REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	CTA EB No. 1477 (CTA Case No. 8749)
	Present:
-versus-	DEL ROSARIO, *P.J.*; CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN, and MANAHAN, *JJ.*
GIC PRIVATE LIMITED, Respondent.	Promulgated: DEC 12 2017 4:12 p.m.

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DECISION

Fabon-Victorino, J.:

Assailed in the present Petition for Review dated July 15, 2016 filed by the Commissioner of Internal Revenue (CIR), are the Decision and Resolution dated March 17, 2016 and June 14, 2016, respectively, both rendered by the Court in Division, granting respondent GIC Private Limited's claim for refund or issuance of tax credit certificate (TCC) of erroneously withheld final tax in the aggregate amount of ₱216,919,286.53.

The facts are as follows.

Petitioner is the Commissioner of the Bureau of Internal Revenue (BIR), with authority to grant or deny claims for refund or tax credit of overpaid or erroneously paid internal revenue taxes. He holds office at the 5th Floor, BIR National Office Building, Agham Road, Diliman, Quezon City.

Respondent GIC Private Limited (Formerly, Government of Singapore Investment Corporation Private Limited) is a non-resident foreign corporation wholly-owned and controlled by the Government of Singapore, organized and existing under the laws of Singapore. Its principal place of business is at 168 Robinson Road, #37-01 Capital Tower, Singapore 068912. Respondent is engaged in the management of Singapore's foreign reserves and is authorized and mandated to open and operate the custody of current accounts, as may be necessary for the safekeeping of assets and cash under its management.

On May 20, 1999, respondent entered into a Direct Custodial Services Agreement (DCSA) with Citibank, N.A., Subsidiaries and Affiliates, whereby it appointed the subsidiaries and affiliates of Citibank as its custodian; entitling the latter to hold certain assets, as well as to open and maintain custody accounts and cash accounts for the purpose of holding the properties and funds received from time to time by Citibank entities for its account.

On March 23, 2009, respondent and Citibank, acting through its Singapore branch, executed a Global Custodial Services Schedule (GCSS) as a supplement to the DCSA. Per GCSS, respondent endowed Citibank to open sub-custody accounts with other Citibank subsidiaries and affiliates as foreign sub-custodians for the purpose of holding the securities issued by foreign governments or foreign companies whose principal trading market is located outside of Singapore. By virtue of the GCSS, Citibank Singapore opened a sub-custody account with Citibank Philippine Branch.

Respondent, through Citibank, invested in various T-Bonds with maturities of more than one year. As custodian, Citibank is accountable for settling respondent's investments in T-Bonds and in safekeeping the T-Bonds it acquired. It is also responsible for collecting the coupons/interests due on respondent's T-Bond holdings when they fall due on coupon date and credit the same into respondent's custody accounts.

For the periods December 1, 2011 to December 31, 2012, respondent derived interest income from its investments in T-Bonds amounting to ₱1,084,596,432.68. The said interest income was subjected to Final Withholding Tax (FWT) at the rate of twenty percent (20%), or in the aggregate amount of ₱216,919,286.53, which the Bureau of Treasury (BTr) withheld and remitted to the BIR.

On December 16, 2013, respondent filed with the BIR an administrative claim for refund/TCC in the total amount of ₱216,919,283.53, corresponding to the alleged erroneously withheld and remitted FWT.

Due to petitioner's inaction, respondent filed the instant petition with the Court in Division on December 19, 2013.

In his answer, petitioner prayed for the denial of respondent's claim for refund/TCC arguing that respondent failed to prove that the amount of ₱216,919,283.53 was illegally or erroneously collected tax as mandated under Sections 204(C) and 229 of the National Internal Revenue Code (NIRC), as amended. Respondent likewise failed to overcome the burden of establishing its clear entitlement to refund/TCC. Moreover, tax refunds, being a derogation of sovereign authority, are construed strictly against taxpayer-claimant, like respondent.

On March 17, 2016, the Court in Division rendered the assailed Decision, disposing the case as follows:

> **WHEREFORE**, premises considered, the present Petition for Review is hereby **GRANTED**. Accordingly, (petitioner) is hereby **ORDERED TO REFUND OR TO ISSUE A TAX CREDIT CERTIFICATE** in favor of (respondent) in the amount of **TWO HUNDRED SIXTEEN MILLION NINE HUNDRED NINETEEN THOUSAND TWO HUNDRED EIGHTY-SIX PESOS AND 53/100**

(₱216,919,286.53), representing (respondent's) erroneously withheld final tax.

