REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-versus-

PHILIPPINE NATIONAL BANK,
Respondent.

CTA *EB* NO. 1615
(CTA Case No. 8636)

x-------------------------------------x

PHILIPPINE NATIONAL BANK,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA *EB* NO. 1617
(CTA Case No. 8636)

Present:

DEL ROSARIO, *P.J.*,
CASTAÑEDA, JR.,
UY,
FABON-VICTORINO,
MINDARO-GRULLA,
RINGPIS-LIBAN, *and*
MANAHAN, *JJ.*

x-------------------------------------x

Promulgated:

OCT 12 2018

3:10 p.m.

x- x

RESOLUTION

MANAHAN, J.:

For resolution are the following:

1. Petitioner Commissioner of Internal Revenue's (CIR) Motion for Reconsideration (Re: Decision promulgated 25 April 2018) in CTA EB No. 1615 filed on May 21, 2018 with respondent's Comment filed on September 7, 2018; and,

2. Petitioner Philippine National Bank's (PNB) Motion for Reconsideration (of the Decision dated 25 April 2018) in CTA EB No. 1617 filed on June 5, 2018 with respondent's Opposition filed on July 30, 2018.

Both parties seek reconsideration of this Court's *En Banc* Decision dated April 25, 2018, the dispositive portion of which reads:

> "**WHEREFORE**, in light of the foregoing considerations, the Petitions for Review are **DENIED** for lack of merit. Accordingly, the Decision dated October 3, 2016 and the Resolution dated March 9, 2017 of the Court in Division, are hereby **AFFIRMED.**"

In the assailed Decision, the Court *En Banc* ruled that petitioner PNB substantially complied with all the requisites to be entitled to a refund of its excess creditable withholding tax (CWT) for taxable year 2010 with some reductions in the amount claimed due to various reasons aforestated in the Decision of the Court in Division promulgated on October 3, 2016. We quote relevant portions of the Decision of the Court in Division which justified the partial grant of the claim for refund in spite of compliance with the aforementioned requisites, thus :

> "However, as found by the Independent CPA, not all income payments per CWT Certificates were traced to the General Ledger. Also, there are CWTs supported by certificates which are undated or dated outside the period of claim, and CWTs which are totally not supported by certificates. xxx xxx xxx.

xxx xxx xxx

> Considering the above findings together with the submitted documents, schedules and reconciliation, the Court finds the Independent CPA report to be in order. Consequently, only the CWTs in the amount of P285,373,676.59 which are duly supported by certificates and of which the related income payments were traced to the General Ledger and thereafter reported in the Audited Financial Statements and Final Amended Annual ITR for taxable year 2010 may be refunded, xxx xxx xxx
>
> xxx xxx xxx
>
> However, petitioner failed to substantiate its Prior Year's Excess Credits of P150,175,021.58 with the corresponding CWT Certificates.
>
> The Certificates of Creditable Tax Withheld at Source issued by the withholding agents of the government are prima facie proof of actual payments to the government through the agents."

The Court *En Banc* affirmed the above Decision of the Court in Division and fully assented to the partial grant of the claim for refund.

Petitioner CIR, in his Motion for Reconsideration, claims that the claim for refund of alleged excess CWT should have been denied by the Court *En Banc* for failure of PNB to fully substantiate the said claim. First, petitioner CIR maintains that claimant PNB failed to prove actual remittance of the alleged withheld taxes to the government in accordance with the clear requirements of Revenue Regulations (RR) No. 2-98. Consistent with the principle that tax refunds should be construed *strictissimi juris* against the taxpayer, petitioner CIR concludes that PNB is not entitled to the entire amount claimed as refund for taxable year 2010.

Respondent PNB opposes the motion filed by petitioner CIR and argues that proof of actual remittance is not a condition precedent for a successful refund claim of excess CWT, contrary to the assertion of petitioner CIR.

On the other hand, petitioner PNB, in its Motion for Reconsideration, seeks for a partial reversal of the Decision of the Court *En Banc* and avers that the presentation of CWT certificates is not indispensable in proving the existence of prior years' excess credit (PYEC). It cites the Supreme Court case of *Winebrenner & Inigo Insurance Brokers, Inc. vs. CIR*[1] where it was ruled that there are no specific documents required of a taxpayer to present as evidence for a claim for refund but only requires that it produce documents showing compliance with the requirements for a claim for refund of excess CWT.

