REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus -

SM INVESTMENTS CORPORATION,
Respondent.

CTA EB NO. 2306
(CTA Case No. 9322)

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

Promulgated:
OCT 28 2021 11:38 a.m.

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DECISION

RINGPIS-LIBAN, *J.*:

The Case

Before the Court is a Petition for Review seeking the nullification of the Amended Decision[1] ("Assailed Amended Decision") dated November 18, 2019 and Resolution[2] ("Assailed Resolution") dated June 30, 2020 of the Court of Tax Appeals Second Division ("Second Division"), partially granting Petitioner's claim for refund or issuance of a Tax Credit Certificate (TCC) amounting to Php986,366,230.72, representing its excess and unutilized input Creditable Withholding Tax ("CWT") for the calendar year ended December 31, 2013.

[1] Penned by Associate Justice Juanito C. Castañeda, Jr., with Associate Justice Catherine T. Manahan concurring. Docket, pp. 1801-1828.
[2] *Id.*, pp. 1900-1905.

The Parties

Petitioner is the Commissioner of the Bureau of Internal Revenue ("BIR"), duly appointed to exercise the powers and perform the duties of his office including, *inter alia*, the power to decide disputed assessments, refunds of internal revenue taxes, fees, other charges, and penalties imposed in relation thereto, or other matters arising under the Tax Code. He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.[3]

Respondent is a domestic corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with principal office at 10th Floor One E-com Center, Harbor Drive, Mall of Asia Complex, CBP-IA, Pasay City.[4]

The Facts

The facts as found by the Second Division are as follows:

> "On April 2, 2014, [Respondent] filed through the Electronic Filing and Payment System (EFPS) its Annual Income Tax Return (ITR) for the year ended December 31, 2013, while on April 3, 2014, [Respondent] received through electronic mail the BIR's acknowledgement receipt. On the same date, or on April 3, 2014, [Respondent] manually filed the subject Annual ITR.
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> Meanwhile, under Item No. 20 of [Respondent's] Annual ITR, it appears that [Respondent] made an overpayment in the amount of [Php]1,388,739,568.00, which it intends to refund through the issuance of a TCC as shown under Item No. 21 thereof.
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> Consequently, on February 18, 2015, [Respondent] filed its administrative claim for refund. On March 2, 2015, the BIR through OIC-Assistant Commissioner Large Taxpayers Service, Nestor S. Valeroso, issued a Letter of Authority (LOA) to inspect [Respondent's] pertinent records.

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3 *Id.*, Decision, Statement of Facts, p. 1612.
4 *Id.*, Decision, Statement of Facts, pp. 1611-1612.

> However, the BIR failed to act on [Respondent's] claim for refund. Thus, on April 1, 2016, [Respondent] was constrained to file the instant Petition for Review."[5]

The Ruling of the Second Division

On March 04, 2019, the Second Division promulgated a Decision[6] partially granting the Petition for Review, the dispositive portion of which reads:

> "**WHEREFORE**, the instant Petition for Review is **PARTIALLY GRANTED**. Accordingly, let a tax refund or a tax credit certificate be issued in favor of [Respondent] in the total amount of [Php]179,295,580.72, representing [Respondent's] excess and unutilized Creditable Withholding Tax for the calendar year ended December 31, 2013.
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> **SO ORDERED.**"[7]

Petitioner then filed a "Motion for Partial Reconsideration (Re: Decision Promulgated 4 March 2019)"[8] on March 18, 2019. Meanwhile, Respondent filed its "Omnibus Motion 1. For the Partial Reconsideration of the Decision Dated 04 March 2019, and 2. For Leave of Court to Recall Witness"[9] on March 20, 2019 *via* registered mail.

On July 23, 2019, a Resolution[10] was issued granting Respondent's Motion For Leave of Court to Recall Witness. On August 14, 2019, the court recalled Petitioner's witnesses, Ms. Helen Grace Dela Cruz and the Independent Certified Public Accountant (ICPA), Atty. Adan Delamide.

On November 18, 2019, the Second Division promulgated the Assailed Amended Decision modifying the dispositive portion of the Decision dated March 04, 2019, and increasing the amount of refund granted, *viz*:

> "**WHEREFORE**, [Petitioner's] Motion for Partial Reconsideration (Re: Decision Promulgated 4 March 2019) is **DENIED**, for lack of merit.
>
> On the other hand, [Respondent's] Motion for Partial Reconsideration is **PARTIALLY GRANTED**. Accordingly, the

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5 *Id.*, Decision, Statement of Facts, p. 1612.
6 *Id.*, pp. 1611-1636.
7 *Id.*, p. 1635.
8 *Id.*, pp. 1637-1643.
9 *Id.*, pp. 1685-1705.
10 *Id.*, pp. 1745-1747.

Decision promulgated on March 4, 2019 is **MODIFIED** as follows:

'**WHEREFORE**, the instant Petition for Review is **PARTIALLY GRANTED**. Accordingly, let a tax refund or a tax credit certificate be issued in favor of [Respondent] in the total amount of [Php]986,366,230.72, representing [Respondent's] excess and unutilized Creditable Withholding Tax for the calendar year ended December 31, 2013, computed as follows:

Claimed CWT		[Php]1,170,533,633.46
Less: Disallowed CWT		
Not properly reported in FS ([Php]943,656,142.68 less P807,070,650.00)	[Php]136,585,492.68	
Not properly reported in FS and not fully substantiated	17,567,246.73	
Reported in FS but supported by photocopy	239,208.99	154,391,948.40
Refundable CWT		**[Php]1,016,141,685.06**
Less: Balance of 2013 Income Tax Due		29,775,454.34
Net Refundable CWT		**[Php]986,366,230.72**

SO ORDERED."[11]

Aggrieved, Petitioner filed a "Motion for Partial Reconsideration (Re: Amended Decision promulgated 18 November 2019)"[12] on December 05 2019, which the Second Division denied in the Assailed Resolution on June 30, 2020, to wit:

"**WHEREFORE**, the instant Motion for Partial Reconsideration (Re: Amended Decision promulgated 18 November 2019) is **DENIED**, for lack of merit.

SO ORDERED."[13]

11 *Id.*, p. 1635.
12 *Id.*, pp. 1829-1842.
13 *Id.*, p. 1905.

The Proceedings in the Court of Tax Appeals En Banc

On July 16, 2020, Petitioner filed *via* registered mail the present "Petition for Review"[14].

On September 25, 2020, the Court issued a Resolution[15] which ordered Respondent to comment on the Petition for Review within ten (10) days from receipt.

On October 12, 2020, Respondent filed his "Comment (To the Petition for Review dated 15 July 2020)"[16]. Thus, on November 11, 2020, a Resolution[17] was issued submitting the instant case for decision.

Assignment of Errors

Petitioner raises the following grounds in support of its petition:

1) Orderly dispensation of justice dictates that recall of witnesses be done before a decision has been rendered – not after; and

2) Whether or not the Special Second Division of the Honorable Court erred in ruling that Respondent is entitled to refund in the amount of Php986,366,230.72 allegedly representing excess and unutilized creditable withholding tax for the calendar year ended 31 December 2013.[18]

The Arguments of Parties

Petitioner avers that the grant of recall of witness is tantamount to reopening the case since a decision has already been rendered. A reopening of a case, like a motion for new trial, may be granted only upon specific ground. In the instant case, there was no presentation of newly discovered evidence. Respondent merely recalled the witness to further explain the recording of related income in its books of accounts. Hence, Respondent was already given more than ample opportunity to proper ventilate its case.

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14 Rollo, pp. 1-22. Record shows that Petitioner received the Assailed Resolution on July 03, 2020; Docket, p. 1899.
15 *Id.*, pp. 67-68.
16 *Id.*, pp. 69-91.
17 *Id.*, pp. 93-94.
18 *Id.*, Petition for Review, Assignment of Errors, p. 3.

Moreover, Petitioner asserts that as Respondent failed to prove that the alleged withheld taxes came to the hands of the BIR, it is unquestionable not entitled to any refund.

On the other hand, Respondent points out that Petitioner failed to advance any substantial ground to warrant the reversal of the Assailed Amended Decision and Assailed Resolution. *First*, the court in Division's grant of leave to recall Respondent's witnesses was made within the bounds of the rules and the law, and was done in the exercise of its sound discretion as provided under Rule 132, Section 9 of the Rules of Court. *And second*, the Second Division rightly held that Respondent does not have the burden to prove remittance of creditable tax withheld in order for its claim for tax refund to prosper.

The Ruling of the Court

Timeliness of Petition

The Court in Division issued the Assailed Resolution, denying Petitioner's "Motion for Partial Reconsideration (Re: Amended Decision promulgated 18 November 2019)", on June 30, 2020. Petitioner received said Resolution on July 03, 2020.[19] Pursuant to Rule 4, Section 2(a)(1)[20] in relation to Rule 8, Section 3(b)[21] of the Revised Rules of the Court of Tax Appeals[22] ("RRCTA"), Petitioner had fifteen (15) days from date of receipt of the resolution or until July 18, 2020 within which to file its petition for review.

On July 16, 2020, Petitioner timely filed *via* registered mail the present "Petition for Review". Hence, the Court *En Banc* validly acquired jurisdiction.

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[19] Docket, p. 1899.

[20] **Sec. 2.** *Cases within the jurisdiction of the Court en banc.* — The Court *en banc* shall exercise exclusive appellate jurisdiction to review by appeal the following:

> (a) Decisions or resolutions on motions for reconsideration or new trial of the Court in Divisions in the exercise of its exclusive appellate jurisdiction over:
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> xxx xxx xxx
>
> (1) Cases arising from administrative agencies – Bureau of Internal Revenue, Bureau of Customs, Department of Finance, Department of Trade and Industry, Department of Agriculture; x x x

[21] **Sec. 3.** *Who may appeal; period to file petition.* — x x x

> (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 additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review. (Rules of Court, Rule 42, sec. 1a)

[22] A.M. No. 05-11-07-CTA, November 22, 2005.

We now proceed to the merits of the case.

At the outset, Petitioner presents no new argument to persuade Us that it has a meritorious case. In fact, the grounds relied upon by Petitioner in the instant Petition for Review are the same contentions in its "Motion for Partial Reconsideration (Re: Decision Promulgated 4 March 2019)" and "Omnibus Motion (a) Motion for Reconsideration of the Resolution dated July 23,2019 and (b) To Cancel the Hearing Set on 14 August 2019"[23], both filed before the Second Division. They were already passed upon, addressed and resolved in the Order[24] dated August 14, 2019, Assailed Amended Decision and Assailed Resolution. Nevertheless, we will discuss, once again, the demerits of Petitioner's arguments which may serve as a guidepost in deciding issues of similar nature in the future.

The Second Division did not err in granting Respondent's motion to recall witness

The settled rule is that a trial court, such as the Court of Tax Appeals, has discretion to grant leave for the recall of a witness. This is clear from a reading of Rule 132, Section 9 of the Rules of Court, as amended, which reads:

> "**Section 9.** *Recalling witness.* — After the examination of a witness by both sides has been concluded, the witness cannot be recalled without leave of the court. The court will grant or withhold leave in its discretion, as the interests of justice may require."

Discretion may be defined as the act or the liberty to decide according to the principles of justice and one's ideas of what is right and proper under the circumstances, without willfulness or favor.[25]

However, that discretion may not be exercised in a vacuum, as it were, entirely, isolated from a particular set of attendant circumstances, but should be based on facts and circumstances surrounding the case. There must be a satisfactory showing of some concrete, substantial ground for the recall.

In the case at bar, Respondent's Motion For Leave of Court to Recall Witness was filed in conjunction with its Motion For Partial Reconsideration of the Decision, in order to provide further explanation on the pieces of evidence already presented to the Second Division. The witnesses who were recalled

[23] Docket, pp. 1748-1759.
[24] *Id.*, p. 1791.
[25] Carroll H. Lamb v. W.H. Phipps, as Auditor for the Philippine Islands, G.R. No. L-7806, July 12, 1912.

merely shed light to the evidence on record and enabled the court a *quo* to re-evaluate its findings thereon. This is in fact in keeping with the function of a motion for reconsideration, that is, for the court to reconsider its findings or conditions of law and make them conformable to the law applicable to the case.

Accordingly, Petitioner is mistaken in its argument that the rules on motion for new trial or reopening of the case is to be applied in this instance.

Moreover, the Second Division in its Resolution[26] dated July 23, 2019, ruled that the recall of Respondent's witnesses would best serve the ends of justice, to wit:

> "In the interest of justice and to give both parties every chance to fight their case fairly and in the open without resorting to technicalities, the Court finds that the grant of its motion to recall witness is in order. However, [Respondent] is not allowed to present new evidence which will contribute in the delay of the resolution of this case which is a proscription on the rules on motion for reconsideration."

This is consistent with Rule 1, Section 6[27] of the Rules of Court and Rule 1, Section 2[28] of the RRCTA which states that liberal construction of the rules is the controlling principle to effect substantial justice. In this respect, the court *a quo* exercised its sound discretion and allowed the relaxation in the application of the rules in order for the case to be decided on the merits and not on mere technicalities.

Proof of actual remittance of taxes withheld is not a pre-requisite in claiming refund of unutilized CWT

Time and again, it has been held that proof of actual remittance of taxes withheld is not a pre-requisite in claiming refund of unutilized creditable withholding tax.

In *Commissioner of Internal Revenue v. Philippine National Bank*[29], the Supreme Court held as follows:

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[26] Docket, pp.1745-1747.

[27] **Section 6.** *Construction.* — These Rules shall be liberally construed in order to promote their objective of securing a just, speedy and inexpensive disposition of every action and proceeding. (2a).

[28] **SEC. 2.** *Liberal construction.* - The Rules shall be liberally construed in order to promote their objective of securing a just, speedy, and inexpensive determination of every action and proceeding before the Court. (RCTA, Rule 1, sec. 2a)

[29] G.R. No. 180290, September 29, 2014.

> "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 responsibility of withholding and remitting income taxes.**
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> This court's ruling in Commissioner of Internal Revenue v. Asian Transmission Corporation, citing the Court of Tax Appeals' explanation, is instructive:
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>> '... 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 Section 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.'"[30]

It must be emphasized that proof of actual remittance of withholding taxes, or fact of withholding, is the responsibility of the payor-withholding agent and not of the payee.[31] A withholding agents' bounden duty, under Section

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30 *Emphasis and underscoring supplied.*

31 Revenue Regulations No. 02-98, Section 2.58.3 (B).

58(A)[32] of the National Internal Revenue Code ("NIRC") of 1997, as amended, is to guarantee that the pertinent income taxes they withheld on taxpayers are paid in favor of the government.

Further, the payee-refund claimant, such as Respondent in this case, need only prove the fact of withholding of taxes, which is established by a copy of the withholding tax statement; and not its actual remittance to the BIR. Section 58(B)[33] of the NIRC of 1997, as amended, mandates payors/withholding-agents to provide income payees a written statement containing the amount of income or yield paid along with the amount of tax deducted and withheld therefrom. Such documents are embodied in the various Certificates of Creditable Tax Withheld at Source (BIR Form No. 2307) duly issued by income payors/withholding agents.

With Respondent's presentation of several Certificates of Creditable Tax Withheld at Source (BIR Forms No. 2307) issued in its favor by its payors/withholding agents, it has adequately established the existence and validity of CWTs subject of the refund.

Considering all these pronouncements, We find no cogent reason to reverse or modify the assailed Decision and assailed Resolution of the Court *a quo*.

WHEREFORE, premises considered, the instant Petition for Review is **DENIED**. The Amended Decision dated November 18, 2019 and the

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[32] **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 and 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.

[33] **SEC. 58. Returns and Payment of Taxes Withheld at Source. —**
xxx xxx xxx

(B) Statement of Income Payments Made and Taxes Withheld. - Every withholding agent required to deduct and withhold taxes under Section 57 shall furnish each recipient, in respect to his or its receipts during the calendar quarter or year, a written statement showing the income or other payments made by the withholding agent during such quarter or year, and the amount of the tax deducted and withheld therefrom, simultaneously upon payment at the request of the payee, but not later than the twentieth (20th) day following the close of the quarter in the case of corporate payee, or not later than March 1 of the following year in the case of individual payee for creditable withholding taxes. For final withholding taxes, the statement should be given to the payee on or before January 31 of the succeeding year.

Resolution dated June 30, 2020 of the Second Division in the case docketed as CTA Case No. 9322 are **AFFIRMED**.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

Maria Ivy F. Reyes-Fajardo

MARIAN IVY F. REYES-FAJARDO
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