SO ORDERED.[1]

On April 6, 2016, petitioner moved for the reconsideration of the adverse decision but it was denied by the Court in Division in the equally assailed Resolution of June 14, 2016.[2]

Unfazed, petitioner filed the instant petition[3] anchored on the following grounds:

I. Respondent failed to prove that it is wholly-owned by the government of Singapore;

II. Respondent cannot rely on BIR Ruling [DA 130-02] in its action to claim for refund or issuance of tax credit certificate; and

III. Respondent's failure to present BIR Form No. 1602 renders the administrative claim *pro-forma.*

Petitioner contends that the Letter dated January 9, 2014 presented by respondent failed to prove that it is a financial institution wholly-owned by the Government of Singapore. Petitioner considers the said Letter a private document that should be authenticated by one who participated in its preparation or execution. However, neither the signatory, Derrick Wan, or Tan Jin Hwee, the person who notarized it, was presented to prove its due execution and authenticity required under Section 20, Rule 132 of the Rules of Court. For lack of proper authentication, the Letter dated January 9, 2014 is without any probative weight and should not have been considered by the Court in Division.

Petitioner further claims that respondent cannot invoke in its favor BIR Ruling [DA 130-02] as it was issued not in its favor but of Reco Grandhomes Pte Ltd., who requested the

[1] *Rollo,* p. 36.
[2] Ibid. at p. 43.
[3] Id. at. pp. 5-13.

same. Besides, the factual milieu in respondent's case is different from that of Reco Grandhomes Pte Ltd. BIR Ruling [DA 130-02] is also deemed automatically revoked when respondent filed the Petition for Review with the Court in Division, hence, inapplicable in the given controversy.

Petitioner also complains that he was deprived of the opportunity to fully evaluate the merit of respondent's administrative claim for refund/TCC as the latter failed to submit BIR Form 1602 or the Monthly Remittance Return of Final Income Taxes Withheld, which he considers a pre-requisite for the successful prosecution of its administrative action. Hence, the Petition for Review lodged with the Court in Division was *pro-forma* and premature, depriving the Court of jurisdiction to entertain it.

Finally, taxes are the lifeblood of the government, thus, tax exemptions are strictly construed against the claimant, like respondent, for being a derogation of sovereign authority.

By way of comment,[4] respondent counterargues that:

A. It was able to prove that it is a financing institution wholly-owned by the Government of Singapore and that its income from investments in T-Bonds is exempt from income tax under Section 32(B)(7)(a), Tax Code;

B. There is sufficient legal basis for CTA-Division's conclusion that its income from investments in T-Bonds is exempt from income tax under Section 32(B)(7)(a), Tax Code; and

C. There is no basis for petitioner's argument that failure to present the Monthly Remittance Return of Final Income Taxes Withheld (BIR Form No. 1602) at the administrative level renders the respondent's claim for refund *pro-forma*.

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[4] Id. at pp. 56-74.

Respondent points out that the Letter dated January 9, 2014 qualifies as a public document under Section 19(a), Rule 132 of the Rules of Court for having been issued by the Ministry of Finance of Singapore. As such, identification in Court by a witness having personal knowledge of its execution may be dispensed with. Moreover, it was notarized and certified by the Philippine Consul in Singapore Victorio Mario M. Dimagiba, Jr., who confirmed the due execution of the content of the Letter dated January 9, 2014. In fine, the authentication required for *public* documents under Sections 19, 24 and 30, Rule 132 of the ROC has been sufficiently complied with. Contrary to petitioner's claim, the said Letter of January 9, 2014 established that respondent is a financial institution exclusively owned by the Government of Singapore, thus, entitled to income tax exemption under Section 32(B)(7)(a) of the NIRC, as amended.

Respondent also underscores petitioner's inability to timely question the admissibility of the said letter as he did not file any comment/opposition to its formal offer of exhibits as indicated in the Records Verification Report dated November 26, 2014. Such failure is deemed a waiver to object to the subject letter's admissibility.

Respondent likewise states that its claim for refund/TCC is not solely anchored on BIR Ruling [DA 130-02]. The Tax Code,[5] pertinent BIR rules and regulations[6], and Decisions rendered by both the Court in Division[7] and *En Banc*[8] also support its stance that interest income derived from its investments in Philippine T-Bonds is exempt from income tax.

