REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

JARDINE LLOYD THOMPSON INSURANCE BROKERS, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 8273

Members:

CASTAÑEDA, JR., *Chairperson,*
CASANOVA, *and*
MINDARO-GRULLA, *JJ.*

Promulgated:

MAR 0 2 2016 2:55 pm

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RESOLUTION

CASANOVA, *J.*:

For resolution is respondent's **Motion for Partial Reconsideration (Re: Amended Decision dated 28 September 2015)** filed on October 21, 2015, with petitioner's **Comment (Re: Motion for Partial Reconsideration dated October 21, 2015)** filed on December 11, 2015.

Respondent moves for the partial reconsideration of the Court's Amended Decision dated September 28, 2015, the dispositive portion of which reads:

> "**WHEREFORE,** petitioner's Motion for Reconsideration is **PARTIALLY GRANTED**. Accordingly,

the dispositive portion of the assailed Decision dated February 11, 2014 is hereby amended to read, as follows:

> '**WHEREFORE**, premises considered, the instant Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, respondent is hereby **ORDERED TO REFUND** or **TO ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the reduced amount of **THREE MILLION SEVEN HUNDRED NINETY ONE THOUSAND FIVE HUNDRED TWENTY NINE PESOS and 65/100 (₱3,791,529.65)**, representing petitioner's excess and unutilized creditable income taxes withheld for calendar year 2008.
>
> **SO ORDERED**.'

SO ORDERED."[1]

In the assailed Amended Decision, the Court partially granted petitioner's Motion for Partial Reconsideration and increased the amount of refundable excess and unutilized creditable withholding taxes (CWT) for calendar year (CY) 2008 to ₱3,791,529.65.

In her Motion, respondent argues that the Court erred in partially granting petitioner's claim for refund of excess and unutilized CWT in the amount of ₱3,791,529.65 on the grounds that:

a. Petitioner failed to present its original Quarterly Income Tax Return (ITR) for the succeeding period.

b. Petitioner failed to have its withholding tax certificates identified by the respective withholding agents and to prove the remittance to the Bureau of Internal Revenue (BIR) of the amounts alleged to have been withheld.

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[1]Docket (Vol. II), p. 778.

c. Petitioner failed to comply with administrative requirements when it did not submit to the BIR copies of the withholding tax certificates in support of its administrative claim for refund.

d. Tax refunds are in the nature of tax exemptions and should therefore be construed *strictissimi juris* against the taxpayer.

Petitioner counters that respondent's Motion should be denied outright for being a Second Motion for Reconsideration, which is a prohibited pleading under the procedural rules of this Court.

It also argues that, even assuming that the Motion can be treated as a permissible pleading, respondent's arguments in her Motion deserve scant consideration, for the reasons stated below:

a. It is already established that presentation of the Quarterly ITRs for the succeeding taxable period is not alegal requisite for claiming a refund of excess and unutilized CWT.

b. It is well-settled that the presentation of the Certificates of Creditable Tax Withheld at Source (BIR Form No. 2307) issued by withholding agents constitute sufficient existence and validity of a taxpayer's CWT.

c. The non-submission of the Certificates of Creditable Tax Withheld at Source at the administrative level does not justify the denial of the claim for refund.

d. The rule that "claims for refund of overpaid taxes are construed *strictissimi juris* against the taxpayer" does not apply to claims for refund of overpaid or erroneously paid taxes.

This Court promulgated a Decision[2] on February 11, 2014 (hereinafter referred to as "Original Decision"), which partially

[2] Docket (Vol. I), pp. 394-417.

granted petitioner's refund claim to the extent of ₱3,569,915.23. Respondent assailed the Original Decision by filing a Motion for Partial Reconsideration[3] on February 28, 2014, raising the same arguments she raised in the instant Motion for Partial Reconsideration. This was denied by the Court in the Resolution[4] dated April 30, 2014, which also allowed petitioner to present additional evidence in order to address the disallowed portion of the refund claim. Thereafter, the Court issued the Amended Decision[5] dated September 28, 2015, which increased the refundable amount to ₱3,791,529.65. Respondent now assails the said refundable amount through the instant motion, praying that the entire amount of the claim for refund be denied.

In the recent case of *CE Luzon Geothermal Power Company, Inc. vs. Commissioner of Internal Revenue*[6], the Supreme Court ruled that an amended decision modifying and increasing a taxpayer's entitlement to a refund is a different decision from the original decision and therefore can be a proper subject of a motion for reconsideration anew. The pertinent portion of the SC Decision reads:

> "Under Section 3, Rule 14 of the Revised Rules of the Court of Tax Appeals, an amended decision is issued when there is any action **modifying or reversing a decision** of the CTA *En Banc* or in Division. Pursuant to these parameters, it is clear that the CIR's motions for partial reconsideration – *i.e., (a)* motion for partial reconsideration of the June 24, 2009 Decision; and *(b)* motion for partial reconsideration of the January 19, 2010 Amended Decision – assailed separate and distinct decisions that were rendered by the CTA Division. Notably, its amended decision **modified and increased** CE Luzon's entitlement to a refund or tax credit certificate in the amount of ₱17,277,938.47. **Essentially, it was therefore a different decision and, hence, the proper subject of a motion for reconsideration anew on the part of the CIR.** Thus, CE Luzon's procedural objection must fail." *(Emphasis supplied)*

[3] Docket (Vol. I), pp. 418-432.
[4] Docket (Vol. I), pp. 470-478.
[5] Docket (Vol. II), pp.770-779.
[6] G.R. No. 200841-42, August 26, 2015.

Considering the foregoing, the Amended Decision dated September 28, 2015, which modified the Decision dated February 11, 2014 by increasing the refundable amount, is essentially a different decision from the original decision and a proper subject of a motion for partial reconsideration.

Nevertheless, respondent's present Motion for Partial Reconsideration must be denied for lack of merit.

The arguments raised by respondent are mere rehash of the arguments she interposed in her Motion for Partial Reconsideration[7] filed on February 28, 2014. These were thoroughly threshed out in the Court's Resolution[8] dated April 30, 2014, the pertinent portion of which reads:

> "We find respondent's arguments untenable.
>
> In the case of *Philam Asset Management, Inc. vs. Commissioner of Internal Revenue*, the High Tribunal already ruled that the requirement of presenting the ITR of the succeeding taxable year has no basis in law and jurisprudence, to wit:
>
> > 'Requiring that the ITR or the FAR of the *succeeding* year be presented to the BIR in requesting a *tax refund* has no basis in law and jurisprudence.
> >
> > *First*, Section 76 of the Tax Code does not mandate it. The law merely requires the filing of the FAR for the *preceding* -- not the succeeding -- taxable year. Indeed, any refundable amount indicated in the FAR of the preceding taxable year may be credited against the estimated income tax liabilities for the taxable quarters of the succeeding taxable year. However, nowhere is there even a tinge of a hint in any of the provisions of the Tax Code that the FAR of the taxable year following the

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[7] Docket (Vol. I), pp. 418-432.
[8] Docket (Vol. I), pp. 470-478.

period to which the *tax credits* are originally being applied should also be presented to the BIR.'

In relation thereto, the CTA Court *En Banc*, in the case of *Commissioner of Internal Revenue vs. Philippine Realty and Holdings Corporation* held that the non-presentation of Original Quarterly ITR is not required to be entitled to a refund of excess CWT, *viz*:

'x x x **the non-presentation of respondent's Original Quarterly ITR for the year 2008 to prove that respondent did not carry-over and apply its excess CWT for 2007 to the succeeding year is of no moment.** Jurisprudence has long dispensed with the presentation of the succeeding year's returns in claims for refund of excess CWT, thus:

xxx xxx xxx

While the cited case mentions only that there is no need to present the FAR of the succeeding year, it is also clear that there is also no need to present the quarterly returns for the succeeding year. The cited decision also enumerated the documents that must be submitted in evidence to prove entitlement to refund or tax credit, to wit: '(1) the withholding tax statements; (2) the ITR of the present quarter to which the excesswithholding tax credits are being applied; and (3) the ITR of the quarter for the previous taxable year in which the excess credits arose.'

