REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

UNITED COCONUT PLANTERS BANK,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB NO. 1017
(CTA Case No. 8083)

Present:

Del Rosario, *P.J.,*
Castañeda, Jr.
Bautista,
Uy,
Casanova,
Fabon-Victorino,
Mindaro-Grulla,
Cotangco-Manalastas,
Ringpis-Liban, *JJ.*

Promulgated:

DEC 16 2014
4:10 p.m.

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DECISION

RINGPIS-LIBAN, J.

Before the Court En Banc is a Petition for Review[1] filed by petitioner United Coconut Planters Bank ("UCPB") under Section 3(b), Rule 8 of the Revised Rules of the Court of Tax Appeals seeking nullification of the

[1]Rollo, CTA EB Case No. 1017, p. 8.

Decision[2] dated December 12, 2012 (Assailed Decision) and Resolution[3] dated May 15, 2013 (Assailed Resolution), both promulgated by the Second Division of this Court in CTA Case No. 8083 entitled *"United Coconut Planters Bank vs. Commissioner of Internal Revenue"* which denied petitioner's claim for refund or issuance of a tax credit certificate in the amount of Ninety Four Million Three Hundred Forty Nine Thousand Two Hundred Eighty Five Pesos (P94,349,285.00) allegedly representing its excess or unutilized creditable withholding tax ("CWT") for taxable year 2007.

THE FACTS

The relevant antecedents stated in the assailed Decision are as follows:

> Petitioner is a domestic banking corporation duly organized to operate as an expanded commercial bank by the Bangko Sentral ng Pilipinas (BSP), with principal office address at UCPB Building, 7907 Makati Avenue, Makati City.
>
> Respondent, on the other hand, is the duly appointed Commissioner of Internal Revenue ("CIR"), vested with authority to act as such, including, among others, the power to decide, approve and grant refunds or tax credits of erroneously or excessively paid taxes. She holds office at the BIR National Office Building, BIR Road, Diliman, Quezon City.
>
> On April 15, 2008, petitioner manually and through the Electronic Filing and Payment System (EFPS), filed its Annual Income Tax Return for the taxable year 2007, which showed Minimum Corporate Income Tax ("MCIT") in the amount of P3,752,889.00, Creditable Tax Withheld for the First Three Quarters in the amount of P56,544,195.00, and Creditable Tax Withheld per BIR Form No. 2307 for the Fourth Quarter in the amount of P37,805,090.00, leaving petitioner a tax overpayment in the amount of P201,769,407.00. The MCIT due was allegedly offset against Prior Year's Excess Credits in the amount of P111,173,011.00. Petitioner manifested its intention to be issued a tax credit certificate by marking the box "To be issued a Tax Credit Certificate" on the said tax return.
>
> On April 12, 2010, petitioner filed an administrative claim for refund before the Bureau of Internal Revenue ("BIR"),

[2] Rollo, p. 53.
[3] Rollo, p. 80.

requesting the issuance of a tax credit certificate or refund in the amount of P94,349,285.71, representing excess or unutilized CWT for taxable year 2007.

Respondent did not act upon the written claim for refund, hence, UCPB filed a Petition for Review before the Court in Division on April 15, 2010.

On June 7, 2010, respondent filed her Answer and interposed the following defenses:

> SPECIAL AND AFFIRMATIVE DEFENSES
>
> 7) Assuming but without admitting that Petitioner filed a claim for refund, the same is still subject to investigation by the Bureau of Internal revenue;
>
> 8) Petitioner failed to demonstrate that the tax, which is the subject of this case, was erroneously or illegally collected;
>
> 9) Taxes paid and collected are presumed to be made in accordance with the laws and regulations, hence, not creditable or refundable;
>
> 10) It is incumbent upon the Petitioner to show that it has complied with the provision of Section 204(C) in relation to Section 229 of the 1997 Tax Code as amended;
>
> 11) In an action for tax credit or refund, the burden is upon the taxpayer to prove that he is entitled thereto, and failure to discharge the said burden is fatal to the claim. xxx;
>
> 12) Claims for refund are construed strictly against the claimant, the same partake the nature of exemption from taxation xxx.

In the Joint Stipulation of Facts and Issues[4], the parties agreed that the issues to be resolved by the Court are as follows:

1) Whether or not petitioner has complied with the provisions of Sections 204 (c) and 229 of the National Internal Revenue Code ("NIRC") of 1997, as amended, relative to the prescriptive period for filing of administrative and judicial claims for refund and/or issuance of a tax credit certificate.

[4]Filed by the parties on August 11, 2010.

2) Whether or not petitioner has established the withholding of the amount of Ninety Four Million Three Hundred Forty Nine Thousand Two Hundred Eighty Five Pesos (94,349,285) with copies of the withholding statements duly issued by the various payors of petitioner, showing the amount paid and the amount of tax withheld therefrom;

3) Whether or not petitioner's alleged unutilized creditable withholding taxes in the amount of Ninety Four Million Three Hundred Forty Nine Thousand Two Hundred Eighty Five Pesos (P94,349,285.00) has been unutilized or carried over to the succeeding years;

4) Whether or not petitioner is entitled to refund and/or issuance of a tax credit certificate in the amount of Ninety Four Million Three Hundred Forty Nine Thousand Two Hundred Eighty Five Pesos (P94,349,285.00) representing unutilized withholding tax credits for the calendar year 2007; and

5) Whether or not the respondent Commissioner of Internal Revenue erred when it failed to act on petitioner's claim for refund/credit of its excess and unutilized creditable withholding taxes in 2007 through the issuance of a TCC.

After trial on the merits wherein both parties presented their respective evidence, and upon the parties' submission of their respective memoranda, the case was submitted for decision.

On December 12, 2012 and May 15, 2013, the Court in Division rendered the questioned Decision and Resolution.

Aggrieved, petitioner filed before the Court *En Banc* this Petition for Review[5].

In the Resolution[6] dated July 24, 2013, respondent CIR was directed by the Court *En Banc* to file her comment in this case.

As per Records Verification Report dated October 18, 2013, respondent CIR failed to file her comment on the Petition for Review.

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[5]Rollo p. 8-46.
[6] Ibid p. 121-122.

On November 11, 2013, the Court *En Banc* issued a Resolution ordering the parties to submit their respective memoranda within thirty days from notice. UCPB filed its Memorandum on January 2, 2014. Respondent CIR filed on January 29, 2014 a Motion for Leave to File and Admit Attached Memorandum.

In the Resolution dated February 26, 2014, the Court granted respondent's Motion for Leave to File and Admit Attached Memorandum and admitted respondent's memorandum. Thereafter, the case was deemed submitted for decision.

ISSUES

Petitioner raised the following issues in its Memorandum:

> I. Whether or not the CTA Second Division erred in holding that UCPB failed to prove that the income payments for which the creditable withholding tax was remitted were declared as part of its gross income in its 2007 annual income tax return.
>
> II. Whether or not UCPB is entitled to claim for a tax refund or credit and/or issuance of a tax credit certificate of its 2007 excess and unutilized creditable withholding taxes.

PETITIONER'S ARGUMENTS

UCPB argues that there is sufficient evidence on record that the income payments for which the creditable withholding tax were remitted were declared as part of UCPB's gross income in its 2007 annual income tax return; that it submitted reconciliations schedules between the amounts of revenue reported in the General Ledger, Trial Balance and 2007 Annual Income Tax Return as verified by the Court Commissioned Independent Certified Public Accountant (ICPA); that whether or not the related loss from ROPA sales for which the corresponding taxes were remitted was reported in the 2007 annual income tax return is immaterial considering that UCPB suffered a net taxable loss in the amount of P2,752,347,537.00 in 2007; that UCPB is entitled to claim for a tax refund or credit certificate for its 2007 excess taxes considering that it has complied with all the legal and procedural requirements.

RESPONDENT'S ARGUMENTS

Respondent argues that petitioner failed to submit all the relevant documents to warrant that it is entitled to the claim being sought for. Petitioner's failure to present the company's detailed General Ledger, reconciliations schedules or any documents to trace the discrepancy and determine with certainty that income payments related to the claimed CWT formed part of its taxable gross income in its 2007 Annual ITR is fatal in its claim for refund.

RULING OF THE COURT EN BANC

The Court finds no reversible error in the assailed Decision and Resolution of the Court in Division.

Section 229 of the NIRC provides that:

> **No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.**
>
> **In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment: *Provided however,* that the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears to have been erroneously paid.**

As found in the records of the case, petitioner filed its Annual Income Tax Return for taxable year 2007 on April 15, 2008[7]. On April 12, 2010[8], petitioner filed an administrative claim for refund before the BIR. On April 15,

[7]Exhibits "I" and "J".
[8]Exhibit "U".

2010[9], petitioner filed a Petition for Review before the Court in Division. Thus, the filing of the administrative claim for refund before the BIR and the Petition for Review before the Court in Division both fell within the prescriptive period allowed by law.

I. UCPB failed to prove that the income payments for which the CWT was remitted were declared as part of its gross income in its 2007 annual income tax return

UCPB argues that it was able to prove that the income payments for which the CWT were remitted were declared as part of its gross income in its 2007 annual income tax return.

We agree with the findings of the Court in Division that the evidence presented by the petitioner are insufficient to prove that it is entitled to its claim for tax refund or tax credit certificate considering that petitioner failed to present detailed General Ledger, reconciliation schedules or any other documents whereby the Court can trace the discrepancy and can determine with certainty that the income payments related to the claimed CWT formed part of its taxable gross income in its 2007 Annual ITR. Petitioner's failure to present the foregoing documents is fatal to its claim for refund.

As explained by the Court in Division in the Assailed Decision:

> "On the issue of whether or not petitioner is entitled to the refund or issuance of tax credit certificate in the amount of P94,349,285.00, representing unutilized CWT for taxable year 2007, it is well settled that a taxpayer claiming a tax credit or refund of CWT must comply with the following requisites:
>
> 1. The claim must be filed with the BIR Commissioner within the two-year period from the date of payment of the tax;
> 2. The fact of withholding must be established by a copy of a statement duly issued by the payor to the payee showing the amount paid and the amount of the tax withheld; and
> 3. It must be shown on the return that the income received was declared as part of the gross income.

[9]Docket, CTA Case No. 8083, pp. 5-30.

As stated earlier, the first requisite has been satisfied.

With regard to the second requisite, petitioner through Mr. Emmanuel Y. Mendoza, the court Commissioned Independent CPA (ICPA), presented a summary of verified BIR Form No. 2307 or Certificate of Creditable Tax Withheld at Source, *xxx*.

Findings	Annex	CWT on Income payments subjected to 6% EWT	CWT on Income payments subjected to 2% EWT	CWT on Income payments subjected to 5% EWT	CWT on Income payments subjected to 10% EWT	Total
1. Supported with BIR Form No. 2307 with no exceptions noted	A-1, A-2, A-3 and A-4	P 86,804,752.75	P 3,619,742.48	P 183,658.49	P 39,141.57	P 90,647,295.29
2. Supported with BIR Form No. 2307 but covering periods outside the taxable year of claim	A-5		97,661.62			97,661.62
3. Supported with BIR Form No. 2307 wherein the tax base used in computing the amount of CWT is the lower amount between the FMV and Selling price	A-6	3,383,381.91				3,383,381.91
4. Supported with BIR Form No. 2307 with no payor's signature	A-7		221.15			221.15
5. Supported with BIR Form No. 2307 wherein the amount of CWT is not tie-up compared to the bank's list/schedule of CWT	A-8		209,021.88			209,021.88
Sub-total		P 90,188,134.66	P 3,926,647.13	P 183,658.49	P 39,141.57	P 94,337,581.85
CWT with no supporting BIR Form No. 2307	A-9		1,976.50	8,236.02		10,212.52
TOTAL		P 90,188,134.66	P 3,928,623.63	P191,894.51	P 39,141.57	P 94,347,794.37

A perusal of the ICPA reports and the presented certificates shows that out of the total claimed CWT of P94,349,285.00 only the amount of P94,337,581.85 is supported by the required BIR Form No. 2307. The difference of P11,703.15 has no supporting certificates; thus, shall be deducted outright from petitioner's claim.

Moreover, the certificates which were dated outside the period of claim with the corresponding CWT of P97,661.62 and the certificate without the payor's signature amounting to P221.15 should be disallowed, *xxx*.

In fine, petitioner complied with the second requisite but only to the extent of P94,239,699.08 out of the total claim of P94,349,285.00, computed as follows:

Claimed CWT for taxable year 2007	P 94,349,285.00
Less: Unsupported by certificates	11,703.15
CWT supported by certificate dated outside the period claim	97,661.62
CWT supported by certificate without the payor's signature	221.15
CWT validly supported by BIR Form No. 2307	P 94,239,699.08

The CWT amounting to P94,239,699.08, which are validly supported by certificates, can be broken down as follows:

CWT on Income Payments Subjected to 6% EWT	P 90,188,134.66
CWT on Income Payments Subjected to 2% EWT	3,828,764.36
CWT on Income Payments Subjected to 5% EWT	183,658.49
CWT on Income Payments Subjected to 10% and 15% EWT	39,141.57
TOTAL	P 94,239,699.08

Anent the third requisite, the Court verified through the ICPA findings and observations as stated in his Reports whether the income was part of the total income declared in the 2007 Annual ITR.

The CWT on income payments subjected to six (6%) pertains to sales of real property and other properties acquired (ROPA). ROPA includes real and other properties, other than those used for banking purposes or held in the investment portfolio, acquired by the bank judicially or extra-judicially in settlement of loans.

Based on the ICPA findings, of the P90,188,134.66 total CWT from the ROPA, the CWT of P62,546,248.64 the related loss of which in the amount of P759,777,881.06 was verified to have been included in petitioner's General Ledger, P68,51,167.34 of which was declared in petitioner's 2007 Annual Income Tax Return. While the remaining P691,026,713.72 was charged as deferred losses of petitioner in 2007. Petitioner defers the booking of some of its losses incurred from the sale of ROPA because according to the Management, the bank is currently under rehabilitation of the BSP and the Philippine Deposit Insurance Corporation (PDIC) as such losses are to be staggered to ten (10) years.

On the other hand, the related loss on the remaining P27,641,886.02 CWT was either recorded in petitioner's General Ledger in taxable years other than year 2007 or it cannot be traced in petitioner's General ledger in any taxable year.

The net loss from assets sold or exchanged reported in petitioner's General ledger and trial balance for the taxable year 2007 amounted to P212,401,216.67. The said amount includes net loss of P68,751,167.34 arising from the sale of ROPA that were subjected and related to creditable withholding taxes amounting to P62,546,248.64. The net loss during the year amounting to

P212,401,216.67 was reported in the Annual Income Tax Return for the taxable year 2007.

The CWT on income payments subjected to two percent (2%) refers to interest income collected from loans and fees from trade services. Interest income is recognized as they are earned.

As found by the ICPA, the interest income collected from petitioner's loans and fees from trade services in 2007 related to the claimed 2% CWT of P3,928,623.63 (inclusive of the disallowed CWT) amounts to P182,255,132.41, xxx.

As ascertained by the ICPA, the total interest income and other income of petitioner for the taxable year 2007 amounted to P4,297,811,186.95 and P1,732,031,877.87, respectively. As verified, out of the total income payments related to interest income and fees from trade services that were subjected to CWT amounting to P182,255,132.41, P106,800,262.65 was reported as interest income and fees from trade services (under Interest Income and Other Income Accounts) in petitioner's General Ledger and Trial Balance for the taxable year 2007 and 2007 Annual Income Tax Return.

The total other income of petitioner for the taxable year 2007 amounted to P1,732,031,877.87. The ICPA verified that the total rental income that was subjected to creditable withholding taxes amounting to P3,837,744,74 was reported as rental income (under Other Income Account) in petitioner's General Ledger and Trial Balance for the taxable year 2007 and Annual Income Tax Return for taxable year 2007.

The CWT on income payments subjected to ten (10%) and fifteen (15%) pertains to income arising from outsourcing and professional fees. The total amount of income from outsourcing and professional fee that was subjected to CWT amounted to P271,943.83 and the same was reported in petitioner's General Ledger and included in the 2007 Annual ITR of petitioner."

Based on the above findings and observations, petitioner's claim substantiated by CWT and the related income payment/loss declared in the Annual ITR may be summarized as follows:

FINDINGS	INCOME PAYMENT/LOSS	TAXES WITHHELD
Income payment subjected to 6% CWT properly supported with BIR Form No. 2307	(P68,751,167.34)	P62,546,248.64
Income payment subjected to 2% CWT properly supported with BIR Form No. 2307	106,800,262.65	3,828,764.36
Income payment subjected to 5% CWT properly supported with BIR Form No. 2307	3,673,169.80	183,658.49
Income payment subjected to 10% and 15% CWT properly supported with BIR Form No. 2307	271,943.83	39,141.57
TOTAL		P66,597,813.06

As stated by petitioner and as verified by the ICPA, the income payments related to the CWT of P66, 597,813.06 formed part of the declared income/loss in the Annual ITR of 2007; nevertheless, the Court cannot ascertain its veracity.

The total other income amounting to P1,147,598,768.00 and the net loss from asset sold/exchanged amounting to P212,401,216.67 reported in the Annual ITR that includes the income payments or loss from which the P66,597,813.06 CWT were withheld, has no breakdown as to its components.

Although petitioner submitted before this Court documents like General Ledger, Trial Balance, Audited Financial Statements for 2007, 2008 and 2009, Annual Income Tax Returns for 2007 and 2008, Quarterly Income Tax Return for 2007 and 2008, Schedules and other supporting documents; however, petitioner failed to present detailed General Ledger, reconciliation schedules or any other documents whereby the Court can trace the discrepancy and can determine with certainty that the income payments related to the claimed CWT formed part of its taxable gross income in its 2007 Annual ITR. Failure to present the foregoing documents is fatal to petitioner's claim.

Notwithstanding the report of the ICPA, the Court is not bound by his findings. The Report submitted by the ICPA is but a tool or guide to aid the Court in the resolution of the case. The determination of the merit or the probative value of such Report is still within the province of the Court. In addition, the Court is free to adopt or disregard, completely or partially, the findings of the ICPA. It can even make its own audit and evaluation of the documents pertinent to the case presented during the trial in order to intelligently resolve the conflict brought before it." (Emphasis supplied)

As pointed out by the Court in Division, petitioner failed to substantiate its claim for refund considering that the documentary evidence offered in Court did not satisfy the last element required in order to claim refund of taxes.

II. UCPB entitled to claim for a tax refund or credit and/or issuance of a tax credit certificate for its 2007 excess and unutilized CWT

UCPB argued that it is entitled to claim for a tax refund or credit certificate for its 2007 excess taxes considering that it has complied with all the legal and procedural requirements.

We find UCPB's claim to be unmeritorious.

As previously discussed, petitioner failed to show that the income upon which the taxes were withheld was included in its 2007 Annual ITR.

To reiterate, a taxpayer claiming for a tax credit or refund of CWT must prove that it was shown in the ITR that the income received was declared as part of the gross income and the fact of withholding must be established by a copy of a statement duly issued by the payor to the payee showing the amount paid and the amount of the tax withheld.

Tax refunds partake the nature of tax exemptions and are thus construed *strictissimi juris* against the person or entity claiming the exemption.[10] The

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[10] Far East Bank and Trust Company as Trustee of Various Retirement Present: Funds, vs. Commissioner of Internal Revenue and the Court of Tax Appeals, G.R. No.138919, May 2, 2006, citing *Commissioner of Internal Revenue v. S.C. Johnson & Son, Inc.*, 368 Phil. 388, 411 (1999).

burden in claiming tax refund rests upon the taxpayer. In this case, petitioner failed to discharge the necessary burden of proof.

WHEREFORE, premises considered, the Petition for Review is hereby **DENIED for lack of merit.** Accordingly, the Decision dated December 12, 2012 and Resolution dated May 15, 2013 are hereby affirmed *in toto*.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

AMELIA R. COTANGCO – MANALASTAS
Associate Justice

CERTIFICATION

Pursuant to Section 13 of 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