REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-*versus* –

HONDA CARS MAKATI, INC.,
Respondent.

CTA *EB* NO. 1432
(CTA Case No. 8466)

Present:
DEL ROSARIO, P.J.,
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA,
FABON-VICTORINO,
MINDARO-GRULLA,
RINGPIS-LIBAN, and
MANAHAN, JJ.

Promulgated:
MAY 18 2017 3:25 p.m.

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DECISION

BAUTISTA, J.:

The Case

Submitted for decision to the Court of Tax Appeals ("CTA") *En Banc* under *Section 4(b)*[1], *Rule 8 of the 2005 Revised Rules of the CTA, as amended ("RRCTA")*, is a Petition for Review[2] of the Decision[3] dated

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[1] "SEC. 4. *Where to appeal; mode of appeal.* –

xxx xxx xxx

(b) An appeal from a decision or resolution of the Court in Division on a motion for reconsideration or new trial shall be taken to the Court by petition for review as provided in Rule 43 of the Rules of Court. The Court *En Banc* shall act on the appeal."

[2] *Rollo, CTA EB No. 1432, Petition for Review ("PFR")*, pp. 5-41, with annexes.

[3] *Records, CTA Case No. 8466, Assailed Decision*, pp. 510-527; penned by Associate Justice Erlinda P. Uy, with Presiding Justice Roman G. Del Rosario and Associate Justice Cielito N. Mindaro-Grulla concurring.

September 17, 2015 ("Assailed Decision"), and the Resolution[4] dated February 10, 2016 ("Assailed Resolution"), rendered by the CTA First Division ("Court in Division") in CTA Case No. 8466, praying for the Court *En Banc* to reverse and set aside the Assailed Decision and the Assailed Resolution of the Court in Division and for a new decision to be rendered dismissing the Petition for Review filed by respondent for lack of merit.[5]

The Parties[6]

Petitioner Commissioner of Internal Revenue ("CIR") is the duly appointed Commissioner of the Bureau of Internal Revenue ("BIR"), vested with authority, among others, to act upon and approve claims for refund or tax credit of overpaid or erroneously paid internal revenue taxes.

Respondent Honda Cars Makati, Inc. ("HCMI") is a corporation duly organized and existing under the laws of the Republic of the Philippines; and is a registered taxpayer of the BIR, with Tax Identification Number ("TIN") 000-220-239-000. It is engaged in the sale, distribution, service, and repair of automobiles, and was incorporated with the following primary purpose as stated in its Amended Articles of Incorporation dated July 23, 2002, to wit:

> To engage in the sale and distribution, service and repair of automobiles, motor cars, motor trucks, wagons, buggies, carriages and other mechanically propelled vehicles, and vehicle engines, parts, accessories, supplies, and other articles; to operate chain stores and general merchandising pertaining to motor vehicles, to build, maintain, lease or otherwise acquire, own, hold and operate warehouses, agencies, structures, service centers and showrooms which may be used in connection with the business of the Corporation; to buy, sell and generally deal in all kinds of merchandise, fixtures, and chattels relating to motor vehicles; to acquire and own patents, improvements and franchises, and to operate under such patents, improvements and franchises, any commercial dealings pertaining to the matters and things enumerated herein.

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[4] *Records, Assailed Resolution,* pp. 558-560; penned by Associate Justice Erlinda P. Uy, with Presiding Justice Roman G. Del Rosario and Associate Justice Cielito N. Mindaro-Grulla concurring.
[5] *Rollo, PFR, Prayer,* p. 10.
[6] *Records, Assailed Decision, The Facts,* pp. 510-511.

The Facts

As stated in the Assailed Decision, the factual antecedents of the case are as follows:

> On April 15, 2010, [respondent] manually filed its Annual Income Tax Return (ITR) for [calendar year ("CY")] 2009 with the BIR, Large Taxpayers Assistance Division II. On the same day, [respondent] also filed with the BIR, through the Electronic Filing and Payment System (EFPS), an electronic copy of its Annual ITR for CY 2009.
>
> In both its manual and electronic Annual ITRs for CY 2009, [respondent] reported income tax credits in the total amount of [Php]62,668,423.43, broken down as follows:

Prior Year's Excess Credits other than MCIT	[Php]	40,604,540.00
Creditable Tax Withheld for the First Three Quarters		9,015,448.00
Creditable Tax Withheld Per BIR Form No. 2307 for the Fourth Quarter		13,048,436.00
Total Tax Credits/Payments	[Php]	62,668,423.00

> [Respondent] indicated in its Annual ITR for CY 2009 its option to be issued a TCC for its excess and unutilized CWT for CY 2009.
>
> On December 14, 2011, [respondent] filed with the BIR, Large Taxpayers Excise Audit Division II, a letter-request for the refund of or issuance of TCC for its excess and unutilized CWT for CY 2009 in the amount of [Php]22,063,884.00.
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> Due to the inaction on the part of [petitioner], [respondent] then filed with this Court the [] Petition for Review on April 13, 2012.
>
> [Petitioner] filed her Answer on July 3, 2012, interposing the following Special and Affirmative Defenses:
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> xxx xxx xxx
>
> The case was set for Pre-Trial Conference on July 27, 2012 at 9:00 a.m. Thereafter, the parties filed their Joint Stipulation of Facts and Issues on August 22, 2012, which the Court approved in the Resolution dated August 29, 2012.
>
> During trial, [respondent] presented two witnesses: (1) Francis Dennis C. Lardizabal, its Finance Manager; and Ma.

> Milagros F. Padernal of Uy, Singson, Abella & Co., the Court-commissioned Independent Certified Public Accountant (ICPA).
>
> On the other hand, [petitioner]'s counsel manifested that he will not present evidence on the ground that no Final Report was submitted by the Investigating Revenue Officer during the hearing held on July 22, 2014. Thus, the Court directed the parties to file their respective Memorand[a] in the Resolution dated July 22, 2014.
>
> [Respondent] filed its Memorandum on September 10, 2014; while [petitioner] filed her Memorandum on October 29, 2014. In the Resolution dated November 7, 2014, the case was submitted for decision.

On September 17, 2015, the Court in Division promulgated the Assailed Decision, the dispositive portion thereof reads as follows:

> **WHEREFORE,** in light of the foregoing considerations, the instant Petition for Review is **PARTIALLY GRANTED.** Accordingly, respondent is hereby **ORDERED TO ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the reduced amount of **SIXTEEN MILLION EIGHT HUNDRED FIFTY FIVE THOUSAND EIGHT HUNDRED SIXTEEN PESOS AND FIFTY SIX CENTAVOS ([Php]16,855,816.56),** representing its unutilized excess CWT for CY 2009.
>
> **SO ORDERED.**[7]

On October 2, 2015, petitioner filed by registered mail a Motion for Reconsideration[8], to which respondent filed its Comment (Re: Motion for Reconsideration dated October 2, 2015)[9] on November 16, 2015.

On February 10, 2016, the Court in Division promulgated the Assailed Resolution, with the following dispositive portion:

> **WHEREFORE,** premises considered, finding no cogent reason to depart from the assailed Decision, respondent's

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[7] *Records, Assailed Decision,* p. 526; emphases retained.
[8] *Id., Motion for Reconsideration,* pp. 528-532.
[9] *Id., Comment (Motion for Reconsideration Dated October 2, 2015),* pp. 539-554.

Motion for Reconsideration is hereby **DENIED** for lack of merit.

SO ORDERED.[10]

On February 23, 2016, petitioner filed by registered mail, a Motion for Extension of Time to File Petition for Review[11], which was granted by the Court *En Banc* in a Minute Resolution[12] dated March 4, 2016.

On March 11, 2016, petitioner filed by registered mail, the instant Petition for Review[13] with the CTA *En Banc*, docketed as CTA *EB* No. 1432.

On May 19, 2016, the Court *En Banc* issued a Resolution[14] requiring respondent to file its comment, not a motion to dismiss; to which respondent complied by filing its Comment (re: Petition for Review Dated March 9, 2016)[15] on June 10, 2016.

On July 1, 2016, the Court *En Banc* issued a Resolution[16] giving due course to the Petition for Review and ordering the parties to file their respective Memoranda.

On August 15, 2016, respondent filed a Motion for Extension of Time to File Memorandum[17]; which was granted[18] by the Court *En Banc* on August 22, 2016.

With the filing of respondent's Memorandum[19] on August 30, 2016, and the issuance of a Records Verification Report[20] dated September 2, 2016 stating that the CIR failed to file his Memorandum, the Court *En Banc* resolved[21] to submit the case for decision on September 28, 2016; hence, this Decision.

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[10] *Records, Assailed Resolution,* p. 560; emphases retained.
[11] *Rollo,* pp. 1-2.
[12] *Id.* at 4.
[13] *Id., PFR,* pp. 5-41, with annexes.
[14] *Id.* at 44-45.
[15] *Id., Comment (re: Petition for Review Dated March 9, 2016),* pp. 46-64.
[16] *Id.* at 66-67.
[17] *Rollo,* pp. 68-71.
[18] *Id.* at 72.
[19] *Id., respondent's Memorandum,* pp. 73-95.
[20] *Id., Records Verification Report,* p. 96.
[21] *Id.,* pp. 98-99.

The Issues

WHETHER THE INCOME FROM WHICH THE TAXES WERE WITHHELD WAS INCLUDED AS PART OF GROSS INCOME IN HCMI'S 2009 AND 2010 TAX RETURNS.[22]

WHETHER HCMI WAS ABLE TO COMPLY WITH THE REQUIREMENT TO PRESENT PROOF OF ACTUAL REMITTANCE TO THE BIR OF THE WITHHELD TAXES AND TESTIMONIAL EVIDENCE OF THE PAYORS AND WITHHOLDING AGENTS.[23]

Petitioner's Arguments[24]

On one hand, petitioner argues that a perusal of respondent's Annual ITR for taxable years 2009 and 2010 would show that there is no entry in the "Creditable Tax Withheld" column, specifically, Schedule 1 or the Schedule of Sales/Revenues/Receipts/Fees. Citing the case of *Raytheon-Ebasco Overseas Ltd. - Philippine Branch v. CIR*[25] *(the "Raytheon Case")*, petitioner claims that such absence can be taken to mean that no part of the gross income reported therein was ever subjected to creditable withholding tax ("CWT") and that non-compliance with this requirement is fatal to respondent's claim for refund.

Petitioner posits further that the certificates of creditable taxes withheld accomplished by its withholding agents showing the amount deducted and withheld from its income in support of the tax refund does not constitute conclusive evidence of payment and remittance to the BIR; that the best proof of remittance is the certification from the BIR's Revenue Accounting Division ("RAD") as to the fact of remittance of the tax withheld; and that respondent failed to present the various payors and withholding agents in order to establish the fact of withholding and remittances made.

Lastly, petitioner insists that tax refunds are in the nature of tax exemptions, thus, it is regarded as in derogation of sovereign

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[22] *Rollo, PFR*, p. 7.
[23] *Id.* at 9.
[24] *Id.* at 7-10.
[25] CTA *EB* No. 597, March 17, 2011.

authority and is construed *strictissimi juris* against the person or entity claiming the exemption.

Respondent's Counter-Arguments[26]

On the other hand, respondent contends that the arguments raised by petitioner have already been exhaustively considered and addressed by the Court in Division; hence, should be denied outright for lack of merit.

Respondent counter-argues that its failure to indicate the amount of tax withheld under the "Creditable Tax Withheld" column in Schedule 1 of its Annual ITR for CY 2009 is not fatal to its cause. It avers that there is nothing in *Section 76 of the 1997 National Internal Revenue Code, as amended ("1997 NIRC")* which requires the CWT being claimed for refund to be reported in a particular portion of the taxpayer-claimant's Annual ITR; that *Section 2.58.3 of Revenue Regulations ("RR") No. 2-98, as amended,* merely requires that the income payment should be declared as part of the gross income; and that the fact of withholding is established by a copy of the withholding tax statement duly issued by the payor to the payee showing the amount paid and the amount of tax withheld.

It maintains that the presentation of the Certificates of Creditable Tax Withheld at Source (BIR Form No. 2307) issued by the withholding agents constitute sufficient proof of the existence and validity of a taxpayer's CWT pursuant to *Sections 2.58(B) and 2.58.3 of RR No. 2-98, as amended* for it is considered *prima facie* proof of actual payment of CWT by the payee-taxpayer to the government.

Respondent avers that there is no need to present the testimony of various payors and withholding agents who prepared and signed the certifications of creditable taxes withheld showing the amount deducted and withheld from its income in support of respondent's tax refund; that withholding agents are not within the control of the taxpayer-claimant as they are agents of the CIR; and that to require the taxpayer-claimant to prove the actual payment and remittance of taxes withheld would place it at the mercy of the withholding agents over which it has no control.

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[26] *Rollo, respondent's Memorandum,* pp. 78-92.

The Ruling of the Court En Banc

The Petition for Review is without merit. It must be stated at the outset that the issues and arguments raised by the CIR are the same issues he raised before the Court in Division, and were already considered, passed upon and exhaustively discussed in the Assailed Decision and the Assailed Resolution.

Petitioner insists that respondent's failure to make an entry in the "Creditable Tax Withheld" column of its Annual ITR for taxable years 2009 and 2010, specifically, Schedule 1 or the Schedule of Sales/ Revenues/Receipts/Fees proves that no part of the gross income reported therein was ever subjected to CWT, pursuant to the *Raytheon Case.*

The Court *En Banc* finds the argument untenable as it is not obliged to follow the ruling of the CTA *En Banc* in the *Raytheon Case.* As the Supreme Court said in the case of *Commissioner of Internal Revenue v. San Roque Power Corporation*[27] *(the "San Roque Case")*, "CTA decisions do not constitute as precedents, and do not bind this Court or the public. That is why CTA decisions are appealable to this Court, which may affirm, reverse or modify the CTA decisions as the facts and the law may warrant."

It is clear from the foregoing that only the decisions of the Supreme Court constitute binding precedents, forming part of the Philippine legal system.[28]

As the Court in Division validly held, following the doctrine laid down by the Supreme Court in numerous cases[29], in order for a claim for tax refund or TCC can be granted, the taxpayer must establish the following:

1. The claim for refund was filed within two (2) years as prescribed in *Section 230 (now 229) of the 1997 NIRC;*

[27] G.R. Nos. 187485, 196113 & 197156, February 12, 2013, 690 SCRA 336.
[28] *Commissioner of Internal Revenue v. San Roque Power Corporation*, G.R. Nos. 187485, 196113 & 197156, February 12, 2013, 690 SCRA 336.
[29] *Banco Filipino Savings and Mortgage Bank v. Court of Appeals, et.al.*, G.R. No. 155682, March 27, 2007, 519 SCRA 93; *Commissioner of Internal Revenue v. Perf Realty Corporation*, G.R. No. 163345, July 4, 2008, 557 SCRA 165; and *Commissioner of Internal Revenue v. Far East Bank & Trust Co. (Now Bank of the Philippine Islands)*, G.R. No. 173854, March 15, 2010, 615 SCRA 417.

2. The income upon which the taxes were withheld were included in the return of the recipient; and

3. The fact of withholding is established by a copy of statement (BIR Form 1743-A[30]) duly issued by the payer (withholding agent) to the payee showing the amount paid and the amount of tax withheld therefrom.[31]

As can be seen from the above-enumeration, petitioner's argument, that failure to make an entry in the "Creditable Taxes Withheld" column in Schedule 1 of petitioner's Annual ITR is fatal to petitioner's cause, has no leg to stand on.

From the records, respondent was able to prove that the claim for administrative and judicial claims for refund were filed within two (2) years from the date of filing of the final adjusted return, in compliance with the first condition.

Anent the second condition, the Court in Division was able to trace the various income declared in respondent's Annual ITR to the general ledger and/or invoices/journal/vouchers/official receipts/production reports, which prove that the income upon which the taxes were withheld were declared as part of its gross income. As borne by the records, only the total income payments of Php1,274,574,257.97 from which the CWT amounting to Php17,036,923.13 were withheld were traced to the GL and/or Invoices/Journal/Vouchers/Official Receipts/Production Reports.

As to the last condition, petitioner posits that the best proof of remittance is the certification from the BIR's RAD as to the fact of remittance of the tax withheld; and that respondent's failure to present the various payors and withholding agents in order to establish the fact of withholding and remittances made is fatal to its cause.

The Court *En Banc* does not agree.

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[30] Now BIR Form No. 2307.

[31] *Commissioner of Internal Revenue v. Asian Transmission Corporation*, G.R. No. 179617, January 19, 2011, 640 SCRA 189.

Sections 2.58(B) and 2.58.3 of RR No. 2-98, as amended, is instructive as to how to establish the fact of withholding, *viz.:*

> Section 2.58. *Returns and Payment of Taxes Withheld at Source.* - (A) xxx
>
> (B) *Withholding tax statement for taxes withheld.* - Every payor required to deduct and withhold taxes under these regulations shall furnish each payee, whether individual or corporate, with a withholding tax statement, using the prescribed form (BIR Form 2307) showing the income payments made and the amount of taxes withheld therefrom, for every month of the quarter within twenty (20) days following the close of the taxable quarter employed by the payee in filing his/its quarterly income tax return. Upon request of the payee, however, the payor must furnish such statement to the payee simultaneously with the income payment. For final withholding taxes, the statement should be given to the payee on or before January 31 of the succeeding year.
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> xxx xxx xxx
>
> SECTION 2.58.3. *Claim for Tax Credit or Refund.* – (A) The amount of creditable tax withheld shall be allowed as a tax credit against the income tax liability of the payee in the quarter of the taxable year in which income was earned or received.
>
> (B) Claims for tax credit or refund of any creditable income tax which was deducted and withheld on income payments shall be given due course only when it is shown that the income payment has been declared as part of the gross income and the fact of withholding is established by a copy of the withholding tax statement duly issued by the payor to the payee showing the amount paid and the amount of tax withheld therefrom.
>
> <u>Proof of remittance is the responsibility of the withholding agent.</u>[32]

Based on the afore-quoted provisions, the taxpayer does not have to prove actual remittance. The certificate of creditable tax withheld at source is the competent proof to establish the fact that

[32] Underscoring ours.

taxes are withheld.[33] It is not necessary for the person who executed and prepared the certificate of creditable tax withheld at source to be presented and to testify personally to prove the authenticity of the certificates.[34]

A certificate of creditable tax withheld at source is complete in the relevant details that would aid the courts in the evaluation of any claim for refund of excess creditable withholding taxes.[35] Thus, upon presentation of a withholding tax certificate complete in its relevant details and with a written statement that it was made under the penalties of perjury, the burden of evidence then shifts to the CIR to prove that *(1)* the certificate is not complete; *(2)* it is false; or *(3)* it was not issued regularly.[36] In the case at bar, petitioner failed to dispute the evidence presented by respondent.

WHEREFORE, premises considered, the instant Petition for Review is hereby **DENIED** for lack of merit. Accordingly, the Decision dated September 17, 2015 and the Resolution dated February 10, 2016 of the Court in Division, are hereby **AFFIRMED** and **UPHELD.**

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

[33] *Commissioner of Internal Revenue v. Philippine National Bank,* G.R. No. 180290, September 29, 2014, 736 SCRA 609.
[34] *Id.*
[35] *Banco Filipino Savings and Mortgage Bank v. Court of Appeals, et.al.,* G.R. No. 155682, March 27, 2007, 519 SCRA 93.
[36] *Commissioner of Internal Revenue v. Philippine National Bank,* G.R. No. 180290, September 29, 2014, 736 SCRA 609.

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

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

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

Ma. Belen
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

Catherine T. Manahan
CATHERINE T. MANAHAN
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