REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

JARDINE LLOYD THOMPSON INSURANCE BROKERS, INC., Petitioner,	**CTA CASE NO. 8273**
	Members:
- versus -	**CASTAÑEDA, JR.,** *Chairperson,* **CASANOVA,** *and* **MINDARO-GRULLA,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: SEP 28 2015 4:30 p.m.

x- x

AMENDED DECISION

CASANOVA, *J.*:

For resolution is petitioner's **Motion for Reconsideration (With Motion to Reopen Trial of the Case and Request for Leave to Submit Details of General Ledgers)**, filed through registered mail on February 28, 2014, with respondent's **Opposition (Re: Motion for Reconsideration with Motion to Reopen Trial of the Case and Request for Leave to Submit Details of General Ledgers)**, filed on March 27, 2014.

Petitioner moves for reconsideration of the Court's Decision dated February 11, 2014, the dispositive portion of which reads:

> "**WHEREFORE**, premises considered, the instant Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, respondent is hereby **ORDERED TO REFUND** or **TO ISSUE A TAX CREDIT CERTIFICATE**

in favor of petitioner in the reduced amount of ₱3,569,915.23, representing petitioner's excess and unutilized creditable income taxes withheld for calendar year 2008.

SO ORDERED."[1]

In the assailed Decision, the Court partially granted petitioner's claim for refund or issuance of tax credit certificate representing unutilized creditable withholding taxes (CWT) for calendar year (CY) 2008 in the amount of ₱3,569,915.23, while the amount of ₱5,309,498.52 was denied on the ground that petitioner failed to prove that it complied with the third requisite, *i.e.*, the income payments upon which the claimed unutilized CWT were withheld were declared as part of its gross income.

Consequently, petitioner prays that it be allowed to reopen the trial and to submit details of its general ledgers so as to satisfactorily prove the ₱58,332,023.13 income payments were declared as part of its gross income, the corresponding CWT of which amounts to ₱5,309,498.52.

On April 30, 2014, the Court granted petitioner's Motion to Reopen Trial of the Case and Request for Leave to Submit Details of General Ledgers, while the resolution of petitioner's Motion for Reconsideration was held in abeyance. Subsequently, petitioner's Assistant Vice-President, Maria Esperanza Rosario R. Dellosa, was recalled to the witness stand.[2] She identified her Supplemental Sworn Statement as Exhibit "CCCCC", her signature on page 14 thereof, as Exhibit "CCCCC-1", and additional documentary evidence.[3]

On May 11, 2015, the Court admitted petitioner's exhibits enumerated in its Supplemental Offer of Evidence filed on January 5, 2015.[4] After petitioner filed its Memorandum on June 25, 2015, *sans* respondent's Memorandum, petitioner's Motion for Reconsideration was then submitted for resolution on June 30, 2015.

In its Motion, petitioner claims to have proven by preponderance of evidence its entitlement to the refund of its excess

---

[1] Decision, Docket (vol. I), pp. 415-416.
[2] Minutes of the Hearing dated October 20, 2014, Docket (vol. II), p. 702.
[3] Supplemental Sworn Statement of Ms. Maria Esperanza Rosario R. Dellosa to Questions Propounded by Atty. Reizel Ann A. Tanchico, Docket (vol. II), pp. 687-701.
[4] Resolution dated May 11, 2015, Docket (vol. II), p. 752.

and unutilized CWT for CY 2008. According to petitioner, the discrepancies between the gross income shown in the CWT Certificates and the gross income reported in the Income Tax Return (ITR) were the result of timing differences in reporting gross income and in the withholding of taxes, hence, do not necessarily mean that petitioner failed to include the income subjected to withholding tax in its gross income.

Respondent, in her Opposition, contends that the Court correctly ruled that the income payments of ₱58,332,023.13 cannot be traced with certainty from petitioner's production report, general ledger and Annual ITR. Petitioner's Annual ITR merely provided a summarized data without the supporting schedule or notes that will allow the Court to verify petitioner's allegations. Moreover, respondent claims that the burden of establishing the factual basis of a claim for a refund rests on the taxpayer.

We find petitioner's Motion for Reconsideration partly meritorious.

In the case of *Winebrenner & Iñigo Insurance Brokers, Inc. vs. Commissioner of Internal Revenue*[5], the Supreme Court enumerated the requirements to successfully claim a refund of excess and unutilized CWT, to wit:

> "As implemented by the applicable rules and regulations and as interpreted in a vast array of decisions, a taxpayer who seeks a refund of excess and unutilized CWT must:
>
> 1) File the claim with the CIR within the two year period from the date of payment of the tax;
>
> 2) Show on the return that the income received was declared as part of the gross income; and
>
> 3) Establish the fact of withholding by a copy of a statement duly issued by the payor to the payee showing the amount paid and the amount of tax withheld."

[5] G.R. No. 206526, January 28, 2015.

At the crux of petitioner's Motion for Reconsideration is its firm belief that it complied with the requirement of showing on the return that the income received was declared as part of the gross income, specifically, for the income payments of ₱58,332,023.13. Hence, petitioner provided additional supporting documents in the form of Billing Statements and Daily Premium Entries Generation Reports[6], Production Reports for CYs 2007[7], 2008[8], and 2009[9]; Details of General Ledgers (GL) for CYs 2007[10], 2008[11] and 2009[12]; Trial Balance for CYs 2007[13], 2008[14] and 2009[15]; reconciliation of the amounts of gross income as reflected in the GLs and in the Annual ITRs for CYs 2007[16], 2008[17], and CY 2009[18] as well as the Judicial Affidavit[19] of Ms. Maria Esperanza Rosario R. Dellosa dated October 16, 2014.

In the Supplemental Sworn Statement of petitioner's witness, Ms. Maria Esperanza Rosario R. Dellosa[20], she explained why the Court cannot trace with certainty the disputed amount of ₱58,332,023.13 to petitioner's Production Reports and GL, to wit:

> "Q15: If all the income in the Production Reports are reported in the GL and all income in the GL are reported as gross income in the Company's Annual ITR, how come Court was not able to trace with

---

[6] Exhibits "YY" to "YY-3", "ZZ" to "ZZ-3", "AAA" to "AAA-3", "BBB to BBB-9", "CCC" to "CCC-3", "DDD" to "DDD-3", "EEE" to "EEE-11", "FFF" to "FFF-1", "GGG" to "GGG-3", "HHH" to "HHH-2", "III" to "III-8", "JJJ" to "JJJ-11", "KKK" to "KKK-13", "LLL" to "LLL-1", "MMM" to "MMM-1", "NNN" to "NNN-3", "OOO" to "OOO-39", "PPP" to "PPP-13", "QQQ" to "QQQ-3", "RRR" to "RRR-22", "SSS" to "SSS-41" "TTT" to "TTT-7", "UUU" to "UUU-9", "VVV" to "VVV-71", "WWW" to "WWW-34", "XXX" to "XXX-57", "YYY" to "YYY-5", "ZZZ" to "ZZZ-11", "AAAA" to "AAAA-9", "BBBB" to "BBBB-9", "CCCC" to "CCCC-1" "DDDD" to "DDDD-24", "EEEE" to "EEEE-72", "FFFF" to "FFFF-29", "GGGG" to "GGGG-70", "HHHH" to "HHHH-48", "IIII" to "IIII-6", "JJJJ" to "JJJJ-10", "KKKK" to "KKKK-34", "LLLL" to "LLLL-6", "MMMM" to "MMMM-4", "NNNN" to "NNNN-5", "OOOO" to "OOOO-11", "PPPP" to "PPPP-32", "QQQQ" to "QQQQ-62", "RRRR" to "RRRR-58", "SSSS" to "SSSS-1", "TTTT" to "TTTT-20", "UUUU" to "UUUU-16", "VVVV" to "VVVV-5", "WWWW" to "WWWW-10", "XXXX" to "XXXX-3", "YYYY" to "YYYY-40", "ZZZZ" to "ZZZZ-93", "AAAAA" to "AAAAA-116".

[7] Exhibits "JJJJJ-15" to "JJJJJ-77".

[8] Exhibits "KKKKK-16" to "KKKKK-85".

[9] Exhibits "IIIII-10" to "IIIII-84".

[10] Exhibits "JJJJJ-78" to "JJJJJ-180".

[11] Exhibits "KKKKK-86" to "KKKKK-192".

[12] Exhibits "IIIII-85" to "IIIII-195".

[13] Exhibit "JJJJJ-1" to "JJJJJ-14"

[14] Exhibits "KKKKK-1" to "KKKKK-15".

[15] Exhibits "IIIII-1" to "IIIII-9".

[16] Exhibit "JJJJJ".

[17] Exhibit "KKKKK".

[18] Exhibit "IIIII".

[19] Exhibit "CCCCC".

[20] Exhibit "CCCCC", Docket (vol. II), pp.687-700.

certainty the amount of income payments of Php58,332,023.13?

A15: The total income payment of Php97,276,271.79 involved in this case, which includes the Php58,332,023.13, is based on the related CWT certificates the Company received and reported in 2008. It does not represent the total amount of income the Company earned in 2008 and reported as gross income in the 2008 Annual ITR. Some of the CWT certificates received in 2008 pertain to income in 2007 that was already reported as gross income in the Company's 2007 Annual ITR. On the other hand, a portion of the 2008 income reported in the Production Reports and in the GL for 2008 will only be paid in 2009 and the corresponding CWT certificates will only be received and reported in 2009. In short, portion of the Php97,276,271.79 income payment were already reported as gross income in 2007 Annual ITR and does not include income payment already reported as gross income in 2008 Annual ITR but the CWT certificates of which will only be received in 2009. Therefore, if you only compare the Php97,276,271.79 with the income in the 2008 Production Reports and 2008 GL, it will certainly not match because they came from different sources. They are not comparable."[21]

According to petitioner's witness, the Production Report contains the list of transactions, specifically, commission income that the Company earned for the particular taxable year from various clients and from each insurance policy that the Company was able to sell. These are daily transactions of income. The sum of the commission income and fees for the day is then posted in the GL for that day. The GL is effectively a repository of the Company's total revenues for the day. Hence, the total revenues in the Production Reports are included in the total revenues in the GL.[22] In sum, it is petitioner's contention that the income reported in the Production Reports formed part of the Company's gross income as shown in its Annual ITR.[23]

[21] Q&A No. 15, Exhibit "CCCCC", Docket (vol. II), p. 691.
[22] Q&A No. 10, Exhibit "CCCCC", Docket (vol. II), p. 689.
[23] Q&A No. 15, Exhibit "CCCCC", Docket (vol. II), p. 691.

Finally, petitioner presented a breakdown of the income payments shown in the CWT certificates with additional supporting documents. Using the said breakdown found in the Supplemental Sworn Statement of Ms. Dellosa[24], the Court summarized the amount of income payment and the corresponding amount of tax withheld, as follows:

Exhibit No. of CWT certificates	Amount of Income Payment	Amount of Tax Withheld	Exhibit No. of Additional Documents
KK1	₱ 688.04	₱ 68.80	ZZ to ZZ-3
KK3	2,356.36	235.64	CCC to CCC-3
KK4	2,498.30	249.83	BBB to BBB-4
KK6	3,923.10	392.31	MMM to MMM-1
KK8	15,997.82	1,599.78	BBB to BBB-9
KK10	128,584.45	12,858.44	YY to YY-3
KK13	252,268.65	25,226.87	AAA to AAA-3
KK19	1,506.60	150.66	FFF to FFF-1
KK24	14,921.98	1,492.20	DDD to DDD-3
KK28	58,380.18	5,838.02	EEE to EEE-11
KK31	698.92	69.89	HHH-1
KK32	1,125.68	112.57	HHH and HHH-2
KK34	7,829.88	782.99	III to III-8
KK40	15,146.67	1,514.67	JJJ to JJJ-11
KK43	26,723.18	2,672.32	GGG to GGG-3
KK56	5,835.46	583.55	TTT to TTT-7
KK57	8,838.59	883.86	LLL to LLL-1
KK59	21,569.55	2,156.96	NNN to NNN-3
KK60	45,277.82	4,527.78	KKK to KKK-13
KK64	353,834.91	35,383.49	ZZZZ to ZZZZ-93
KK67	570,313.43	57,031.34	OOO to OOO-39
KK79	59,330.40	5,933.04	PPP to PPP-13
KK83	1,569.10	156.91	QQQ to QQQ-3
KK84	982,434.00	98,243.40	RRR to RRR-22
KK85	59,327.50	5,932.75	SSS to SSS-41
KK93	393,442.49	39,344.25	UUU to UUU-9
KK94	716,861.10	71,686.11	VVV to VVV-71
KK98	782,620.10	78,262.01	WWW to WWW-34
KK99	628,335.10	62,833.51	XXX to XXX-57
KK112	954,460.70	95,446.07	BBBB to BBBB-9
KK113	1,038,536.33	103,853.63	DDDD to DDDD-24
KK114	765,808.70	76,580.87	EEEE to EEEE-72
KK119	613,858.06	61,385.81	FFFF to FFFF-29
KK121	719,895.70	71,989.57	GGGG to GGGG-70
KK122	2,373,158.20	237,215.82	HHHH to HHHH-48
KK125	236,160.20	23,616.02	KKKK to KKKK-34
KK129	73,468.60	7,346.86	IIII to IIII-6
KK130	34,648.82	3,464.88	JJJJ to JJJJ-10
KK139	61,831.60	6,183.16	LLLL to LLLL-6
KK141	19,949.49	16,624.56	MMMM to MMMM-4
KK160	5,352,468.49	535,246.85	NNNN to NNNN-5
KK161	289,603.93	28,960.39	OOOO to OOOO-11
KK162	2,627,427.11	262,742.71	PPPP to PPPP-32
KK165	1,783,243.40	178,324.34	QQQQ to QQQQ-62
KK167	747,151.60	74,715.16	RRRR to RRRR-58
KK168	566,315.30	56,631.53	SSSS to SSSS-1
KK184	71,966.80	7,196.68	WWWW to WWWW-10

[24] Q&A No. 19, Exhibit "CCCCC", Docket (vol. II), pp. 692-696.

KK188	733,333.00	14,666.66	YYY to YYY-5
KK190	2,359,575.50	47,191.51	ZZZ to ZZZ-11
KK191	1,217,525.50	24,350.51	AAAA to AAAA-9
KK194	227,283.00	19,773.62	CCCC to CCCC-1
KK197	1,700,000.00	170,000.00	XXXX to XXXX-3
KK199	366,041.20	6,720.82	UUUU to UUUU-16
KK200	166,919.50	3,338.39	YYYY to YYYY-40
KK201	1,383,243.68	27,664.87	TTTT to TTTT-20
KK202	498,804.00	4,988.04	VVVV to VVVV-5
TOTAL	**₱ 32,144,917.77**	**₱ 2,682,443.28**	

Contrary to petitioner's allegation that it was able to trace the amount of ₱34,077,756.73[25] from its 2008 Production Report, the above summary shows that only the amount of ₱32,144,917.77 was supported by petitioner's additional evidence. As a result, out of the total appealed CWT of ₱5,309,498.52, only the amount of ₱2,682,443.28 pertaining to income payments supported by additional evidence shall be examined, while the CWT amounting to ₱2,627,055.24 shall remain disallowed for failure to substantiate.

Upon re-examination of the CWTs amounting to ₱2,682,443.28, it is observed that not all amounts found in the additional supporting documents, particularly in the Production Reports where the debits/credits to Fees and Commissions are reflected, are equal to the amount of income payments shown in the CWT certificates. Hence, the Court cannot ascertain if a particular entry to the Production Report (and subsequently to the GL) truthfully represents the income payment per CWT being supported. The above findings on the examination made by the Court are summarized as follows:

Findings of this Court:	Amount of income payment	Amount of Tax Withheld
1. Income payments properly supported by Production Reports that are traced to GL in exact amounts (see Schedule 1)	₱ 2,245,690.79	₱ 221,614.42
2. Income payments supported by Production Reports but are not equal to amount shown in the CWT certificates	29,899,226.98	2,460,828.86
TOTAL	**₱ 32,144,917.77**	**₱ 2,682,443.28**

<u>Schedule 1</u> – Income payments properly supported by Production Reports that were traced to GL in exact amounts

Exhibit No. of CWT Certificate	Amount of Income Payment	Amount of Tax Withheld	Exh. No. of Supporting Documents
KK3	₱ 2,356.36	₱ 235.64	CCC to CCC-3
KK4	2,498.30	249.83	BBB to BBB-4
KK6	3,923.10	392.31	MMM to MMM-1

[25] Q&A No. 19, Exhibit "CCCCC", Docket (vol. II), p. 696.

KK13	252,268.65	25,226.87	AAA to AAA-3
KK19	1,506.60	150.66	FFF to FFF-1
KK24	14,921.98	1,492.20	DDD to DDD-3
KK32	1,125.68	112.57	HHH and HHH-2
KK34	7,829.88	782.99	III to III-8
KK57	8,838.59	883.86	LLL to LLL-1
KK59	21,569.55	2,156.96	NNN to NNN-3
KK83	1,569.10	156.91	QQQ to QQQ-3
KK194	227,283.00	19,773.62	CCCC to CCCC-1
KK197	1,700,000.00	170,000.00	XXXX to XXXX-1
TOTAL	**₱ 2,245,690.79**	**₱ 221,614.42**	

Since there is no way to determine the truthfulness of petitioner's allegations, the Court cannot see the exact amounts of income payments in the CWT certificates when traced to the Production Reports and General Ledgers. Since the withholding agent per CWT and the named payee per billing statements and Production Reports are not the same, then the Court cannot verify that the income payment per CWT pertains to Commission and Fees income reported as part of petitioner's gross income.

As explained by petitioner earlier, the CWT certificates are provided by the withholding agents upon payment of Commission Income and Service and Other Income. Petitioner could have provided additional reconciliations for those income payments per CWT that were not exactly reflected in the GL and supported the same with official receipts and/or invoices.

Even petitioner's witness admitted that they were not able to trace some income payments to the Production Report, to wit:

> "A21: Some of the issuers of the CWT certificates identified by the Court did not give the Company a breakdown of which insurance policies the income payments pertain to. Hence, it is difficult, if not impossible, to trace them to the Production Report. We have requested a breakdown from the withholding agents who issued those CWT certificates but they were unable to provide us the breakdown."[26]

The burden of proof to establish entitlement to refund is on the claimant taxpayer. Being in the nature of a claim for exemption, refund is construed in *strictissimi juris* against the entity claiming the refund and in favor of the taxing power. This is the reason why a

[26] Q&A No. 21, Exhibit "CCCCC", Docket (vol. II), p. 696.

claimant must positively show compliance with the statutory requirements provided for under the NIRC in order to successfully pursue one's claim.[27]

For failure to adequately substantiate the entire appealed amount, petitioner is entitled to a refund in the amount of ₱221,614.42 only, representing unutilized excess creditable income taxes withheld for taxable year 2008, in addition to the amount of ₱3,569,915.23 originally granted in the assailed Decision dated February 11, 2014.

WHEREFORE, petitioner's Motion for Reconsideration is **PARTIALLY GRANTED.** Accordingly, the dispositive portion of the assailed Decision dated February 11, 2014 is hereby amended to read, as follows:

> "**WHEREFORE**, premises considered, the instant Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, respondent is hereby **ORDERED TO REFUND** or **TO ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the reduced amount of **THREE MILLION SEVEN HUNDRED NINETY ONE THOUSAND FIVE HUNDRED TWENTY NINE PESOS and 65/100 (₱3,791,529.65)**, representing petitioner's excess and unutilized creditable income taxes withheld for calendar year 2008.
>
> **SO ORDERED.**"

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

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

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

---

[27] *Winebrenner & Iñigo Insurance Brokers, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 206526, January 28, 2015.

ATTESTATION

I attest that the conclusions in the above Amended Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson's Attestation, it is hereby certified that the conclusions in the above Amended 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