the Court in Division are **AFFIRMED**.

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1 *Rollo*, pp. 101-106.
2 Ibid. at pp. 87-96.

SO ORDERED.

Petitioner insists that income payee-taxpayer like respondent is required to provide the BIR with a summary alphalist of withholding agents of income payments subject to withholding tax (SAWT) for the grant of CWT refund to prosper, citing Revenue Regulations (RR) No. 2-2006 as his authority. Such alleged requirement will also demonstrate that proof of actual remittance lies with respondent. For its neglect to submit the pertinent SAWT, as well as show proof of actual remittance, respondent's CWT refund must be rejected.

Further, tax refunds are in the nature of tax exemptions which must be strictly construed against the taxpayer like respondent. For its neglect to demonstrate actual remittance of the subject CWTs, its refund claim must be denied, concludes petitioner.

In refutation,[3] respondent counters that: 1) petitioner's lack of *bona fide* effort to craft additional arguments renders the instant Motion *pro forma;* 2) the rule on strict construction of tax exemptions does not find application on refund claims of overpaid taxes such as the case at bench; and 3) the *onus* of establishing remittance of CWTs lies with the income payor-withholding agent and not the income payee-taxpayer such as respondent.

The instant Motion lacks merit.

In the recent case of *Commissioner of Internal Revenue vs. Univation Motor Philippines, Inc. (formerly Nissan Motors Philippines, Inc.),*[4] the Supreme Court declared that there are three essential conditions for the grant of a claim for refund of creditable withholding income tax, to wit: (1) the claim is filed with the Commissioner of Internal Revenue within the two-year period from the date of payment of the tax; (2) it is shown on the return of the recipient that the income payment received was declared as part of the gross income; and (3) the fact of withholding is established by a

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3 Respondent's *Comment* dated September 11, 2019, id. at pp. 116-132.
4 G.R. No. 231581, July 12, 2019.

copy of a statement duly issued by the payor to the payee showing the amount paid and the amount of the tax withheld therefrom.

Plain from the foregoing that petitioner may not impose an additional requirement such as submission of SAWTs by respondent as a precondition for entitlement to a CWT refund simply because it is neither required by law nor jurisprudence on the matter. Administrative agency issuing regulations may not enlarge, alter or restrict the provisions of the law it administers, and it cannot engraft additional requirements not contemplated by the legislature.[5] To do so constitutes lawmaking, which is generally reserved for Congress.[6]

By the same token, respondent need not prove actual remittance of CWTs to the BIR. Apart from the fact that proof of actual remittance is not among the prerequisites for the grant of CWT refund, the burden of showing the same does not pertain to respondent as the income payee-taxpayer, but of the income payor-withholding agent.

WHEREFORE, for failure to successfully mount a challenge that would warrant reversal much less modification of the assailed Decision dated July 5, 2019, petitioner's *Motion for Partial Reconsideration* dated July 23, 2019 is **DENIED**.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

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5 See *Commissioner of Internal Revenue vs. Central Luzon Drug Corporation,* G.R. No. 159647, April 15, 2005.

6 See *Soriano vs. Secretary of Finance,* G.R. No. 184450, January 24, 2017.

We Concur:

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

MA. BELEN RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

ON LEAVE
MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice