REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

Third Division

PHILIPPINE BANK OF COMMUNICATIONS,
Petitioner,

- *versus* -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 8632

Members:
BAUTISTA, *Chairperson*
FABON-VICTORINO, and
RINGPIS-LIBAN, *JJ.*

Promulgated:

JAN 19 2016
2:54 p.m.

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RESOLUTION

BAUTISTA, J:

This resolves the following:

1. Petitioner's "Motion for Reconsideration" ("Petitioner's MR") filed on September 29, 2015; with respondent's "Comment (Re: *Motion for Reconsideration Dated September 29, 2015*)" ("Respondent's Comment") filed on November 6, 2015; and

2. Respondent's "Motion for Reconsideration (Re: Decision Promulgated 09 September 2015)" ("Respondent's MR") filed on September 29, 2015; with petitioner's "Comment (to Respondent's Motion for Reconsideration dated September 23, 2015)" ("Petitioner's Comment") filed on October 28, 2015.

On September 9, 2015, the Court promulgated a Decision[1], the dispositive portion of which states:[2]

[1] *Records, CTA Case No. 8632,* pp. 1092-1124.
[2] *Id.,* p. 1123.

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WHEREFORE, in view of the foregoing, the instant Petition for Review is hereby **PARTIALLY GRANTED.** Accordingly, respondent is hereby **ORDERED to ISSUE A TAX CREDIT CERTIFICATE** in the reduced amount of **TWENTY-SEVEN MILLION TWO HUNDRED SEVENTY-FIVE THOUSAND SEVEN HUNDRED TWENTY ONE AND 33/100 PESOS (PHP27,275,721.33)** representing petitioner's unutilized creditable withholding taxes for taxable year 2010.

SO ORDERED.

Not satisfied with the Decision, both petitioner and respondent filed their respective Motions for Reconsideration on September 29, 2015.

On October 6, 2015, the Court issued a Resolution ordering the parties to file their respective comments on each other's Motion for Reconsideration within ten (10) days from notice.

On October 19, 2015, petitioner filed its Motion for Extension of Time to File Comment, which was granted by the Court in its Resolution dated October 28, 2015.

On October 20, 2015, respondent filed her Motion for Extension of Time to File Comment, which was granted by the Court on November 11, 2015.

On October 28, 2015 and November 6, 2015, petitioner and respondent filed their respective Comments.

Petitioner's MR

Petitioner avers that the Court erred in disallowing the amount of Php144,000.00 under *Annex* "A1-3" because it has complied with the third condition[3] for the grant of a claim for refund of creditable

[3] The conditions for the grant of a claim for refund of creditable withholding tax: (i) that the claim is filed with the CIR within the two-year period from the date of payment of the tax; (ii) that the income upon which the taxes were withheld must be included in the return of the recipient; and (iii) the fact of withholding must be established by a copy of a statement duly issued by the payor

withholding tax ("CWT") when the BIR issued a certification confirming the remittance of CWT; that the requirement of establishing the fact of withholding has been complied with by the issuance of BIR Form No. 2307, despite the absence of petitioner's taxpayer's identification number ("TIN") so long as its name and address are properly indicated therein; and that the Court erred in not considering the findings of the Independent Certified Public Accountant ("ICPA") that the income taxes withheld at source were actually included as part of the gross income declared in its 2010 Annual Income Tax Return.

In her Comment, respondent counter-argues that BIR Form No. 2307 is the only document accepted to prove the fact of withholding; that the Court is correct in disallowing the BIR Form No. 2307 that does not bear petitioner's TIN and BIR Form No. 2307 that has corrections since there were defects in the CWT; that the burden of proof to establish the factual basis of the claim for tax refund lies with the taxpayer; and that tax refunds, like tax exemptions, are construed strictly against the taxpayer.

Respondent's MR

Respondent alleges that the claim for tax refund is tainted with procedural infirmity due to petitioner's failure to submit complete documents in support of its administrative claim for refund pursuant to Revenue Memorandum Order ("RMO") No. 53-98 and Revenue Regulations ("RR") No. 2-2006; that the failure to submit relevant documents on the administrative level makes its administrative claim for tax refund *pro-forma* and deemed as not filed at all; that before judicial inquiry into the claim for refund could ensue, it must be proved that there was procedural compliance in pursuing the administrative claim leading to the appellate proceedings.

On the other hand, petitioner counter-argues that the arguments raised by respondent in her MR are mere rehash and reiterations of the arguments she raised in her Answer; that it was able to establish its

(withholding agent) to the payee, showing the amount paid and the amount of tax withheld therefrom.

entitlement for refund of its unutilized creditable withholding tax for taxable year 2010 in the reduced amount of Php27,275,721.33.

The Court finds no cogent reason to depart from its Decision.

