REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	CTA EB NO. 1152 (CTA Case No.8262)
	Present:
- versus -	DEL ROSARIO, *PJ* CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, COTANGCO-MANALASTAS, *and* RINGPIS-LIBAN, *JJ.*
AYALA CORPORATION, Respondent.	Promulgated: JAN 14 2016 11:03 a.m.

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DECISION

Fabon-Victorino, J.:

Of the firm belief that respondent Ayala Corporation is not entitled to refund/tax credit albeit in the reduced amount of ₱99,199,150.64, petitioner Commissioner of Internal Revenue (CIR) is now before the Court *En Banc* praying that the Decision[1] dated November 11, 2013 and the Amended Decision[2] dated March 21, 2014, rendered by the Court in Division in CTA Case No. 8262, entitled *Commissioner of Internal Revenue vs. Ayala Corporation* be reconsidered and set aside. The dispositive portions of the assailed Decision and Amended Decision read as follows:

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[1]*En Banc* docket, pp. 20-39.
[2]*En Banc* docket, pp. 40-47.

Assailed Decision of November 11, 2013:

> **WHEREFORE**, premises considered, the instant Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, respondent is hereby **ORDERED TO ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the amount of P64,970,643.22, representing petitioner's unutilized and excess creditable withholding taxes for calendar years 2008 and 2009.
>
> **SO ORDERED.**

Assailed Amended Decision of March 21, 2014:

> **WHEREFORE**, respondent's **"MOTION FOR PARTIAL RECONSIDERATION (RE: Decision dated 11 November 2013)"** is **DENIED** for lack of merit.
>
> On the other hand, petitioner's **"MOTION FOR PARTIAL RECONSIDERATION"** is **PARTIALLY GRANTED**. Accordingly, the Decision promulgated on November 11, 2013 is **MODIFIED** and respondent is ordered to issue a Tax Credit Certificate in favor of petitioner in the amount of P99,199,150.64, representing excess CWT for calendar years 2008 and 2009.
>
> **SO ORDERED.**

First, the facts.

Petitioner, the Commissioner of the Bureau of Internal Revenue (BIR) is vested with authority to decide, approve, and grant refunds or tax credits of over or erroneously paid or collected internal revenue taxes. She holds office at the BIR National Office Building, Diliman, Quezon City.

Respondent Ayala Corporation, on the other hand, is a domestic corporation, with principal place of business at 33rd Floor, Tower One Exchange Plaza, Ayala Triangle, Ayala Avenue, Makati City. It is registered with the BIR as a large taxpayer with Tax Identification Number (TIN) 000-153-610-000. As such, it is required to file its quarterly and annual Income Tax Returns (ITR) through the Electronic Filing and Payment System (EFPS).

On April 15, 2009, respondent filed it's annual ITR for calendar year (CY) 2008 through the EFPS, declaring a total overpayment of ₱92,002,780.22, computed as follows:[3]

Taxable Income		(₱1,481,007,742.00)
Tax Rate		35%
Income Tax		-
MCIT		₱8,908,985.78
Aggregate Income Tax Due		8,908,985.78
Less: Tax Credits/Payments		
Prior Year's Credits	₱56,622,901.00	
CWT 1st to 3rd Quarters	21,728,394.00	
CWT 4th Quarter	22,560,471.00	
Total	₱100,911,766.00	100,911,766.00
Total Overpayment		(₱92,002,780.00)

On even date, respondent manually filed its Annual ITR for CY 2008 with the BIR Large Taxpayer Service reflecting the foregoing amounts.

On April 13, 2010, respondent again filed its Annual ITR for CY 2009 through the EFPS reporting a tax overpayment of ₱94,329,072.30. Manual filing of the same annual ITR for CY 2009 followed on April 15, 2010, with the following details:[4]

Taxable Income		(₱1,175,136,741.00)
Tax Rate		30%
Income Tax		-
MCIT		₱11,306,546.70
Aggregate Income Tax Due		11,306,546.70
Less: Tax Credits/Payments		
Prior Year's Credits	₱47,713,915.00	
CWT 1st to 3rd Quarters	27,753,060.00	
CWT 4th Quarter	30,168,644.00	

[3]Par. 4, Joint Stipulation of Facts, Joint Stipulation, *Rollo*, p. 84.
[4]Par. 6 and 7, Joint Stipulation of Facts, Joint Stipulation, *Rollo*, pp. 84-85.