Under the familiar maxim in statutory construction, *expressio unius est exclusio alterius*, the express mention of one person, thing, or consequence implies the exclusion of all others. Hence, when the Supreme Court listed the documents needed to be entitled to a claim for refund of excess CWT, such is deemed an exclusive list and everything else must be excluded. Since submission of the FAR or the quarterly returns of

> the succeeding year to be entitled to a refund of excess CWT is not included, then there is no need to present these documents.
>
> To repeat, the submission in evidence of the returns of the succeeding year is unnecessary as 'the Tax Code merely requires the filing of the final adjustment return for the preceding — not the succeeding — taxable year. Indeed, any refundable amount indicated therein corresponding to the preceding taxable year may be credited against the estimated income tax liabilities for the taxable quarters of the succeeding taxable year. Requiring that the income tax return or the final adjustment return of the succeeding year be presented to the BIR in requesting a tax refund has no basis in law and jurisprudence.'

With regard to respondent's contention that petitioner failed to present the various payors/withholding agents to prove the entries inits withholding tax certificates and its subsequent remittance of the taxes therein to the Bureau of Internal Revenue (BIR), the same holds no water.

In *Commissioner of Internal Revenue vs. Asian Transmission Corporation*, the Supreme Court, quoting the ruling of the Court *En Banc*, held that:

> '. . . 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 Regulations 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 Sections 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 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.** We stress that the pertinent provisions of law and the established jurisprudence evidently demonstrate that there is no need for the claimant, respondent in this case, **to prove actual remittance by the withholding agent (payor) to the BIR**.

In view of the foregoing findings, this Court hereby **DENIES** respondent's **MOTION FOR PARTIAL RECONSIDERATION** for lack of merit."

Moreover, in the case of *Winebrenner & Iñigo Insurance Brokers, Inc. vs. Commissioner of Internal Revenue*[9], the Supreme Court held that for the purpose of proving that no carry-over has been made, the succeeding Quarterly ITRs are not absolutely needed, to wit:

"**Proving that no carry-over has been made does not absolutely require the presentation of the quarterly ITRs.**

xxx xxx xxx

It appears however that there is misunderstanding in the ruling of the Court in *Philam*. That factual

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

> distinction does not negate the proposition that subsequent quarterly ITRs are not indispensable. The logic in not requiring quarterly ITRs of the succeeding taxable years to be presented remains true to this day. **What Section 76 requires**, just like in all civil cases, **is to prove the *prima facie* entitlement to a claim, including the fact of not having carried over the excess credits to the subsequent quarters or taxable year. It does not say that to prove such a fact, succeeding quarterly ITRs are absolutely needed**.
>
> This simply underscores the rule that **any document, other than quarterly ITRs may be used to establish that indeed the non-carry over clause has been complied with, provided that such is competent, relevant and part of the records**. The Court is thus not prepared to make a pronouncement as to the indispensability of the quarterly ITRs in a claim for refund for no court can limit a party to the means of proving a fact for as long as they are consistent with the rules of evidence and fair play. The means of ascertainment of a fact is best left to the party that alleges the same. The Court's power is limited only to the appreciation of that means pursuant to the prevailing rules of evidence. **To stress, what the NIRC merely requires is to sufficiently prove the existence of the non-carry over of excess CWT in a claim for refund**." *(Emphasis supplied)*

Furthermore, in the case of *Commissioner of Internal Revenue vs. Philippine National Bank*[10], the Highest Tribunal ruled that the "certificate of creditable tax withheld at source is the competent proof to establish the fact that taxes are withheld. It is not necessary for the person who executed and prepared the certificate of creditable tax withheld at source to be presented and to testify personally to prove the authenticity of the certificates." Likewise, in the afore-mentioned case, the High Court held that "the Court of Tax Appeals is not precluded from accepting respondent's evidence assuming these were not presented at the administrative level. Cases filed in the Court of Tax Appeals are litigated *de novo*."

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[10] G.R. No. 180290, September 29, 2014.

Finally, it must be emphasized that tax refunds, being in the nature of tax exemptions, are construed in *strictissimi juris* against the taxpayer and liberally in favor of the government. Accordingly, it is a claimant's burden to prove the factual basis of a claim for refund or tax credit.[11] In the present case, petitioner was able to prove that it is entitled to its claim for refund ofexcess and unutilized CWT for CY 2008 in the amount of ₱3,791,529.65.

WHEREFORE, finding no compelling reason to reverse the ruling of this Court in the assailed Amended Decision, respondent's Motion for Partial Reconsideration (Re: Amended Decision dated October 21, 2015) is hereby **DENIED** for lack of merit.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

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

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

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[11] *Eastern Telecommunications Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 183531, March 25, 2015.