Anent petitioner's MR, the Court cannot subscribe to its contention that the Court should have given credence to the findings of the ICPA. *Section 3 of Rule 13*[4] *of the Revised Rules of the Court of Tax Appeals ("RRCTA"), as amended*[5], provides that "the findings and conclusions of the ICPA may be challenged by the parties and shall not be conclusive upon the Court, which may, in whole or in part, adopt such findings and conclusion subject to verification."

Based on the foregoing, the Court is not bound by the findings of the ICPA, for they are only tools or guides to aid the Court in the decision of the case. The determination of the merit or the probative value of such report is still within the province of the Court, which can completely or partially adopt or discard the findings of the ICPA; or if it wishes, it can come out with its own findings and evaluation of the pieces of evidence submitted by the parties to resolve the issues of the case.[6]

There is no question that the document necessary to prove a claim for tax credit or refund of creditable income tax is BIR Form No. 2307 as provided by *Sections 2.58.3(B) and 2.58(B) of RR No. 2-98.* Petitioner questions the disallowance of its claim under Annexes "A3-2," "A3-3," and "A3-5" because the supporting BIR Form No. 2307 did not indicate its TIN. It argues that the requirement has been complied with by the issuance of the required BIR Form No. 2307 even in the absence of its TIN. It cited the case of *Jardine Lloyd Thompson Insurance Brokers, Inc. v. Commissioner of Internal Revenue*[7], wherein the Court's Second Division gave credence and probative value to the BIR Forms No. 2307 despite it not bearing petitioner's TIN or that the TIN indicated therein is incorrect, so long as petitioner's name and address are properly indicated therein.

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[4] A.M. No. 05-11-07-CTA.
[5] Supreme Court Resolution dated September 16, 2008, which took effect on October 15, 2008
[6] *Energy Development Corporation (Formerly known as PNOC Energy Development Corporation) v. CIR,* CTA *EB* Case No. 1067 (CTA Case No. 8019), November 3, 2014, citing *First Lepanto Taisho Insurance Corporation v. CIR,* CTA *EB* Case No. 563, March 1, 2011.
[7] CTA Case No. 8471, April 14, 2015.

It appears that petitioner wants this Court to adhere to the findings of the Second Division in the abovementioned case. It bears stressing that the Court in Division is not bound by decisions or findings by another Division. The principle of *stare decisis* is not applicable to the instant case. As held by the Supreme Court in *Christinelli S. Fermin v. People of the Philippines*[8], *viz.*:

> The doctrine of *stare decisis* enjoins adherence to judicial precedents. It requires courts in a country to follow the rule established in a decision of the Supreme Court thereof. That decision becomes a judicial precedent to be followed in subsequent cases by all courts in the land. The doctrine of *stare decisis* is based on the principle that once a question of law has been examined and decided, it should be deemed settled and closed to further argument.

It is clear that what is contemplated as judicial precedents are decisions of the Supreme Court. Besides, cases filed before the Court of Tax Appeals are *litigated de novo*, thus, claimant should prove every minute aspect of its case,[9] and the appreciation of the evidence lies within the sound discretion of the Court.

As held in a long line of cases, actions for tax refund, as in the instant case, are in the nature of a claim for exemption and the law is not only construed in *strictissimi juris* against the taxpayer, but also the pieces of evidence presented entitling a taxpayer to an exemption is *strictissimi* scrutinized and must be duly proven.[10]

On the other hand, a perusal of respondent's MR show that the grounds raised therein are mere reiterations of her Answer[11] filed on June 13, 2013, which have already been comprehensively discussed and passed upon in the assailed Decision dated November 11, 2015. Among the ends to which a motion for reconsideration is addressed, is to convince the court that its ruling is erroneous and improper,

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[8] G.R. No. 157643, March 28, 2008, 550 SCRA 132.

[9] *Commissioner of Internal Revenue v. Philippine National Bank*, G.R. No. 180290, September 29, 2014.

[10] *Atlas Consolidated Mining and Development Corporation v. Commissioner of Internal Revenue*, G.R. No. 159490, February 18, 2008, 546 SCRA 150.

[11] *Records*, pp. 63-73.

contrary to the law or the evidence.[12] Thus, having failed to convince the court, the respondent's MR must necessarily fail.

WHEREFORE, from the foregoing, petitioner's "Motion for Reconsideration" and respondent's "Motion for Reconsideration (Re: Decision Promulgated 09 September 2015)"are hereby **DENIED** for lack of merit. Consequently, the Decision dated September 9, 2015 is hereby **AFFIRMED** and **UPHELD.**

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

Ma. Belen

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

[12] *Guerra Enterprises Company, Inc. v. Court of First Instance of Lanao del Sur,* G.R. No. L-28310, April 17, 1970, 32 SCRA 314.