Total	₱105,635,619.00	105,635,619.00
Total Overpayment		(₱94,329,072.00)

On February 8, 2011, respondent filed with the BIR Large Taxpayer Division an administrative claim for issuance of Tax Credit Certificate (TCC) on its alleged unutilized Creditable Withholding Tax (CWT) for CYs 2008 and 2009 in the aggregate amount of ₱102,210,569.00.[5]

Without waiting for any action from petitioner and in order to stop the running of the two-year period prescribed under Section 229 of the National Internal Revenue Code (NIRC) of 1997, as amended, respondent elevated the case *via* a *Petition for Review* with the Court in Division on April 7, 2011.

In her *Answer*[6] filed on June 7, 2011, petitioner mainly focused on the precept that claims for refund are strictly construed against the claimant, and that the claimant must prove its entitlement to the refund sought by clear and convincing evidence.

During the trial only respondent presented evidence in support of its case. Petitioner, despite the opportunity granted, did not.

On November 11, 2013, the Court in Division rendered the assailed Decision partially granting the Petition for Review in the reduced amount of ₱64,970,643.22. The Court in Division ratiocinated that only the amount of ₱64,970,643.22 corresponds to the income payments verified to have been included in respondent's taxable gross income per its Annual ITR for CYs 2008 and 2009, in compliance with the requirement that the income upon which the taxes were withheld must be included in the return of the recipient.

Unconvinced, both petitioner and respondent filed their respective *motions for partial reconsideration* of the foregoing Decision of November 11, 2013.

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[5]Exhibits "F" and "F-1".
[6]*Rollo*, pp. 51-57.

In her *motion* posted on November 28, 2013, petitioner contended that respondent failed to establish compliance with Revenue Memorandum Order (RMO) No. 53-98 and Revenue Regulations (RR) No. 2-2006, in connection with the filing of its administrative claim for refund through the submission of the mandatory documentary requirements provided therein. Hence, the *Petition for Review* was prematurely filed due to non-exhaustion of administrative remedies.

In its own bid for reconsideration filed on November 29, 2013, respondent argued that the Court in Division erred when it disallowed a portion of its claimed excess CWT for CYs 2008 and 2009, in the amount of ₱35,384,746.22, on the ground that the income payments per Schedules of Creditable Taxes Withheld on Sale of Services and Properties and Lease of Properties did not tally with the income indicated in the Summary of Rental Income, Summary of Directors' Fees and Summary of Other Income, as indicated in the Final Amended Report of the Independent Certified Public Accountant (ICPA) commissioned by the Court. Respondent suggested that if indeed, there were discrepancies between the two schedules as ruled by the Court in Division, the same could be clarified and fully explained through cross-reference with other documentary exhibits forming part of the Final Amended Report and in the testimony of the ICPA.

In the similarly assailed Amended Decision of March 21, 2014, the Court in Division denied petitioner's *Motion for Partial Reconsideration* but partially granted that of respondent's. The Court in Division explained that out of the ₱35,384,746.22 sought for reconsideration, an additional amount of ₱34,228,507.42 should be refunded to respondent as the related income in the amount of ₱355,335,182.47 formed part of its taxable income reported in its annual ITRs for CYs 2008 and 2009.

On the other hand, in denying petitioner's *motion*, the Court in Division stressed that on appeal before it the Rules of Court and the Revised Rules of the Court of Tax Appeals apply insofar as proving the claimant's entitlement to refund/TCC of excess CWT. Thus, only the following requisites must be met, to wit: (a) that the claim for refund was filed within the two-year prescriptive period as provided under Section 204(C) in relation to Section 229 of the NIRC of 1997, as amended; (b) that the fact of withholding is established by a copy of a statement duly issued by the payor (withholding agent) to the payee, showing the amount paid and the amount of tax withheld therefrom; and (c) that the income upon which the taxes were withheld were included in the return of the recipient. All these were satisfied but only insofar as the amount ordered to be refunded.

Undeterred, petitioner is now before the Court *En Banc* *via* the instant *Petition for Review*[7] filed on April 24, 2014.

In her *petition,* petitioner insists that respondent is not entitled to refund or issuance of TCC of its alleged unutilized and excess CWTs for CYs 2008 and 2009 as it failed to have the withholding tax certificates it presented identified by the respective withholding agents as well as to prove the actual remittance of the amounts indicated therein to the BIR.

Petitioner also reiterates that the *Petition for Review* was prematurely filed before the Court in Division due to respondent's failure to exhaust administrative remedies. Respondent deprived her of the opportunity to determine the merits of her claim for refund in the administrative level as it did not submit the withholding tax certificates which it presented before the Court in Division in support of her petition.

Again, petitioner invokes the principle that tax refunds being in the nature of tax exemption is construed *strictissimi juris* against respondent.

By way of *Comment*[8], respondent counters that the petitioner's arguments in the instant *Petition for Review* lack merit. At most, they are but afterthoughts intended to delay the proceeding and delay the issuance of TCC in its favor justifying outright denial of the same. Respondent believes

[7]*En Banc* docket, pp. 9-16.
[8]*En Banc* docket, pp. 102-113.

that: (i) it presented sufficient evidence to prove the validity of its claim for TCC in the amount of ₱99,199,150.64 for CYs 2008 and 2009; (ii) petitioner was given sufficient time and opportunity to check and validate its claim for refund/TCC for CYs 2008 and 2009; and (iii) its entitlement to the claim for refund/TCC is based on the applicable laws, revenue regulations and jurisprudence.

In compliance with the Court's Resolution dated September 25, 2014[9], respondent filed a *Manifestation*[10] that it is adopting its *Comment* filed on August 7, 2014 as its *Memorandum,* and due to petitioner's failure to file her own memorandum, despite notice per the Report[11]of the Judicial Records Division dated January 7, 2015, the instant *petition* was deemed submitted for decision on January 29, 2015.

RULING OF THE COURT *EN BANC*

The instant petition lacks merit.

Petitioner raises two points on her stance that respondent's prayer for refund/TCC should be denied, to wit:

1. That respondent failed to present the testimony of the respective withholding agents to identify the entries in the alleged CWTs and to prove actual remittance to the BIR of the taxes allegedly withheld; and

2. That respondent failed to exhaust administrative remedies on account of its failure to submit necessary supporting documents in the administrative level.

Obviously, issue number two (2) is but a mere reiteration of petitioner's arguments in her *Motion for Partial Reconsideration* filed on November 28, 2013, which had already been considered and found wanting of merit by the

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[9]*En Banc* docket, pp. 115-116.
[10]*En Banc* docket, pp. 117-118.
[11]*En Banc* docket, p. 120.

Court in Division in the assailed Amended Decision of March 21, 2014.

There is no denying that the burden of proof is on the respondent whose claim for refund is in the nature of a claim for exemption which is strictly construed against it and in favor of the Government[12]. However, respondent is not required to present proof of actual remittance to the BIR of the tax withheld by the withholding agent. Proof of actual remittance is not a condition to claim for refund of unutilized tax credits under Sections 57 and 58 of the NIRC, as amended. As held in a number of cases and reiterated in the case of *Commissioner of Internal Revenue vs. Philippine National Bank,*[13] proof of actual remittance by the withholding agent is not needed to prove withholding and remittance of taxes to BIR.

The testimony of the withholding agent is also not required to establish the fact of withholding because the certificate of tax withheld at source (BIR Form No. 2307) is competent proof of the fact that taxes were withheld by the withholding agent, who by law, is obliged to remit the amount withheld to the BIR. In other words, it is not necessary for the person who executed and prepared the certificate of creditable tax withheld at source to be presented in court and authenticate the said document.[14]

In relation to the foregoing, is the pronouncement of the Supreme Court in *Commissioner of Internal Revenue vs. Asian Transmission Corporation,*[15] thus:

> ". . . 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**

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[12] *Winebrenner & Iñigo Insurance Brokers, Inc. v. Commissioner of Internal Revenue,* G.R. No. 206526, January 28, 2015.
[13] G.R. No. 180290, September 29, 2014.
[14] *Commissioner of Internal Revenue vs. Team (Philippines) Operations Corporation*, G.R. No. 179260, April 2, 2014.
[15] G.R. No. 179617, January 19, 2011.

> **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, . . . 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 (payor) to the BIR**.(*Boldfacing Supplied*)

Non-submission of supporting documents in the administrative level is not fatal to a claim for refund.

This pronouncement is by no means new. In a number of cases[16], CTA *En Banc* has ruled that judicial claims should

[16] *Commissioner of Internal Revenue vs. San Roque Power Corporation*, CTA EB 657, April 4, 2012, *Commissioner of Internal Revenue vs. Panay Power Company*, CTA EB No. 683, November 29, 2011; *Commissioner of Internal Revenue vs. Team Energy Corporation (formerly Mirant Pagbilao Corporation and Southern Energy Quezon, Inc.)*, CTA EB No. 652, October 4, 2011; *Consolidated cases of CE Luzon Geothermal Power Company, Inc. vs. Commissioner of Internal Revenue*, CTA EB No. 553 *and Commissioner of Internal Revenue*

not be denied on the sole ground that the taxpayer allegedly failed to submit before the BIR complete documents in support of its administrative claim for refund. The Court's ruling on the matter in the case of *Philippine Bank of Communications vs. Commissioner of Internal Revenue,*[17] is instructive:

> Non-submission of supporting documents in the administrative level is not fatal to a claim for refund. Judicial claims are litigated *de novo* and decided based on what has been presented and formally offered by the parties during the trial. In the case of CIR vs. Manila Mining Corporation, it was explained that "Under Section 8 of RA 1125, the CTA is described as a court of record. As cases filed before it are litigated *de novo*, party litigants should prove every minute aspect of their cases." Finally, pieces of evidence submitted in the administrative proceeding have no evidentiary value unless presented and formally offered before the Court.

Evidently, the Court *En Banc* is not barred from receiving, evaluating and appreciating evidence formally offered before it. Once the claim for refund has been elevated to the Court, the admissibility, materiality, relevancy, probative value and weight of evidence presented therein become subject to the Rules of Court.[18] The question of whether or not the evidence submitted by a party is sufficient to warrant the granting of a claim for refund lies within the sound discretion and judgment of the Court.[19] The CTA being a court of record, the cases filed before it are litigated *de novo* and party litigants should

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vs. CE Luzon Geothermal Power Company, Inc., CTA EB No. 554, July 20, 2010, *Commissioner of Internal Revenue vs. San Roque Power Corporation*, CTA EB No. 523, April 15, 2010; and, *Commissioner of Internal Revenue vs. CE Luzon Geothermal Power Company, Inc.*, CTA EB No. 474, September 1, 2009.

[17] CTA EB Nos. 560 & 586, June 1, 2011.

[18] *Commissioner of Internal Revenue vs. Visayas Geothermal Power Company, Inc.*, CTA EB Case No. 282 (CTA Case Nos. 6790 & 6838), November 20, 2007, citing *Jideco Manufacturing Corporation vs. Commissioner of Internal Revenue*, CTA Case No. 6552, September 16, 2004.

[19] *Consolidated cases of CE Luzon Geothermal Power Company, Inc. vs. Commissioner of Internal Revenue*, CTA EB No. 553 and *Commissioner of Internal Revenue vs. CE Luzon Geothermal Power Company, Inc.*, CTA EB No. 554, July 20, 2010; and, *Commissioner of Internal Revenue vs. San Roque Power Corporation*, CTA EB No. 523, April 15, 2010.

prove every minute aspect of their cases.[20] Otherwise stated, judicial claims for refund are decided based on the evidence presented and formally offered by party litigants during the trial on the merits and not on the basis of the evidence submitted in the administrative level.

In other words, respondent had to substantiate its claim for refund irrespective of the outcome of its administrative action before petitioner. The record reveals and as observed by the Court in Division, respondent had sufficiently substantiated its claim to the satisfaction of the Court justifying the grant of refund, albeit partially.

In fine, there is no compelling reason to disturb the findings and conclusion of the Court in Division as it is supported by the evidence on record and is consistent with prevailing law and jurisprudence.

WHEREFORE, the *Petition for Review* filed by petitioner Commissioner of Internal Revenue on April 24, 2014 is hereby **DENIED**, for lack of merit. Accordingly, the assailed Decision and Amended Decision dated November 11, 2013 and March 21, 2014, respectively, are **AFFIRMED** *in toto*.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

We Concur:

ROMAN G. DEL ROSARIO
Presiding Justice

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

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[20] *Commissioner of Internal Revenue vs. Manila Mining Corporation*, G.R. No. 153204, August 31, 2005, 468 SCRA 571.

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
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 above Decision has 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