REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

TOLEDO POWER COMPANY,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 9465

Members:

DEL ROSARIO, *P.J., Chairperson,* and
MANAHAN, *JJ.*

Promulgated:

OCT 02 2020 2:07pm

x- -x

RESOLUTION

MANAHAN, *J.*:

For resolution is respondent Commissioner of Internal Revenue's *Motion for Reconsideration (Re: Decision promulgated 8 June 2020)* posted on June 30, 2020 with petitioner's *Comment/Opposition (To Respondent's Motion for Reconsideration Re: Decision dated June 8, 2020)* filed on July 9, 2020.

Respondent seeks reconsideration of the Court's Decision promulgated on June 8, 2020, the dispositive portion of which reads:

> "**WHEREFORE,** in light of the foregoing considerations, the instant Petition for Review is **GRANTED.** Accordingly, respondent is ordered to issue a tax credit certificate to petitioner Toledo Power Company in the amount of P18,391,219.77, representing its erroneously paid final withholding taxes during the taxable years 2014 and 2015 arising from income payments made to Yashima & Co. Ltd., a

> non-resident foreign corporation exempt from tax under the RP-Japan Tax Treaty, as amended.
>
> **SO ORDERED**."

Respondent assails this Court's Decision on the sole ground that the Court erred in ruling that petitioner is entitled to the refund of P18,391,219.77 allegedly representing erroneously paid final withholding taxes.

The foremost argument of respondent is petitioner's lack of legal standing to pursue the petition because it is not the real party in interest. Respondent asserts that the subject claim for refund involves final withholding taxes (FWT) alleged to have been erroneously paid during the taxable years 2014 and 2015 and that the proper party to claim for a refund or tax credit is the person on whom the tax is imposed by the statute. He further asserts that petitioner is a mere withholding agent and is not the taxpayer required by law to pay the tax, hence, it is only liable if it fails to perform its duty to withhold the tax and remit the same to the government. Respondent concludes that it should have been the payee or recipient of the income payments which in this case is Yashima & Co., Ltd. (Yashima) who should have filed a claim for refund.

Respondent also cites petitioner's failure to present its income tax returns as evidence to show that the income payment it received was declared as part of its gross income. He further contends that petitioner failed to prove the fact of withholding of taxes and their subsequent remittance to the Bureau of Internal Revenue (BIR).

In sum, the lack of proper substantiation of the claim for refund and the lack of legal standing of petitioner are the grounds submitted by respondent to convince the Court to reconsider the partial grant of refund and to reverse the Decision dated June 8, 2020.

In its *Comment/Opposition*, petitioner assails respondent's *Motion for Reconsideration* as it contains statements or arguments that were already raised by the latter during trial and which have been resolved by the Court in the assailed Decision.

Nevertheless, petitioner expressed disagreement with respondent's position and maintains that as a withholding agent, it has the legal personality to claim for the refund of erroneously paid FWT. It cites Section 204 (C) and Section 229 of the 1997 National Internal Revenue Code, as amended, as bases for this argument as well as related jurisprudence such as the case of *CIR vs. Smart Communications, Inc.*[1] where the Supreme Court purportedly ruled that in case a taxpayer does not file a claim for refund, the withholding agent may file the claim. Petitioner also cites the decision of the Supreme Court in *CIR vs. Procter & Gamble Manufacturing Corporation* where it was ruled that a withholding agent is a proper party to file a claim for refund of the withheld taxes of its foreign parent company.

Petitioner describes the role of a withholding agent as the person who has the responsibility to deduct withholding taxes from the income payments and remit the same to the BIR and said role accords it with the legal personality to file the claim for refund pursuant to the rulings of the Supreme Court in the *Smart* and *Procter and Gamble* cases.

RULING OF THE COURT

We shall first resolve the timeliness of the filing of the *Motion for Reconsideration* of respondent.

Records show that the Court promulgated a Decision in the above-entitled case on June 8, 2020 and that a copy thereof was received by respondent on June 18, 2020. Records also show that respondent posted its Motion for Reconsideration with this Court on June 30, 2020. Counted from the date of receipt of a copy of the Decision on June 18, 2020, the Motion for Reconsideration of respondent filed on June 30, 2020 was timely filed pursuant to the provisions of Section 1 of Rule 15 of the RRCTA and we quote, thus:

"Rule 15

Motion for Reconsideration or New Trial

[1] G.R. No. 179045-46, August 25, 2010.

> Section 1. *Who may and when to file motion.*- Any aggrieved party may seek a reconsideration or new trial of any decision, resolution or order of the Court. **He shall file a motion for reconsideration or new trial within fifteen days from the date he received notice of the decision, resolution or order of the Court in question."**(emphasis supplied)

We now resolve the substantive merits of the arguments of respondent in his Motion for Reconsideration.

Respondent challenges the *locus standi* of petitioner to file the claim for refund because as a withholding agent, it is not the actual taxpayer who is entitled to said refund. Respondent posits that it should have been Yashima who filed the claim for refund because as the payee/recipient of the income payments, it stands as the real taxpayer entitled to the refund of the erroneously paid FWT.

We disagree with respondent.

Claims for refund of erroneously paid taxes are governed by Section 204 (C) and Section 229 of the 1997 NIRC, as amended and we quote:

> "SEC. 204. *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.* – The Commissioner may-
>
> xxx xxx xxx
>
> (C) Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamped that have been rendered unfit for use and refund their value upon proof of destruction. **No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two (2) years after the payment of the tax or penalty**: *Provided, however,* That a return filed showing an overpayment shall be considered as a written claim for credit or refund." (emphasis supplied)
>
> "SEC. 229. *Recovery of Tax Erroneously or Illegally Collected.* – No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, **until a claim for refund or credit has been duly filed**

> **with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.**
>
> In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment: *Provided, however,* That the Commissioner may, even without a written claim therefore, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid." (Emphasis supplied)

In the instant case, the excess or erroneous payments stemmed from the income payments made by petitioner to Yashima for the repair done by the latter on the former's equipment used in their power generating business. Yashima, a corporation created under the laws of Japan is not registered to do business in the Philippines but sent its repairmen to perform services in the Philippines for a limited period of time under a Service Agreement duly executed between Yashima and petitioner. In consideration for the services rendered by Yashima, petitioner paid Yashima and accordingly withheld taxes from said payments. However, based on the provisions of the Republic of the Philippines (RP)-Japan Tax Treaty,[2] petitioner filed an Application for Tax Treaty Relief (TTRA) with the International Tax Affairs Division (ITAD) of the Bureau of Internal Revenue (BIR) seeking confirmation that the income payments made to Yashima during the period September 14, 2010 to October 13, 2015, are exempt from income tax. Petitioner subsequently filed a Letter Request for Refund of its alleged erroneously paid withholding taxes.

From the aforestated facts, it is clear that petitioner acted as the withholding agent of the government relative to the taxes paid on the income received by Yashima. The question now is whether or not a withholding agent can be classified as a "taxpayer" entitled to file a claim for refund based on the afore-quoted provisions of Sections 204 (C) and 229 of the 1997 NIRC, as amended.

---

[2] Convention between Republic of the Philippines and Japan for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income.

This was answered in the affirmative by the Supreme Court in the case of *CIR vs. Procter & Gamble Philippines Manufacturing Corporation*[3] where it was ruled, thus:

> "If as pointed out in *Philippine Guaranty,* the withholding agent is also an agent of the beneficial owner of the dividends with respect to the filing of the necessary income tax return and with respect to the actual payment of the tax to the government, such authority may reasonably be held to include the authority to file a claim for refund and to bring an action for recovery of such claim."

The above *P & G* Supreme Court ruling was adopted in the later case of *CIR vs. Smart Communications, Inc.*,[4] where it was similarly ruled, to wit:

> "The term "taxpayer" as defined in our NIRC as referring to "any person subject to tax imposed by the Title (on Tax on Income)." It thus becomes important to note that under Section 53 (c) of the NIRC, the withholding agent who is "required to deduct and withhold any tax" is made "personally liable for such tax" and indeed is indemnified against any claims and demands which the stockholder might wish to make in questioning the amount of payments effected by the withholding agent in accordance with the provisions of the NIRC. The withholding agent, P & G Phil., is directly and independently liable for the correct amount of the tax that should be withheld from the dividend remittances. The withholding agent is, moreover, subject to and liable for deficiency assessments, surcharges and penalties should the amount of the tax withheld be finally found to be less than the amount that should have been withheld under law.
>
> A "person liable for tax" has been held to be a "person subject to tax" and properly considered a "taxpayer." The terms "liable for tax" and "subject to tax" both connote legal obligation or duty to pay a tax. It is very difficult indeed conceptually impossible, to consider a person statutorily made "liable for tax" as not "subject to tax". **By any reasonable standard, such person should be regarded as a party in interest or as a person having sufficient legal interest, to bring a suit for**

---

[3] G.R. No. L-66838, December 2, 1991.
[4] G.R. Nos. 179045-46, August 25, 2010

> **refund of taxes he believes were illegally collected from him."** (emphasis supplied)

For the reasons afore-stated, we do not find any cogent reason to deviate from the Court's ruling in the assailed Decision with regard to this matter.

Respondent's other argument concerning the alleged failure of petitioner to prove the fact of withholding of taxes and their subsequent remittance to the BIR which should have been the basis of the Court's denial of the entire claim for refund, are belied by the records of this case.

During the trial of this case, petitioner offered in evidence the electronic filing and payment system (eFPS) printouts of the Monthly Remittance Returns of Final Income Tax Withheld (BIR Form 1601-F) as Exhibits "P-2" to "P-13", to prove that it paid and remitted the withholding taxes from the income payments made to Yashima for the period September 10, 2014 to October 13, 2015. The said exhibits were admitted by the Court in its Resolution dated April 23, 2018.[5]

The Court in the assailed Decision dated June 8, 2020 used these exhibits, among others, in support of its conclusion that petitioner was able to prove that it had remitted withholding taxes in the total amount of Php18,391,219.77 for said period.

WHEREFORE, premises considered, the Motion for Reconsideration filed by respondent CIR is **DENIED** for lack of merit and the assailed Decision of the Court in the above-captioned case dated June 8, 2020 is hereby **AFFIRMED.**

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

---

[5] Court Docket, Volume II, pp. 777-779.

I CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice