**REPUBLIC OF THE PHILIPPINES**
***Court of Tax Appeals***
QUEZON CITY

**SPECIAL THIRD DIVISION**

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| **GHD PTY LTD. (FORMERLY GUTTERIDGE HASKINS & DAVEY PTY LTD.),** Petitioner, | **CTA CASE NO. 10374** |
| | *Present:* |
| vs. | **RINGPIS-LIBAN**, *Chairperson*, **MODESTO-SAN PEDRO**, and **FERRER-FLORES**, *JJ.* |
| **COMMISSIONER OF INTERNAL REVENUE,** Respondent, | Promulgated: JUL 01 2024 10:30 a.m. |

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## RESOLUTION

***FERRER-FLORES, J.:***

Before this Court is respondent's **Motion for Partial Reconsideration** filed *via* an accredited courier service on February 5, 2024, and received by the Court on February 6, 2024, with petitioner's **Comment (Re: CIR's Motion for Reconsideration dated February 5, 2024)** filed on March 4, 2024.

On January 15, 2024, the Court promulgated the assailed Decision partially granting petitioner's claim for refund of excess and unutilized creditable withholding tax (CWT), the dispositive portion of which reads:

> **WHEREFORE,** in light of the foregoing considerations, the present *Petition for Review* is **PARTIALLY GRANTED.** Accordingly, respondent is **ORDERED TO REFUND OR ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner, the amount of **₱50,743,712.18**, representing its excess and unutilized creditable withholding taxes (CWTs) for the fiscal year ended June 30, 2018.
>
> **SO ORDERED.**

In his *Motion*, respondent primarily claims that the Court erred in finding that petitioner was able to comply with the documentary requirements for refund of its excess CWT in the amount of ₱50,743,712.18. As such, respondent prays that the Court's Decision be reconsidered and set aside, based on the following grounds:

1. Certificates representing CWT for fiscal year (FY) 2018 and those that were reported pertaining to prior years were not entirely executed under oath;

2. Petitioner failed to prove that certificates of taxes withheld pertaining to prior years were declared as part of the income for their respective years; and,

3. Petitioner's accumulated credits supported by BIR Form No. 2307 for prior years are not enough to cover tax due for FY 2018.

On the other hand, in petitioner's *Comment*, it points out that respondent's *Motion for Partial Reconsideration* is a mere rehash of the arguments previously raised and subsequently denied by the Court. In this regard, petitioner asserts that the Court should not consider respondent's arguments as they lack factual and legal merit. Instead, petitioner reiterates the following:

1. The taxpayer's authorized representative signed the Annual Income Tax Return (BIR Form No. 1702-RT) and Certificates of Creditable Tax Withheld at Source (BIR Form No. 2307) *"under the penalties of perjury"* pursuant to the provisions of Section 52, National Internal Revenue Code (NIRC) of 1997, as amended;

2. Petitioner only needs to prove the fact of withholding and not the actual remittance to the Bureau of Internal Revenue (BIR) of taxes withheld. The presentation of the Certificates of Creditable Tax Withheld at Source (BIR Form No. 2307) issued by withholding agents constitutes sufficient proof of the fact of withholding;

3. Respondent erred in citing the Decisions of the Court of Tax Appeals (CTA) in CTA Case Nos. 9948 (FY 2016) and 10187 (FY 2017) as basis to argue that petitioner failed to prove that income from which the FY 2018 CWTs were withheld was reported as part of petitioner's annual income tax return (ITR); and,

4. Petitioner was able to prove that it had sufficient prior year's excess credits to cover its income tax due for FY 2018.

After due consideration of the parties' arguments, the Court finds respondent's *Motion for Partial Reconsideration* bereft of merit.

*1. Certificates representing CWT for fiscal year (FY) 2018 and those that were reported pertaining to prior years were not entirely executed under oath.*

As to the *first* ground, respondent avers that the annual ITRs and the Certificates of Creditable Tax Withheld at Source (BIR Form No. 2307) submitted by petitioner are not valid since they were merely signed by the payee but not made under oath. Respondent points out that Section 2.58.4 of Revenue Regulations (RR) No. 2-98 requires that any return and documents required to be filed relative to the claim for refund of unutilized CWT shall not only contain a written declaration that it was made under penalties of perjury but that the same be made under oath.

Moreover, respondent contends that petitioner should not have been granted refund since the evidence it presented, *i.e.* certificates of creditable taxes withheld executed by its withholding agents, do not constitute conclusive evidence of actual payment and remittance to the BIR of the taxes withheld on petitioner's income. Respondent asserts that the act of withholding is definitely different from the act of remittance and that the best evidence or proof of remittance is the certification from the BIR's Revenue Accounting Division (RAD) to confirm the fact of remittance of the tax withheld.

Lastly, respondent argues that, since the certifications were prepared by petitioner's clients, there is a need to present the signatories of the certificates or any person who has personal knowledge in the preparation thereof to establish the fact of remittances made.

Respondent's arguments are untenable.

At the risk of sounding repetitive, the Court reiterates that, in the case of *Commissioner of Internal Revenue vs. Philippine National Bank*,[1] cited by the Court in the assailed Decision, the Supreme Court already addressed respondent's arguments as follows:

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

**The certificate of creditable tax withheld at source is the competent proof to establish the fact that taxes are withheld. 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.**

In *Banco Filipino Savings and Mortgage Bank v. Court of Appeals*, this court declared that a certificate is complete in the relevant details that would aid the courts in the evaluation of any claim for refund of excess creditable withholding taxes:

x x x

Moreover, as correctly held by the Court of Tax Appeals En Banc, **the figures appearing in the withholding tax certificates can be taken at face value since these documents were executed under the penalties of perjury, pursuant to Section 267 of the 1997 National Internal Revenue Code**, as amended, which reads:

> SEC. 267. Declaration under Penalties of Perjury. — **Any declaration, return and other statements required under this Code, shall, in lieu of an oath, contain a written statement that they are made under the penalties of perjury.** Any person who willfully files a declaration, return or statement containing information which is not true and correct as to every material matter shall, upon conviction, be subject to the penalties prescribed for perjury under the Revised Penal Code.

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 Commissioner of Internal Revenue to prove that (1) the certificate is not complete; (2) it is false; or (3) it was not issued regularly**.

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 the responsibility of withholding and remitting income taxes**.

This court's ruling in *Commissioner of Internal Revenue v. Asian Transmission Corporation*, citing the Court of Tax Appeals' explanation, is instructive:

> . . . **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 Regulation 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 Sections 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.** *(Citations omitted; emphasis supplied)*

From the foregoing, respondent incorrectly argued that the annual ITRs and Certificates of Creditable Tax Withheld at Source (BIR Form No. 2307) must be made under oath as Section 267 of the NIRC of 1997, as amended, requires that these returns/certificates, in lieu of an oath, shall contain a written statement that they are made under the penalties of perjury.

Moreover, as correctly pointed out by petitioner, it is already well-settled that proof of actual remittance is not required in order to be entitled to refund of excess and unutilized CWT. What the law and jurisprudence require is the submission of a copy of a statement duly issued by the payor (withholding agent) to the payee, showing the amount paid and the amount of tax withheld therefrom, as proof of the fact of withholding. It is likewise clear that the person who executed and prepared the certificate of creditable tax withheld at source need not be presented to testify personally to prove the authenticity of the certificates.

Under Sections 57 and 58 of the NIRC of 1997, as amended, it is the payor-withholding agent, and not the payee-refund claimant, who is vested with the responsibility of withholding and remitting income taxes. Section 2.58.3(B) of RR No. 2-98 similarly provides that proof of remittance is the responsibility of the withholding agent and not of the taxpayer-refund claimant. As such, respondent's claim that petitioner should present a certification from the BIR's RAD to confirm the fact of remittance of the tax withheld is utterly baseless.

2. *Petitioner failed to prove that certificates of taxes withheld pertaining to prior years were declared as part of the income for their respective years.*

To support the *second* ground, respondent quoted the Court's Decision in CTA Case No. 9948 (First Division) dated July 28, 2021 and CTA Case No. 10187 (Special First Division) dated December 19, 2023, which pertains to petitioner's claim for refund of excess and unutilized CWTs for FYs 2016 & 2017, respectively. Respondent argues that petitioner failed to show that the amounts reflected in Certificates of Creditable Tax Withheld at Source (BIR Form No. 2307) were indeed the income declared in its annual ITRs for the said years. Although the income declared in these annual ITRs are definitely higher, the amounts in the certificates cannot be assumed to have formed part of the income of petitioner for the subject years.

The Court finds respondent's argument misplaced.

In the assailed Decision,[2] the Court disallowed the CWT amounting to ₱7,386,676.00,[3] related to the revenue of ₱67,876,556.00, which allegedly forms part of petitioner's declared income per annual ITR for FYs 2017 and 2016. As have been discussed in the assailed Decision, the Court cannot ascertain whether the said ₱67,876,556.00 revenue was indeed included in petitioner's annual ITR for FYs 2017 and 2016 from the accounting records presented by the petitioner.

As to respondent's reliance on CTA Case Nos. 9948 and 10187, the Court wishes to emphasize that, though having the same parties, CTA Case Nos. 9948 and 10187 vis-à-vis the present case are different cases. *First*, the findings of the Court in Division in those cases cannot be a considered as binding precedents. Suffice it to say, only decisions of the Supreme Court constitute binding precedents, forming part of the Philippine legal system.[4] *Second*, as a general rule, courts are not authorized to take judicial notice of the contents of the records of other cases, even when such cases have been tried or are pending in the same court, and notwithstanding the fact that both cases may have been tried or are actually pending before the same judge.[5] *Third*, and more importantly, Section 8 of Republic Act No. 1125,[6] as amended, provides that this Court is a *"court of record"*. As such, it is required to conduct a formal trial (trial *de novo*) where the parties must present

[2] *Decision* pp. 19 to 20, Docket – Vol. 2, pp. 1046 to 1047.
[3] Sum of ₱7,353,556.00 and ₱33,120.00, Exhibit "P-17", Docket – Vol. 2, pp. 621 to 622.
[4] *Commissioner of Internal Revenue vs. San Roque Power Corporation, et seq.*, G.R. Nos. 187485, 196113 and 197156, February 12, 2013.
[5] *Pilipinas Shell Petroleum Corporation vs. Commissioner of Customs*, G.R. No. 195876, December 5, 2016.
[6] An Act Creating the Court of Tax Appeals.

their evidence accordingly if they desire the Court to take such evidence into consideration.[7]

3. *Petitioner's accumulated credits supported by BIR Form No. 2307 for prior years are not enough to cover tax due for FY 2018.*

With regard to the *third* ground, that petitioner's accumulated credits are not enough to cover tax due for FY 2018, respondent avers that, out of the prior year's CWT of ₱105,017,480.00 reported for FYs 2014 and 2015, only the aggregate amount of ₱84,489,953.00 is supported by BIR Form No. 2307. Respondent then claims that the said amount is not sufficient to cover the income tax due for FYs 2014, 2015, 2016, 2017, and 2018 in the aggregate amount of ₱101,474,491.00.

Again, the Court is not swayed.

Pursuant to Section 2.58.3 (C) of RR No. 2-98, the submission of petitioner's annual ITR for FY 2017[8] is deemed sufficient to prove its "Prior Year's Excess Credits other than MCIT" in the amount of ₱65,500,659.00 for FY 2018, to wit:

> Sec. 2.58.3. *Claim for tax credit or refund.* —
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> x x x
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> (C) Excess Credits. – An individual or corporate taxpayer's excess expanded withholding tax credits for the taxable quarter/year shall automatically be allowed as a credit against his income tax due for the taxable quarters/years immediately succeeding the taxable quarters/years in which the excess credit arose, provided **he submits with his income tax return, a copy of the first page of his income tax return for the previous taxable period showing the amount of his excess withholding tax credits**, and on which return he has not opted for a cash refund or tax credit certificate. *(Emphasis supplied)*

Moreover, as already discussed in the assailed Decision, the Supreme Court stated in *Philam Asset Management, Inc. v. Commissioner of Internal Revenue*,[9] that any refundable amount indicated in the final adjustment return (FAR) of the preceding taxable year may be credited against the estimated income tax liabilities for the taxable quarters of the succeeding taxable year provided the taxpayer submits with its ITR, a copy of the first page of the ITR

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[7] *Commissioner of Internal Revenue vs. Manila Mining Corporation*, G.R. No. 153204, August 31, 2005.
[8] Exhibit "P-26-11".
[9] G.R. Nos. 156637/162004, December 14, 2005.

for the previous taxable period. Accordingly, the amount of ₱65,500,659.00, representing the balance of petitioner's total tax credits for FY 2017, may be carried over and allowed as a credit for the ₱32,719,577.00 income tax due for FY 2018.[10]

In view of the foregoing disquisitions and there being no new matter or substantial issue raised in respondent's *Motion for Partial Reconsideration*, the Court finds no compelling reason to reverse or modify the Decision promulgated on January 15, 2024.

**WHEREFORE**, premises considered, respondent's *Motion for Partial Reconsideration* is **DENIED** for lack of merit.

**SO ORDERED.**

**CORAZON G. FERRER-FLORES**
Associate Justice

**WE CONCUR:**

(On Official Business)
**MA. BELEN M. RINGPIS-LIBAN**
Associate Justice

**MARIA ROWENA MODESTO-SAN PEDRO**
Associate Justice

[10] Lines 16 and 44, Exhibit "P-5", Docket – Vol. 2, pp. 904 and 905.