Petitioner PNB also reiterates that the existence of PYEC was sufficiently established by documents which were offered and admitted as evidence. However, petitioner PNB is willing to present such CWT certificates and requests that trial be re-opened in in the interest of substantial justice.

In its Opposition to the Motion for Reconsideration filed by petitioner PNB, respondent CIR disagrees with the contention that the presentation of the CWT certificates is not indispensable in proving the existence of PYEC. On the contrary, respondent maintains that the CWT certificates are necessary and that the failure to present said certificates is fatal to the claim for refund filed by PNB consistent with the principle of strict construction when it comes to claims for tax refunds. Respondent CIR also takes issue with PNB's prayer to re-open trial as this is not an available remedy in cases where the evidence is neither newly discovered nor inadvertently omitted due to fraud, accident, mistake or excusable negligence.

THE COURT'S RULING

The arguments raised by both Motions for Reconsideration fail to persuade this Court to overrule its Decision promulgated on April 25, 2018.

A thorough evaluation of the arguments propounded by both parties in their Motions for Reconsideration, shows that the same are mere rehash of the same facts and issues which have already been passed upon extensively in the decisions promulgated by both the Court in Division and by the Court *En Banc*.

---

[1] G.R. No. 206526, January 28, 2015.

In denying the Motion for Reconsideration filed by petitioner PNB, we reiterate our ruling in the Decision dated April 25, 2018[2], to wit:

> "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 2010, 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."

In a similar fashion, we also quote the relevant portions of the *En Banc* Decision in disposing of the issues raised by Petitioner CIR, thus:

> "Petitioner CIR's arguments are bereft of merit.
>
> As clearly stated in the assailed Decision, jurisprudence and Revenue Regulations of the BIR have established that in order for a taxpayer to be entitled to a refund or an issuance of tax credit certificate for its unutilized excess CWT, the following basic requisites must be sufficiently established:
>
> 1. The claim for refund must be filed within the two-year prescriptive period as provided under Sections 204 (C) and 229 of the National Internal Revenue Code (NIRC) of 1997, as amended;
>
> 2. The fact of withholding must be established by a copy of a statement duly issued by the payor (withholding agent) to the

---

[2] CTA EB Nos. 1615 and 1617, *En Banc* Docket, pp. 158-170.

payee showing the amount paid and the amount of tax withheld therefrom; and

3. The income upon which the taxes were withheld must be declared as part of the gross income of the recipient.

The Court in Division correctly found that respondent PNB complied with the first requisite as to the timeliness of the filing of the claim for refund. Records show that petitioner filed its Annual Income Tax Returns for taxable year 2010 on April 15, 2011 and counting two years therefrom, respondent PNB had until April 15, 2013 within which to file its administrative and judicial claims for refund or issuance of a tax credit certificate. Respondent PNB's administrative claim for refund dated January 8, 2013 was received by the BIR on January 10, 2013 well within the prescriptive period provided by law. The Petition for Review was filed with the Court in Division on April 12 2013, which is likewise within the aforesaid two-year period.

As to the second requisite, we find that the findings of the Court in Division are in accord with the basic evidentiary requirements to prove that the fact of withholding as (sic) established by showing the amount paid and the amount of tax withheld therefrom. Respondent PNB offered in evidence its Trial Balance for 2010; its Audited Financial Statements; General Ledgers and various Certificates of Creditable Tax Withheld at Source (BIR Form No. 2307) with Transaction Tickets/Input Sheets and Deeds of Sale and the Independent Certified Public Accountant ICPA Report. A review of the records shows that respondent's income upon which the taxes were withheld was properly reported as forming part of its gross income as shown in the Annual ITR for taxable year 2010. There were, however, some income payments shown in the CWT certificates which were not reflected or traced to the General Ledger. Also, a close scrutiny of some CWT certificates reveals that some of these were not dated or were dated outside the period of the claim, hence, were not included in the final computation.

Aside from compliance with the three aforementioned requisites, evaluation should also be made whether or not petitioner made an option to carry over its excess CWTs to the succeeding quarters because only the amount that was not carried over should be refunded to PNB. The Court in Division conducted the necessary evaluation and came up with the following findings:

> "A thorough perusal of petitioner's Annual ITR for taxable year 2010 filed with the BIR on April 15, 2011 shows that petitioner had a Minimum Corporate Income Tax (MCIT) due of Php75,036,131.92. The said amount was applied against its total tax credits of Php439,260,400.49, which consisted of prior year's excess credits other than MCIT and CWTs for the four quarters of taxable year 2010 in the respective amounts of

> Php150,175,021.58 and Php289,085,378.91, leaving the CWTs in the aggregate amount of Php364,224,268.57 unutilized as of December 31, 2010 xxx xxx
>
> xxx xxx xxx
>
> Furthermore, petitioner chose the issuance of a tax credit certificate for its CWTs for taxable year 2010 by marking the box corresponding to the option "To be issued a Tax Credit Certificate", and as evidenced by petitioner's Annual ITR for taxable year 2011, only the prior year's excess credits in the amount of Php75,138,889.66 were carried over. Clearly the claimed CWTs for the year 2010 amounting to Php289,085,378.91 were not carried over to the succeeding quarters or taxable year. Thus, the substantiated CWTs for taxable year 2010 in the amount of Php285,373,676.59 may be refunded pursuant to Section 76 of the NIRC of 1997, as amended."

As regards petitioner PNB's request to re-open trial for the presentation of additional evidence, the Court finds that such partakes the nature of a Motion for New Trial which is a remedy that is granted only upon specific grounds set forth in Section 1 of Rule 37 of the Rules of Court, and we quote:

> Section 1. *Grounds of and period for filing motion for new trial or reconsideration.* – Within the period for taking an appeal, the aggrieved party may move the trial court to set aside the judgment or final order and grant a new trial for one or more of the following cause materially affecting the substantial rights of said party:
>
> (a) Fraud, accident, mistake or excusable negligence which ordinary prudence could not have guarded against and by reason of which such aggrieved party has probably been impaired in his rights, or
>
> (b) Newly discovered evidence, which he could not, with reasonable diligence, have discovered and produced at the trial, and which if presented would probably alter the result.
>
> xxx xxx xxx

None of the reasons submitted by petitioner falls within the aforementioned grounds, hence such request must fail.

WHEREFORE, premises considered, the Motions for Reconsideration filed by petitioners CIR and PNB filed on May 21, 2018 and June 5, 2018, respectively, are **DENIED** for lack of merit.

Accordingly, the Decision of the Court *En Banc* in the above-entitled case is hereby **AFFIRMED.**

SO ORDERED.

(With Concurring and Dissenting Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	**CTA EB No. 1615 (CTA Case No. 8636)**
-versus-	
PHILIPPINE NATIONAL BANK, *Respondent.*	

x- x

PHILIPPINE NATIONAL BANK, *Petitioner,*	**CTA EB No. 1617 (CTA Case No. 8636)**
	Present:
-versus-	Del Rosario, *P.J.*, Castañeda, Jr., Uy, Fabon-Victorino, Mindaro-Grulla, Ringpis-Liban, *and* Manahan, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: OCT 12 2018

x- 3:10 p.m. -x

CONCURRING AND DISSENTING OPINION

DEL ROSARIO, P.J.:

I concur with the *ponencia* of my learned colleague, the Honorable Associate Justice Catherine T. Manahan, in denying the Motion for Reconsideration filed by the Commissioner of Internal Revenue (CIR) for lack of merit.

Anent the Motion for Reconsideration filed by Philippine National Bank (PNB), with due respect, I maintain the position I have taken in my **Concurring and Dissenting Opinion (on the Court *En Banc*'s Decision dated April 25, 2018)**. I humbly reiterate that the presentation of Creditable Withholding Tax (CWT) certificates is not indispensable in proving the existence of prior year's excess credits since aforesaid credits are not the actual subject of the claim for refund; that the 2009 Annual Income Tax Return and the Schedule of Creditable Withholding Taxes (CWT) for the years 2000 to 2009 and 2011 and 2013 specifically offered by PNB to prove the existence of its prior year's excess credits against which its income tax liability for the year 2010 may be applied are sufficient.

I am not unaware of the fairly recent pronouncement of the Supreme Court in ***Commissioner of Internal Revenue vs. Cebu Holdings, Inc.***[1] wherein the Supreme Court sustained the ruling of the Court of Tax Appeals (CTA) requiring the *substantiation* of prior year's excess credits in a claim for refund of excess creditable withholding tax. Pertinent portions of the Supreme Court's pronouncement in ***Cebu Holdings, Inc.*** state:

> "Xxx. It should be stressed that the amount of ₱16,194,108.00 is the remaining portion of the claimed prior year's excess credits in the amount of ₱30,150,767.00 after deducting the ₱13,956,659.00 tax due in respondent's amended ITR for taxable year 2002. **But the CTA First Division categorically ruled that respondent (petitioner therein) failed to substantiate its prior year's excess credits of ₱30,150,767.00 except for the amount of ₱288,076.04, which can be applied against respondent's income tax liability for taxable year 2002**. Xxx,
>
> xxx
>
> Xxx. **To reiterate, the CTA First Division already ruled that respondent (petitioner therein) failed to substantiate its prior year's excess credits of ₱30,150,767.00 except the amount of ₱288,076.04, which can be applied against respondent's income tax liability for taxable year 2002.** Thus, since respondent's prior year's excess credits have already been fully applied against its 2002 income tax liability, the ₱16,194,108.00 unsubstantiated tax credits in taxable year 2002 could no longer be carried over and applied against its income tax liability for taxable year 2003." (Boldfacing supplied)

There is, however, nothing in *Cebu Holdings* which prescribes the specific documents that must be presented by the taxpayer in establishing the existence of its prior year's excess credits. Thus, I

---
[1] G.R. No. 189792, July 2, 2018.

submit that substantiation of prior year's excess credits may be proved by competent evidence other than CWT Certificates.

In the present case, **PNB substantiated its prior year's excess credits** (which credits are not the actual subject of the claim for refund) by presenting its **2009 Annual Income Tax Return (ITR)** - - (PNB's prior year's ITR) - - **and the Schedule of Creditable Withholding Taxes (CWT)** for the years 2000 to 2009 and 2011 and 2013, both of which were duly identified by PNB's witness under oath. **They were offered in evidence for the specific purpose of proving the existence of its prior year's excess credits against which its income tax liability for the year 2010 may be applied, without any objection on the part of respondent.** At the very least, the burden of evidence has been shifted to the CIR whose duty it was to refute the truthfulness and veracity of the entries in the ITR *vis-à-vis* the Schedule of Creditable Withholding Taxes (CWT). On this point, the pronouncement of the Supreme Court in *Citibank N.A. vs. Court of Appeals*[2] is most enlightening:

> "A refund claimant is required to prove the inclusion of the income payments which were the basis of the withholding taxes and the fact of withholding. However, **detailed proof of the truthfulness of each and every item in the income tax return is not required. That function is lodged in the Commissioner of Internal Revenue by the NIRC which requires the Commissioner to assess internal revenue taxes within three years after the last day prescribed by law for the filing of the return**. In *San Carlos Milling Co., Inc. vs. Commissioner of Internal Revenue*, the Court held that the internal revenue branch of government must investigate and confirm the claims for tax refund or credit before taxpayers may avail themselves of this option. **The grant of a refund is founded on the assumption that the tax return is valid; that is, the facts stated therein are true and correct**. In fact, even without petitioner's tax claim, the Commissioner can proceed to examine the books, records of the petitioner-bank, or any data which may be relevant or material in accordance with Section 16 of the present NIRC."

As oft-repeated, I submit that these documents are sufficient to prove that PNB had prior year's excess credits in the amount of Php150,175,021.58. To require PNB to produce its CWT certificates in support of its prior year's excess credit *(which CWT Certificates were issued as early as year 2000 or eighteen (18) years ago)* will be excessively burdensome, unreasonable and inconsistent with Section 235 in relation to Section 203 of the NIRC of 1997, as amended (anent the requirement to preserve books of account and records for a period of three (3) years) and will also render ineffectual and

---

[2] G.R. No. 107434, October 10, 1997.

nugatory the remedy of refund granted to PNB under Sections 204 and 229 of the NIRC of 1997, as amended. Needless to say, a remedy granted by law should not be so construed in such manner that the relief it seeks to grant is thereby effectively frustrated.

All told, I **VOTE** to: (i) **DENY** the Motion for Reconsideration filed by the Commissioner of Internal Revenue; and, (ii) **GRANT** the Motion for Reconsideration filed by the Philippine National Bank.

ROMAN G. DEL ROSARIO
Presiding Justice