Respondent also opines that its non-presentation of the monthly remittance returns of FWT (BIR Form No. 1602) is not fatal to its cause. It is allegedly akin to Expanded

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[5] Section 32(B)(7)(a), NIRC, as amended.
[6] Section 2.57.5, Revenue Regulations (RR) No. 2-98.
[7] *Government of Singapore Investment Corporation Pte. Ltd. vs. Commissioner of Internal Revenue*, CTA Case No. 5568, February 10, 2000; and *Government of Singapore Investment Corporation Pte. Ltd. vs. Commissioner of Internal Revenue*, CTA Case No. 6745, June 6, 2008.
[8] *Commissioner of Internal Revenue vs. Government of Singapore Investment Corporation Pte Ltd.*, CTA EB Nos. 689 and 958, promulgated on June 10, 2011 and March 31, 2014, respectively.

Withholding Taxes (EWTs) whereby proof of actual remittance of the tax withheld is not required, and that the fact of withholding may be established by showing the withholding tax certificates issued by the payor-withholding agent. With its presentation of the Certificate of Final Tax Withheld at Source (BIR Form No. 2306) issued by the BTr, it has satisfactorily demonstrated that the FWT subject of the present claim for refund/TCC was withheld and remitted to the BIR.

Respondent also press significance on the Letter dated August 1, 2014 which allegedly belies petitioner's contention that the documents submitted to him were insufficient thereby depriving him of the opportunity to ascertain the merits of respondent's administrative claim for refund/TCC. In the said letter, the BIR considered the pieces of evidence it presented at the administrative level and accordingly recommended for the approval of its claim for refund/TCC.

Thus, having met all the conditions for the grant of refund/TCC, petitioner has no basis to deny the refund/TCC sought, lest, it will amount to unjust enrichment on the part of the State.

THE RULING OF THE COURT *EN BANC*

The instant Petition for Review must fail.

It is evident from the record that petitioner merely reiterated the issues he already invoked and which the Court in Division squarely addressed in the assailed Decision of March 17, 2016, and affirmed in the Resolution of June 14, 2016. Petitioner once again claims that respondent's reliance on BIR Ruling (DA130-02) as basis for its claim for refund/TCC is misplaced, that respondent failed to submit BIR Form No. 1602 at the administrative level effectively depriving him of the opportunity to determine the merits of its claim, and for which reason, the filing of the Petition for Review before the Court in Division was premature.

Nevertheless, if only to clear the cloud of doubt still hovering around petitioner's mind, the foregoing issues shall perforce be discussed.

Contrary to petitioner's claim, respondent, through the Letter dated January 9, 2014, was able to sufficiently establish that it is a financing institution wholly-owned and controlled by the Government of Singapore, hence, exempt from income taxation as expressly provided under Sections 32(B)(7)(a) of the NIRC, as amended and 2.57.5 of RR No. 2-98.[9]

Note that the Letter dated January 9, 2014 was not just an ordinary letter to be considered as a private document. The said Letter was a Certification issued by the Reserves and Investment Office, Ministry of Finance of the Singapore Government. It was signed by the Director for Reserves and Investments Derrick Wan, who attested to the fact that respondent is wholly-owned and controlled by the Government of Singapore. Moreover, the said Certification was notarized by our own Consul Victorio M. Dimagiba Jr. at the Philippine Consulate in Singapore[10] as evidenced by a

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[9] Sec. 32. *Gross Income.* –

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(B) *Exclusions from Gross Income.* – The following items shall not be included in gross income and shall be exempt from taxation under this Title:

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(7) *Miscellaneous Items.* –

(a) *Income Derived by Foreign Government*. – Income derived from investments in the Philippines in loans, stocks, bonds or other domestic securities, or from interest on deposits in banks in the Philippines by (i) foreign governments, (ii) financing institutions owned, controlled, or enjoying refinancing from foreign governments; and (iii) international or regional financial institutions established by foreign governments.

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Sec. 2.57.5. *Exemption from withholding*. – The withholding of creditable withholding tax prescribed in these Regulations shall not apply to income payments made to the following:

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(B) Persons enjoying exemption from payment of income taxes pursuant to the provisions of any law, general or special xxx

[10] Exhibit P-3.

Certificate of Authentication which also indicates that original of the said Certification was in the legal custody of Director Derrick Wan.[11] The action taken by the Philippine Consular Office was a recognition on the part of the Philippine Government that the Letter dated January 9, 2014 is a *foreign official document* issued by the proper government agency of the Singapore. Hence, under Section 24, Rule 132[12] of the Rules of Court, it is admissible in evidence without need of further authentication.

Further, Section 19(a), Rule 132[13] of the Rules of Court provides *inter alia* that instruments or records of official acts of official bodies, tribunals and public officers of foreign countries are public documents. Undeniably, the subject letter is a foreign public document as it is a certification originating from the Ministry of Finance - Government of the Republic of Singapore.

Finally, to establish the fact of withholding and remittance of the illegal/erroneous final taxes, respondent presented the Certificate of Final Tax Withheld at Source

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[11] Ibid.

[12] **Section 24.** *Proof of official record.* — The record of public documents referred to in paragraph (a) of Section 19, when admissible for any purpose, may be evidenced by an official publication thereof or by a copy attested by the officer having the legal custody of the record, or by his deputy, and accompanied, if the record is not kept in the Philippines, with a certificate that such officer has the custody. If the office in which the record is kept is in foreign country, the certificate may be made by a secretary of the embassy or legation, consul general, consul, vice consul, or consular agent or by any officer in the foreign service of the Philippines stationed in the foreign country in which the record is kept, and authenticated by the seal of his office.

[13] **Section 19.** *Classes of Documents.* — For the purpose of their presentation evidence, documents are either public or private.

Public documents are:

(a) The written official acts, or records of the official acts of the sovereign authority, official bodies and tribunals, and public officers, whether of the Philippines, or of a foreign country;

(b) Documents acknowledge before a notary public except last wills and testaments; and

(c) Public records, kept in the Philippines, of private documents required by law to the entered therein.

All other writings are private.

(BIR Form No. 2306), Letter dated February 11, 2014, the statement of taxes withheld and journal entry vouchers (JEVs) all emanating from the withholding agent BTr.

In *Commissioner of Internal Revenue vs. Asian Transmission Corporation*,[14] the Supreme Court ruled that for claims for refund of withholding taxes, the taxpayer is not required to establish actual remittance of taxes withheld as the said duty pertains to the payor-withholding agent, thus:

> xxx 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. xxx

Contrary to petitioner's claim, respondent is not required under the law to present the Monthly Remittance Return of Final Income Taxes Withheld (BIR Form 1602) for the *onus* of demonstrating actual remittance of the final tax lies with BTr as payor-withholding agent pursuant to Sections 57 and 58 of the 1997 National Internal Revenue Code, as amended.[15]

As to what document constitutes sufficient proof that the taxes were indeed withheld by the payor-withholding agent, Section 58(B) of the NIRC, as amended, is instructive, thus:

> SEC. 58. **Returns and Payment of Taxes Withheld at Source. -**
>
> (B) Statement of Income Payments made and Taxes Withheld. – Every withholding agent required to deduct and withhold taxes under Section 57 shall furnish each recipient, in respect to his or its receipts during the calendar quarter or year, a <u>written statement showing the income or other payments made by the withholding agent during such quarter or year, and the amount of the tax deducted and withheld therefrom</u> xxx (underscoring supplied)

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[14] G.R. No. 179617, January 19, 2011.

[15] See *Commissioner of Internal Revenue vs. Philippine National Bank,* G.R. No. 180290, September 29, 2014.

Clearly, respondent's presentation of the Certificate of Final Tax Withheld at Source (BIR Form No. 2306) issued by the withholding agent BTr in favor of Citibank covering FWT in the total amount of ₱242,816,565.56,[16] the Certification dated February 11, 2014[17], confirming the amount of final taxes withheld from the coupons or interest income derived by the Philippine T-Bonds recorded under Citibank N.A.'s Custodian Account, the Statements of Interest Payment of Coupon/Maturity due by government securities holders of Citibank,[18] and the journal entry vouchers (JEVs) covering the withholding of final tax on coupons and remittance of FWTs to the BIR,[19] satisfy the requirement of the law. The foregoing pieces of evidence show that for the periods December 1, 2011 to December 31, 2012, the amount of ₱242,816,565.56 pertaining to final taxes on interest income from Philippine T-Bonds, to which respondent's claim is hinged, were indeed withheld and remitted by the BTr to the BIR.

All said, respondent has complied with all the requisites to justify the grant of its claim for refund in the aggregate amount of ₱216,919,286.53, representing erroneously collected final taxes.

WHEREFORE, the Petition for Review dated July 15, 2016, filed by the Commissioner of Internal Revenue is **DENIED**, for lack of merit. The assailed Decision dated March 17, 2016 and Resolution dated June 14, 2016 are **AFFIRMED**.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

[16] Exhibit P-8.
[17] Exhibit P-5.
[18] Exhibits P-6-1 and P-6-2.
[19] Exhibits P-7-1 to P-7-9.

We Concur:

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

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

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