REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

AG COUNSELORS CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 9329

Members:

CASTAÑEDA, JR., *Chairperson,*
MINDARO-GRULLA and
BACORRO-VILLENA, *JJ.*

Promulgated:

MAR 02 2020 1:28 pm

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RESOLUTION

CASTAÑEDA, JR., J.:

Submitted before this Court are the following:

1. petitioner's **Motion for Reconsideration** filed on November 11, 2019 without respondent's comment as per Records Verification Report dated December 19, 2019; and,

2. respondent's **Motion for Partial Reconsideration**, filed through registered mail on November 8, 2019 and received by the Court on November 19, 2019, without petitioner's comment as per Records Verification Report dated December 19, 2019.

Both parties seek reconsideration of the Decision promulgated on October 25, 2019, in finding that petitioner sufficiently proved its entitlement to refund, in a reduced amount, its excess creditable withholding taxes (CWT), the dispositive portion of which reads as follows:

> **WHEREFORE**, premises considered, petitioner's Petition for Review is **PARTIALLY GRANTED**. Accordingly, respondent is **ORDERED TO REFUND OR TO ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the reduced amount of **Ten Million Nine Hundred Ninety-Two Thousand Seven Hundred Eighty-Six and 35/100 Pesos (₱10,992,786.35)**, representing petitioner's excess and unutilized CWT for CY 2013.
>
> **SO ORDERED.**

<u>Petitioner's Motion for Reconsideration</u>

In its Motion, petitioner raises the following grounds for this Court's consideration:

I. The Court erred in disallowing ₱6,111,056.00 representing the Prior Year's Excess Credits in the Annual ITR of CY 2012;

II. The Court erred in disallowing ₱2,540,469.74 of 2012 CWT supposedly supported by CWT certificates indicating a TIN different from petitioner's registered TIN; and

III. The Court erred in disallowing ₱4,114,886.00 of 2013 CWT supposedly from petitioner's failure to submit CWT certificates relating thereto.

As to the first ground, petitioner claims that Section 2.58.3(C)[1] of Revenue Regulations (RR) No. 2-98, as amended, automatically allows the crediting of prior year's excess credits against the income tax due in the succeeding taxable year. As such, petitioner should no longer be required to submit its Bureau of Internal Revenue (BIR) *je*

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[1] "**SECTION 2.58.3.** *Claim for Tax Credit or Refund.* —

x x x

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."

Form No. 2307 for calendar year (CY) 2012, to substantiate the ₱6,111,056.00 prior year's excess credits as declared in its annual Income Tax Return (ITR) for the same year, because basically the said amount was not part of its claim for refund for CY 2013.

More so, petitioner also argues that respondent had the full opportunity during the audit of its books of accounts and accounting records for CY 2011 to verify the amount of ₱6,111,056.00 together with the CWT for the said year, *i.e.* respondent issued a Letter of Authority for the audit of petitioner's books of accounts and accounting records and the verification of its internal revenue tax liabilities for CY 2011. Notably, in his audit, respondent did not disallow any of petitioner's CWT for CY 2011, including the ₱6,111,056.00 carried forward to 2012. In fact, in the Preliminary Assessment Notice (PAN) dated January 7, 2015, respondent's basic deficiency income tax assessment against petitioner for CY 2011 in the amount of ₱707,848.38 was later confirmed in the Formal Assessment Notice (FAN) No. IT-ELA78713-11-15-208 dated January 23, 2015, thereby supporting the fact that there was no disallowance made of the ₱6,111,056.49 CWT excess credits forwarded to 2012.

With regard to the second ground, petitioner maintains that it has sufficiently proven its entitlement to the CWT of ₱2,540,469.74 notwithstanding that the said CWT certificates indicated a TIN different from petitioner's registered TIN for the following reasons: (a) the CWT certificates were issued by respondent's withholding agents, *i.e.*, these were not generated by petitioner itself and other than the erroneous TIN indicated, the CWT Certifications issued by respondent's own withholding agents substantially comply the form prescribed by Section 2.58(B)[2] of RR No. 02-98; (b) in the CTA case of *Jardine Lloyd Thompson Insurance Brokers, Inc. v. Commissioner of Internal Revenue (CTA Case No. 8471, dated April 14, 2015),* this Court gave credence and probative value to CWT Certificates notwithstanding incorrect TIN where the payee/taxpayer's name and

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[2] "**SECTION 2.58.** *Returns and Payment of Taxes Withheld at Source.* –

x x x

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."

address are indicated therein; and (c) the disallowed ₱2,540,469.74 represents 2012 CWT and is not among the ₱24,130,218.00 excess or unutilized CWT for 2013 sought to be refunded or issued a tax credit certificate.

Lastly, as to the third ground, petitioner asserts that it is erroneous to require it to further prove the fact of withholding of the remaining ₱4,114,886.00 CWT, out of the aggregate amount of ₱28,243,967.00 for CY 2013, given that its claim was only for ₱24,130,217.00. Petitioner no longer submitted the CWT certificates for the remaining ₱4,114,886.00 inasmuch as that these already were applied against petitioner's income tax liability for 2013 in addition to the ₱13,189,614.00 prior's year's excess credits and, hence, may no longer be the subject of a claim for refund or issuance of tax credit certificate.

Petitioner submits that despite its non-submission, it does not mean that the ₱4,114,886.00 was not appropriately substantiated because when it filed its ITR for CY 2013, it submitted all the CWT certificates for the said year, *i.e.*, for the aggregate amount of ₱28,243,967.00.

After due consideration, this Court does not agree with petitioner.

As to petitioner's first and third contentions, it must be stressed that the cases filed before this Court are litigated *de novo*, thus, party-litigants should prove every minute aspect of their cases.[3] Accordingly, there should be no room for inconsistencies, especially on the part of petitioner-claimant, who has the burden of proof to establish the factual basis of its claim for tax refund.

In the CTA case of *Commissioner of Internal Revenue vs. Philippine National Bank*[4], the CTA *En Banc*, explained the need to substantiate prior year's excess credit in claims involving excess CWT in this wise, *viz.*:

> "Petitioner contravenes the above findings and insists that the submission of its Annual ITR for taxable year 2009 and the Schedule of Creditable Withholding

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[3] *Rafael Arsenio S. Dizon v. Court of Tax Appeals, et al.*, G.R. No. 140944, April 30, 2008.
[4] *CTA EB Nos. 1615 & 1617 (CTA Case No. 8636), April 25, 2018.*

Taxes for years 2000 to 2009, 2011 and 2013 are sufficient to prove the existence of prior year's excess credit that may be refundable in 2010.

We do not agree with petitioner PNB's contentions.

The Court *En Banc* agrees with the decision of the Court in Division that there is a need to substantiate prior year's excess credit in claims involving excess CWT hence the petitioner has the burden to prove that it had indeed sufficient prior year's excess CWT to cover its income tax liability for 20 10, otherwise, the income tax liability for 2010 shall be offset against the substantiated unutilized CWT for 2010.

It is clear that the subject claim pertains to 'overpaid taxes' which the petitioner/ taxpayer would like to refund based on the relevant provisions of the law.

To our collective minds, we believe that overpayment must be proven. The excess credits may be sourced from prior year's excess credits and those that may have been withheld in the current year. The remaining balance after these tax credits have been applied to the current income tax liability is, strictly speaking, the overpaid and refundable amount. Hence, if the Court requires the substantiation of the current year's tax credit as discussed earlier, the same requirement should be similarly applied to the prior year's excess credit.

This, petitioner failed to do so as correctly determined by the Court in Division. The Schedule of Creditable Withholding Taxes for the years 2000 to 2009 and 2011 to 2013 submitted by petitioner is an incomplete proof of its prior year's excess credits to substantiate its claim for refund for taxable year 2010." *(Emphasis supplied)*

Furthermore, this Court also finds the CTA case of *Marionnaud Philippines, Inc. vs. Commissioner of Internal Revenue*[5] as instructive ℐℯ

[5] CTA Case No. 8807, February 8, 2017.

on the matter that Section 2.58.3(C) of RR No. 2-98 should only be applied at the administrative level, not at the judicial level, to wit:

> "As a necessary consequence of the doctrine that '*(a)s cases filed before it are litigated de novo, party litigants should prove every minute aspect of their cases*', Section 2.58.3(C) of RR No. 2-98, as it is being invoked by petitioner, should be interpreted in light of the said doctrine. Said provision states:
>
> > 'SECTION 2.58.3. Claim for Tax Credit or Refund. –
> >
> > x x x
> >
> > (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.'
>
> **Thus, the above-quoted Section 2.53.3(C) finds application only from the administrative stand point, *i.e.*, only insofar as the Bureau of Internal Revenue is concerned, when the taxpayer is claiming before it a tax refund or credit; and not when proving a tax refund or credit before this Court. This is especially true in that the said administrative agency has all the administrative machinery available to it to easily determine whether the supposed excess credits do exist. This is not so in the case of this Court wherein it has to rely only on all the evidence presented/offered by the parties and admitted by the Court, subject only to the rules of judicial admissions and judicial**

notice, to dispose of a refund case." *(Emphasis supplied)*

Hence, for petitioner to properly claim that it has enough creditable tax withheld to cover the income tax liabilities for CY 2013 in the amount of ₱17,303,364.00, it has the duty to prove the validity of its excess CWT not only those incurred in CY 2013 but also those incurred in prior years.

As to the last remaining ground raised by petitioner – that it has sufficiently proven its entitlement to the ₱2,540,469.74 notwithstanding that the said CWT certificates indicated a TIN different from petitioner's registered TIN, this Court is not swayed. This is for the simple reason that CWT bearing a different TIN should be deemed not belonging to petitioner, thus, the disallowance of the corresponding CWT of ₱2,540,469.74 must remain.

It is well settled, that the Court simply cannot go beyond what is indicated on the documents, which the taxpayer-claimant itself presented, lest it shall violate the elementary rule that judgments must be based on the evidence presented before the court.[6] Verily, the sufficiency of a claimant's evidence and the determination of the amount of refund, as called for in this case, are questions of fact, which are for the judicious determination by the CTA of the evidence on record.[7] In fine, the determination by the CTA must rest on all the evidence introduced and its ultimate determination must find support in credible evidence.[8]

Besides, the taxpayer claiming the tax credit or refund like petitioner has the burden of proving that it is entitled to the refund or credit, by submitting evidence that it has complied with the requirements laid down in the tax code and the BIR's revenue regulations under which such privilege of credit or refund is accorded.[9]

Furthermore, actions for tax refund, as in this case, are in the nature of a claim for exemption and the law is not only construed in

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[6] *Robert F. Mallilin v. Luz G. Jamesolamin and the Republic of the Philippines*, G.R. No. 192718, February 18, 2015.
[7] *Fortune Tobacco Corporation v. Commissioner of Internal Revenue*, G.R. No. 192024, July 1, 2015.
[8] *Commissioner of Internal Revenue v. Hantex Trading*, G.R. No. 136975. March 31, 2005.
[9] *Microsoft Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 180173, April 06, 2011.

strictissimi juris against the taxpayer, but also the pieces of evidence presented entitling a taxpayer to an exemption is *strictissimi* scrutinized and must be duly proven.[10]

Since petitioner failed to present sufficient evidence to prove it entitlement to the disallowed CWTs, *i.e.,* the unsubstantiated prior year's excess credits (₱6,111,056.00), the unsubstantiated CWTs incurred in CY 2013 (₱4,114,886.00), and the CWTs supported by certificates bearing a different TIN (₱2,540,469.74), such disallowances are therefore proper.

Respondent's Motion for Partial Reconsideration

In his Motion, respondent raises the following grounds in support of arguments, *viz.*:

I. The testimonies of the petitioner's witnesses cannot be given probative value for being hearsay.

II. Petitioner failed to present documents to prove that the amount claimed was actually remitted and paid to the BIR.

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

Respondent claims that petitioner failed to present any competent witness who could testify on the veracity and authenticity of the documentary exhibits that were offered by the petitioner in this case. He continues that, petitioner's witnesses namely, Ms. Victoria D. Frejas, Ms. Katrina Placente and the court-commissioned Independent Certified Public Accountant (ICPA) do not have any personal knowledge as to the execution of the documents that were identified in their respective judicial affidavits. In fact, their testimonies were merely based on records which is contrary to the rules of evidence, thus, it is imperative that the maker/s of the document must take the witness stand. *gc*

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[10] *Atlas Consolidated Mining and Development Corporation v. Commissioner of Internal Revenue,* G.R. No. 159490, February 18, 2008.

Respondent also requests that this Court take a second look at petitioner's compliance with the requirement as to whether the income from which the taxes were withheld was included as part of its gross income. He cites the CTA decisions of *Jardine Lloyd Thompson Insurance Brokers, Inc. vs. CIR (CTA Case No. 7916, September 23, 2011)* and of *Havi Food Services, Phils., Inc. vs. CIR (CTA Case No. 7735, February 28, 2011)*, wherein the Court found discrepancies between the gross income per annual ITR vis-à-vis the total income per BIR Form No. 2307, and that petitioners therein failed to reconcile the said discrepancies. Consequently, it was held that petitioners should have submitted documents such as, but not limited to, invoices, official receipts, general ledger, sales journal, and other documents whereby the Court can verify that it properly reported such discrepancies.

Pursuant to the foregoing cases, respondent submits that the failure of the petitioner to present documents such as, but not limited to, official receipts, sales invoices, detailed general ledger, sales register, reconciliation schedules or any other document whereby the income payments related to the claimed creditable withholding taxes may be traced and confirmed as forming part of the taxable gross income reflected in the annual ITR, is fatal to its claim for refund.

Lastly, respondent submits that the certificates of creditable taxes withheld, accomplished by the withholding agents, allegedly showing the amount deducted and withheld from its income in support of the tax refund, do not constitute conclusive evidence of payment and remittance of the withheld taxes to the BIR. The act of withholding is one thing while the act of remittance is another. The best evidence or proof of remittance is the certification from the BIR's Revenue Accounting Division as to the fact of remittance of the tax withheld. As borne out by the records of this case, no such certification was proffered by the petitioner. Thus, the failure to prove that the creditable taxes withheld by the payors were indeed remitted to the BIR is fatal to its claim for refund.

This Court finds respondent's arguments bereft of merit.

Contrary to respondent's first allegation, petitioner's documentary exhibits were substantially identified by its witnesses, including the court-commissioned ICPA. It should be noted that the documents alleged to be hearsay evidence are voluminous documents examined and verified by the Court-commissioned ICPA in accordance with Section 5 of Rule 12 in relation to Rule 13 of the Revised Rules of the Court of Tax Appeals[11]. More so, this Court has already conducted a thorough examination of the documents presented by petitioner and scrutinized the contents thereof. Accordingly, this Court made specific factual findings which became the basis of the ruling to partially grant the present Petition for Review.

Further, in the case of *Commissioner of Internal Revenue vs. Philippine National Bank*[12], the Supreme Court held that it is not necessary for the person who executed and prepared the certificate of creditable tax withheld at source to be presented in court and to testify personally to prove the authenticity of the certificates. The 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. 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.

As to respondent's second ground, the Court finds petitioner to have sufficiently proven its compliance with the third requirement for refund of CWT *i.e., that the income upon which the taxes were withheld must be included in the return of the recipient.*

In the assailed Decision, the Court has verified the findings of the ICPA that the total income payments per CWT certificates can be traced to petitioner's submitted Statement of Accounts (SOA), "General Journal Book"[13] for CYs 2009, 2012 and 2013 and "Summary of Income Payments Traced from SOA to Summary of Expenses Accounts to Out-of-Pocket Expenses CYs 2012 and 2013"[14] and Schedule of Revenue for the CYs 2009, 2012, and 2013[15]. Thus, notwithstanding the noted difference of ₱2,121,038.17, with an equivalent CWT of ₱318,135.75, which the Court disallowed, petitioner has sufficiently proven its entitlement to a refund of its excess CWT for CY 2013 net of disallowances. ge

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[11] A.M. No. 05-11-07-CTA, November 22, 2005.
[12] G.R. No. 180290, September 29, 2014.
[13] Exhibit "P-18".
[14] Exhibit "P-20".
[15] Exhibit "P-16-1", "P-16-2", and "P-16-3", respectively.

Finally, this Court also does not agree with respondent's contention that proof of actual remittance to the BIR of the withheld taxes is required.

Again, the Supreme Court held in the case of *Commissioner of Internal Revenue vs. Philippine National Bank*[16] that the certificate of creditable tax withheld at source is competent proof to establish the fact that taxes are withheld, the pertinent portion of the decision is quoted herein as follows:

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

[16] Supra No. 12.

> 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)*

Thus, petitioner does not need to prove actual remittance of the taxes to the BIR. As such, by presenting in evidence the CWT certificates, petitioner has sufficiently established that the taxes were indeed withheld.

In view of the foregoing, this Court finds no compelling reason to reverse, set aside or modify the Decision promulgated on October 25, 2019.

WHEREFORE, premises considered, petitioner's Motion for Reconsideration and respondent's Motion for Partial Reconsideration are both **DENIED** for lack of merit.

SO ORDERED.

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

We Concur:

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

JEAN MARIE A. BACORRO-VILLENA
Associate Justice