REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	CTA EB No. 1375 (CTA Case No. 8631)
	Present:
-versus-	DEL ROSARIO, *P.J.*, CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN, and MANAHAN, *JJ*.
CITADEL HOLDINGS, INC., Respondent.	Promulgated: NOV 08 2017 2:48 p.m.

x- x

RESOLUTION

Fabon-Victorino, J.:

On May 2, 2017, the Court *En Banc* rendered a Decision, disposing the case as follows:

> **WHEREFORE**, the Petition for Review filed by the Commissioner of Internal Revenue on November 6, 2015, is hereby **DENIED**, for lack of merit. Accordingly, the assailed Decision dated June 29, 2015 and the Resolution dated September 28, 2015 of the Court in Division in CTA Case No. 8631, are hereby **AFFIRMED**.
>
> **SO ORDERED.**[1]

[1] *Rollo*, pp. 88-89.

The assailed Decision sustained the ruling of the Court in Division, partially granting respondent's claim for refund or issuance of tax credit certificate (TCC) amounting to ₱2,755,403.17, pertaining to its excess creditable withholding tax (CWT) for taxable year (TY) 2010.

Unconvinced, petitioner filed the instant *Motion for Reconsideration*, anchored on the following premises, *viz*:

I. Once the option to carry-over and apply the excess quarterly income tax against income tax due for the taxable quarters of the succeeding taxable years has been made, such option shall be considered irrevocable for that taxable period and no application for cash refund or issuance of TCC shall be allowed therefor;

II. Proof of actual remittance to the BIR of the withheld taxes and testimonial evidence of the payors and withholding agents are required; and

III. Exhibits of the respondent should not be given any probative value for being hearsay evidence.

Petitioner admits that respondent has excess CWTs sufficient to cover the subject claim based on its 2011 Quarterly Income Tax Return (ITR) and Annual ITR of even year. He however argues it could not be ascertained if it was carried-over to the succeeding TY since respondent failed to present its 2012 ITRs. Petitioner insists that refund must be disallowed as respondent opted to constructively carry-over its excess creditable taxes.

Relying on the principle that tax refunds are construed against claimant, petitioner faults respondent for its non-presentation of its income payors/withholding agents to prove that the taxes have been withheld and remitted to the Bureau of Internal Revenue (BIR). On account thereof, the claim for refund should be denied.

In addition, petitioner believes that the testimonies of respondent's witnesses Rene C. Kabigting and Mary Avon T. Patingo are hearsay under Section 36, Rule 130 of the Rules of Court in view of their declaration that they lack personal knowledge about the contents of the documents referred to in their judicial affidavits.

By way of comment, respondent counters that: 1) the points raised by petitioner are not new for they were already amply addressed by the Court *En Banc* in the assailed Decision; 2) per jurisprudence, proof of actual remittance of the tax withheld to the BIR is not required; and 3) its exhibits were correctly identified, verified and admitted by the Court in Division.

Petitioner's Motion for Reconsideration must fail.

Anent petitioner's contention that respondent's witnesses were not competent to testify on the documents they identified in open court, suffice it to say that only in his Motion for Reconsideration that petitioner raised this issue. It was neither raised before the Court in Division nor was it alleged in his Petition for Review. The record revealed that petitioner never questioned the competence of respondent's witnesses to identify and verify the documents they referred to in their respective judicial affidavits. The Supreme Court clarified in *Mendoza, et al., vs. Bautista*[2] that issues not duly raised before the proceedings in the Court below may not be ventilated for the first time in a *motion for reconsideration*, thus:

> "Higher courts are precluded from entertaining matters neither alleged in the pleadings nor raised during the proceedings below, but ventilated for the first time only in a motion for reconsideration or on appeal."

As for the remaining issues raised by petitioner, clear as day that they are mere reiteration of petitioner's arguments which have already been discussed at length in the assailed Decision of May 2, 2017, particularly in pages 5 to 11 thereof. No substantial argument was advanced by petitioner to merit a departure from, much less a modification of the Court *En Banc*'s findings. Hence, the denial of the instant Motion is in order.

n/

---

[2] G.R. No. 143666, March 18, 2005.

WHEREFORE, the Motion for Reconsideration dated May 25, 2017, filed by petitioner Commissioner of Internal Revenue is **DENIED**, for lack of merit.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

We Concur:

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

(On Leave)
ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice