REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

CTA EB NO. 2118
(CTA Case No. 9024)

- versus -

Present:

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

AYALA CORPORATION,
Respondent.

Promulgated:
OCT 14 2020 2:27 p.m.

x - x

DECISION

BACORRO-VILLENA, J.:

Before the Court is a Petition for Review[1] pursuant to Rule 8, Section 3(b)[2] of the Revised Rules of the Court of Tax Appeals

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[1] Filed 23 August 2019, *Rollo*, pp. 6-12.

[2] **Sec. 3.** *Who may appeal; period to file petition.* –

. . .

(b) A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court by filing before it a petition for review within fifteen days from receipt of a copy of the questioned decision or resolution. Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of the reglementary period herein fixed, the Court may grant an

(RRCTA), filed by petitioner Commissioner of Internal Revenue **(petitioner/CIR)**. It seeks the reversal of the Amended Decision dated 25 March 2019[3] and Resolution dated 18 July 2019[4], respectively, of the Special First Division[5] in CTA Case No. 9024, entitled *Ayala Corporation v. Commissioner of Internal Revenue.*

The antecedent facts follow.

On 15 April 2013, respondent Ayala Corporation **(respondent/AC)** filed its Annual Income Tax Return **(ITR)** for calendar year **(CY)** 2012 through the electronic filing and payment system[6] **(eFPS)**. A few days later or on 26 April 2013, it also filed the ITR manually.[7] In both instances, it showed unutilized creditable withholding tax **(CWT)** in the amount of ₱66,355,174.63 and indicated its choice for the issuance of tax credit certificate **(TCC)** for the alleged unutilized CWT for CY 2012.

On 10 April 2014, respondent likewise filed its Annual ITR for CY 2013 through the eFPS[8] and manually on 22 April 2014[9], showing unutilized CWT of ₱62,379,894.00. Again, respondent likewise opted for the issuance of a TCC.

On 02 March 2015, respondent filed an administrative claim for the issuance of TCC for its alleged unutilized CWT for CYs 2012 and 2013, in the aggregate amount of ₱128,735,068.63.

Prior to the lapse of the two-year prescriptive period from the date of payment of tax[10] or on 08 April 2015, respondent filed the

additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review.

[3] *Rollo*, pp.18-32.

[4] Id., pp. 33-35.

[5] With Hon. Justice Cielito N. Mindaro-Grulla as *ponente*; Hon. Presiding Justice Roman G. Del Rosario and Hon. Justice Erlinda P. Uy, concurring.

[6] Exhibits "P-9-1" and "P-9-2".

[7] Exhibit "P-9-3".

[8] Exhibits "P-10-1" and "P-10-2".

[9] Exhibit "P-10-3".

[10] Section 2.58.3 of Revenue Regulations (RR) No. 2-98 entitled *Implementing Republic Act No. 8424, "An Act Amending the National Internal Revenue Code, as Amended" Relative to the Withholding on Income subject to the Expanded Withholding Tax and Final Withholding Tax, Withholding of Income Tax on Compensation, Withholding of Creditable Value-Added Tax and Other Percentage Taxes.*

Petition for Review (CTA Case No. 9024) before this Court. The same was referred to the Special First Division.

In the Decision dated 13 February 2018, the Court's First Division partially granted respondent's claim for issuance of a TCC in the amount of ₱81,723,674.43.

Both the CIR and respondent filed their respective Motions for Partial Reconsideration (**MPR**).

In the assailed Amended Decision dated 25 March 2019, the Special First Division denied petitioner's MPR and partially granted respondent's MPR. The dispositive portion thereof read:

> ...
>
> **WHEREFORE**, in view of the foregoing, respondent's **Motion for Partial Reconsideration (re: Decision promulgated on 13 February 2018)** is **DENIED** while petitioner's **Motion for Partial Reconsideration** is **PARTIALLY GRANTED**. Accordingly, the dispositive portion of the Decision dated February 13, 2018 should be amended to read as follows:
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> > "**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 reduced amount of **₱127,292,477.20**, representing petitioner's excess or unutilized creditable withholding taxes for calendar years 2012 and 2013.
> >
> > **SO ORDERED.**"
>
> **SO ORDERED.**
>
> ...

Aggrieved, petitioner filed his MPR on the Amended Decision but the Special First Division maintained its stance. In its Resolution dated 18 July 2019, it held:

> ...
>
> **WHEREFORE**, premises considered, respondent's **Motion for Partial Reconsideration (re: Amended Decision promulgated on 25 March 2019)** is **DENIED** for lack of merit.
>
> **SO ORDERED.**
>
> ...

Unrelenting, petitioner elevated *via* this petition to the Court *En Banc* the aforementioned 25 March 2019 Amended Decision and Resolution dated 18 July 2019, respectively. In his bid to have both actions reversed, he forwards a singular error to the Special First Division's actions, *viz*:

> THE HONORABLE COURT *A QUO* ERRED IN RULING THAT RESPONDENT IS ENTITLED TO REFUND OF UNUTILIZED EXCESS CREDITABLE WITHHOLDING TAX FOR THE CALENDAR YEARS 2012 AND 2013 IN THE REDUCED AMOUNT OF ₱127,292,477.20 DESPITE NO EVIDENCE OF ACTUAL REMITTANCE TO THE BUREAU OF INTERNAL REVENUE.

Before Us, petitioner insists that proof of actual remittance of the withholding taxes is required for the claim for refund to prosper. He opines that it is incumbent upon the taxpayer-claimant to prove that the taxes withheld were actually remitted to the Bureau of Internal Revenue (**BIR**) by the withholding agents, not for petitioner to prove non-remittance of the same.

In relation to the above argument, petitioner invokes Revenue Regulations (**RR**) No. 2-2006[11] which allegedly requires the submission of Summary Alphalist of Withholding Agents of Income Payments Subjected to Withholding Tax (**SAWT**) and Monthly Alphalist of Payees (**MAP**). Likewise, he maintains that RR No. 2-98[12] is still a valid

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11 *Mandatory Attachments of the Summary Alphalist of Withholding Agents of Income Payments Subjected to Tax Withheld at Source (SAWT) to Tax Returns With Claimed Tax Credits due to Creditable Tax Withheld At Source and of the Monthly Alphalist of Payees (MAP) Whose Income Received Have Been Subjected to Withholding Tax to the Withholding Tax Remittance Return Filed by the Withholding Agent/Payor of Income Payments.*

12 *Implementing Republic Act No. 8424, "An Act Amending the National Internal Revenue Code, as Amended" Relative to the Withholding on Income subject to the Expanded Withholding Tax and Final Withholding Tax, Withholding of Income Tax on Compensation, Withholding of Creditable Value-Added Tax and Other Percentage Taxes.*

regulation and remains in full force and effect. Hence, for petitioner, proof of actual remittance to the BIR is indispensable for entitlement to the claim for refund.

Respondent, on the other hand, counters that it has sufficiently proven its entitlement to its claim for issuance of a TCC. In refutation to petitioner's allegations, respondent stresses that: (1) the withholding agents are petitioner's agents; (2) that the CWT were withheld by the withholding agents pursuant to petitioner's mandate and independent of respondent's will; (3) the CWT withheld were in trust for the government and beyond its reach once withheld; and, (4) proof of actual remittance is not required to prove entitlement to refund.

This Court *En Banc* rules below.

At the outset, We note that petitioner's present Petition for Review before Us merely replicates his argument in his MPR before the Special First Division. Nevertheless, for emphasis and to put to rest the insistent argument that respondent is not entitled to the relief granted to it in the assailed Decision and Resolution, We shall oblige to discuss why We are inclined not to deviate from the stand that the Special First Division had taken.

Sections 57(B) and 58(A) of the National Internal Revenue Code (**NIRC**) of 1997, as amended, provide:

> ...
> **Sec. 57.** *Withholding of Tax at Source.* –
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> ...
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> (B) *Withholding of Creditable Tax at Source.* – The Secretary of Finance may, upon the recommendation of the Commissioner, require the withholding of a tax on the items of income payable to natural or juridical persons, residing in the Philippines, **by payor-corporation/persons** as provided for by law, at the rate of not less than one percent (1%) but not more than thirty-two percent (32%) thereof, which shall be credited against the income tax liability of the taxpayer for the taxable year.
>
> ...

Sec. 58. *Returns and Payment of Taxes Withheld at Source.* –

(A) *Quarterly Returns and Payments of Taxes Withheld.* – Taxes deducted and withheld under Section 57 **by withholding agents** shall be covered by a return and **paid to**, except in cases where the Commissioner otherwise permits, an authorized agent bank, Revenue District Officer, Collection Agent, or duly authorized Treasurer of the city or municipality where the withholding agent has his legal residence or principal place of business, or where the withholding agent is a corporation, where the principal office is located.

The taxes deducted and withheld by the withholding agent shall be held as a special fund in trust for the government until paid to the collecting officers.

The return for final withholding tax shall be filed and the payment made within twenty-five (25) days from the close of each calendar quarter, while the return for creditable withholding taxes shall be filed and the payment made not later than the last day of the month following the close of the quarter during which withholding was made: *Provided,* That the Commissioner, with the approval of the Secretary of Finance, may require these withholding agents to pay or deposit the taxes deducted or withheld at more frequent intervals when necessary to protect the interest of the government.[13]

...

Additionally, Section 2.58.3 of RR No. 2-98 states:

Sec. 2.58.3. *Claim for tax credit or refund* –

...

(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.[14]

...

[13] Emphasis supplied.
[14] Emphasis supplied.

The afore-cited provisions clearly place the obligation to remit the withheld taxes upon the withholding agents. The withholding tax system creates a relationship akin to a contract of agency between the government (through the BIR) as the principal and the withholding agent as the agent of the government. As such, the withholding agent is tasked with the collection of taxes in order to ensure its payment.[15]

The Supreme Court in *Commissioner of Internal Revenue v. Asian Transmission Corporation*[16] favored the CTA *En Banc's* decision[17] rejecting the BIR's contention that proof of actual remittance is required before a refund of excess or unutilized creditable withholding taxes may be granted. It held:

> ...
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> 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 Regulations 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

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[15] *Commissioner of Internal Revenue v. La Flor Dela Isabela, Inc.*, G.R. No. 211289, 14 January 2019.

[16] 655 Phil. 186 (2011); Emphasis supplied.

[17] *Commissioner of Internal Revenue v. Asian Transmission Corporation*, CTA EB No. 205 (CTA Case No. 6648), 16 July 2007.

> (payor) to the BIR. In this regard, We do not agree with petitioner's allegation that respondent failed to prove that creditable withholding taxes were duly supported by valid Certificates of Creditable Tax Withheld at Source. As aptly ruled by the Court in Division, and We reiterate, the evidence on record in which petitioner interposed no objection to its admission and was subsequently admitted by the Court in Division, show that respondent was able to substantiate its claim through the presentation of Exhibits "J" to "P" and "R" to "Z", the Certificates of Creditable Tax Withheld at Source. The documentary evidence presented were sufficient to establish that respondent was withheld taxes and that there was an excess which remain unutilized and now subject of refund.
>
> ...

The Supreme Court elaborates further in the more recent case of *Commissioner of Internal Revenue v. Philippine National Bank*[18], to wit:

> ...
>
> 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.**
>
> ...

Under the Philippine withholding tax system, the withholding agent acts as the government's agent for the collection of taxes in order to ensure its payment. It is actually a system of advance collection of the payee's or income recipient's tax liability by the payor of any income item.[19] The payor who has the control and custody of the funds from which income payments are sourced is constituted as the agent of the BIR to withhold a tax at the rates defined under existing law and its implementing revenue regulations[20], whether final or creditable.

[18] 744 Phil. 299 (2014); Emphasis supplied.

[19] *Rizal Commercial Banking Corporation v. Commissioner of Internal Revenue*, 672 Phil. 514 (2011).

[20] Revenue Regulations No. 2-98, SUBJECT: *Implementing Republic Act No. 8424, "An Act Amending the National Internal Revenue Code, as Amended" Relative to the Withholding on Income subject to the Expanded Withholding Tax and Final Withholding Tax, Withholding of Income Tax on Compensation, Withholding of Creditable Value-Added Tax and Other Percentage Taxes*; Supra at note 12.

Hence, the acts of the agent on behalf of the principal within the scope of the authority granted have the same legal effect and consequence as though the principal had been the one so acting in the given situation.[21]

Here, the withholding agent's receipt of the tax withheld is tantamount to the BIR's receipt thereof. Any failure on the part of the withholding agent to remit the amount withheld to the BIR is a breach on the part of the agent and not by the taxpayer.[22]

Respondent's presentation of its SAWT[23] and the relevant Certificates of Creditable Tax Withheld At Source (BIR Form No. 2307)[24], which are generally provided by the withholding agents as proof of tax withheld are sufficient to establish the fact of withholding, and consequently its entitlement to the issuance of a TCC. Therefore, respondent should no longer be burdened to show proof of actual remittance in his claim for the issuance of such TCC.

WHEREFORE, the foregoing considered, petitioner Commissioner of Internal Revenue's Petition for Review filed on 23 August 2019 is **DENIED**. Accordingly, the assailed Amended Decision and Resolution dated 25 March 2019 and 18 July 2019, respectively, of the Special First Division in CTA Case No. 9024, entitled *Ayala Corporation v. Commissioner of Internal Revenue*, are hereby **AFFIRMED.**

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

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21 *Philex Mining Corporation v. Commissioner of Internal Revenue*, 574 Phil. 571 (2008).
22 See also *Philippine Airlines, Inc. (PAL) v. Commissioner of Internal Revenue*, G.R. Nos. 206079-80, 17 January 2018.
23 Exhibit "P-19".
24 Exhibits "P-20" to "P-20-519".

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

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice