REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC
****

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**CTA EB No. 2359** (CTA Case No. 9465)
	Present:
- versus -	**DEL ROSARIO,** P.J., **CASTAÑEDA, JR., UY, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, MODESTO-SAN PEDRO, REYES-FAJARDO,** and **CUI-DAVID,** JJ.
	Promulgated:
TOLEDO POWER COMPANY, Respondent.	MAY 3 1 2022 3:28 p.m.

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RESOLUTION

UY, J.:

For resolution is petitioner's *Motion for Reconsideration (Re: Decision promulgated 5 January 2022)*[1] filed on February 10, 2022, with respondent's *Comment/Opposition (To Petitioner's Motion for Reconsideration Re: Decision dated January 5, 2022)*.[2]

In the said *Motion*, petitioner prays that the Court *En Banc's Decision* promulgated on January 5, 2022 be reversed and set aside, and another one be rendered denying respondent's entire claim for refund. The dispositive portion thereof reads:

[1] EB Docket, pp. 91 to 100.
[2] EB Docket, pp. 105 to 119.

> "**WHEREFORE**, in light of the foregoing considerations, the instant *Petition for Review* is hereby **DENIED** for lack of merit. Accordingly, the *Decision* promulgated on June 8, 2020, and the *Resolution* promulgated on October 2, 2020, by the First Division of this Court in CTA Case No. 9465 are hereby **AFFIRMED**.
>
> **SO ORDERED.**"

Petitioner's arguments:

In his *Motion*, petitioner reiterates his position that respondent, as a mere withholding agent, has no personality to file a claim for refund because the proper person to file such claim or tax credit is the person on whom tax is imposed by statute. To support his claim, petitioner cites *Silkair (Singapore) Pte. Ltd., v. Commissioner of Internal Revenue (CIR)*[3] (*Silkair* case) where the Supreme Court held that *"the person liable to claim a tax refund is the statutory taxpayer"*.

Petitioner further insists that in order to be entitled to a refund of creditable withholding taxes, respondent must show in its income tax return that the income payment received was declared as part of its gross income, pursuant to the Supreme Court's ruling in *Citibank, N.A. v. Court of Appeals and CIR*[4] (*Citibank* case). Petitioner claims that no income tax return was presented by respondent which would show that the income payment it received was declared as part of its gross income, precisely because respondent and Yashima & Co. Ltd. (Yashima) are unrelated entities.

Finally, petitioner claims that it is incumbent upon respondent to discharge its burden of proving the fact of withholding of taxes and the subsequent remittance thereof to the Bureau of Internal Revenue (BIR). Petitioner argues that respondent failed to prove that the alleged taxes withheld came to the hands of the BIR.

Respondent's counter-arguments:

Respondent points out that the allegations in petitioner's *Motion* are mere reiteration of the arguments raised in his *Petition for Review* which have been thoroughly discussed and settled by the Court in

[3] G.R. No. 166482, January 25, 2012.
[4] G.R. No. 107434, October 10, 1997.

Division and the Court *En Banc* in their respective *Decisions* and *Resolutions*.

Respondent also asserts that as a withholding agent, it has personality to claim for refund. In the case of *Commissioner of Internal Revenue v. Smart Communication, Inc.*[5] , the Supreme Court clarified that the withholding agent may file a claim for refund in lieu of the taxpayer.

Finally, respondent maintains that it was able to prove the fact of withholding of taxes and the subsequent remittance thereof to the BIR.

THE COURT *EN BANC*'S RULING

We deny the instant *Motion*.

After a careful examination and consideration of petitioner's arguments in his *Motion*, We note that the same are mere reiteration of matters which have already been considered, weighed and resolved in the assailed *Decision*. Thus, we shall not belabor, in this *Resolution*, the disquisitions made therein.

Nevertheless, the Court *En Banc* stresses that a withholding agent may file a claim for refund. Pursuant to Sections 204 (C) and 229 of the 1997 National Internal Revenue Code (NIRC), as amended, the person entitled to claim a tax refund is the taxpayer. As correctly pointed out by respondent, the withholding agent may file the claim in case the taxpayer does not file a claim for refund pursuant to the pronouncement of the Supreme Court in the case of *Smart Communications, Inc.*.[6]

The withholding agent has a legal right to file a claim for refund for two reasons: 1) he is considered a "taxpayer" under the 1997 NIRC, as amended, because he is personally liable for the withholding tax as well as for deficiency assessments, surcharges, and penalties, should the amount of the tax withheld be found to be less than the amount that should have been withheld under the law; and 2) as an agent of the taxpayer, his authority to file the necessary income tax return and to remit the tax withheld to the government impliedly includes the authority to file a claim for refund and to bring an action for recovery of such claim.[7]

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[5] G.R. No. 179045-46, August 25, 2010
[6] Ibid
[7] *Id.*

With respect to the *Silkair* case cited by petitioner where it was held that *"the person liable to claim a tax refund is the statutory taxpayer"*, the same is not applicable to the instant case. The *Silkair* case involved excise taxes and not final withholding taxes. In the said case, the Supreme Court ruled that considering that excise tax is an indirect tax, the proper party to question or seek a refund of the tax is the statutory taxpayer, the person on whom the tax is imposed by law and who paid the same even when he shifts the burden thereof to another.

Meanwhile, petitioner's argument that in order for respondent to be entitled to the refund of creditable withholding taxes it must be shown in respondent's income tax return that the income payment received was declared as part of its gross income, is unfounded. The requisites cited by petitioner in his *Motion* pursuant to the *Citibank* case pertains to a claim for refund of creditable withholding taxes and not of final withholding taxes. Respondent cannot be expected to declare its income payments to Yashima as part of its gross income because as petitioner himself stated in his *Motion*, the income payment to Yashima is an expense of the part of respondent. There was no income to declare on the part of respondent.

Finally, contrary to petitioner's claim that respondent failed to prove that the alleged withheld taxes were remitted to the BIR, respondent did in fact prove that it remitted to the BIR the withholding taxes on its income payments to Yashima for the period September 10, 2014 to October 13, 2015, amounting to ₱18,391,219.77, as evidenced by respondent's BIR Forms No. 1601-F[8] and BIR ePayment Confirmations.[9]

In view of the foregoing, the Court *En Banc* finds no compelling reason to reconsider, modify, or reverse the assailed *Decision*.

WHEREFORE, in light of the foregoing considerations, the instant *Motion for Reconsideration (Re: Decision promulgated 5 January 2022)* is **DENIED** for lack of merit.

SO ORDERED.

ERLINDA P. UY
Associate Justice

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[8] Division Docket – Vol. 2 (CTA Case No. 9465), pp. 632, 634 to 635, 637 to 638, 640 to 641, and 643 to 644.
[9] Division Docket – Vol. 2 (CTA Case No. 9465), pp. 633, 636, 639, 642, and 645.

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

Marian Ivy F. Reyes-Fajardo
MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice