REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

FIRST DIVISION

CASAS+ARCHITECTS, INC., *Petitioner,*	**CTA CASE NO. 9806**
	Members:
-versus-	**DEL ROSARIO,** *P.J. & Chairperson,* **MANAHAN,** and **REYES-FAJARDO,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: MAR 15 2022 2:10 pm

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RESOLUTION

DEL ROSARIO, P.J.:

This resolves respondent's Motion for Reconsideration filed on July 23, 2021, with petitioner's Comment/Opposition (re: Respondent's Motion for Reconsideration dated July 23, 2021) filed on October 18, 2021, which was submitted for Resolution on February 7, 2022.

Respondent assails the Court's Decision dated June 17, 2021 (assailed Decision), the dispositive portion of which reads:

> "**WHEREFORE**, premises considered, the Petition for Review is **PARTIALLY GRANTED**. Accordingly, respondent Commissioner of Internal Revenue is **ORDERED** to **REFUND** in favor of petitioner Casas+Architects, Inc. the amount of ₱11,613,232.95, representing its excess and unutilized creditable withholding taxes for taxable year 2015.
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> **SO ORDERED**."

In his motion, respondent prays that the assailed Decision be reconsidered and set aside, and that a new one be issued denying petitioner's claim for refund or issuance of a tax credit certificate (TCC). Respondent advances the following grounds/arguments in support thereof, *viz.*:

1. The Petition for tax refund for taxable year (TY) 2015 was filed out of time;

2. Petitioner failed to present the documentary requirements *[i.e., Summary Alphalist of Withholding Agents of Income Payments Subjected to Withholding Tax (SAWT) and Monthly Alphalist of Payees (MAP)]* prescribed under Revenue Regulations (RR) No. 2-98, as amended by RR No. 2-2006, in support of its claim for refund of its excess/unutilized creditable income taxes withheld for TY 2015;

3. Proof of actual remittance to the Bureau of Internal Revenue (BIR) of the withheld taxes, and testimonial evidence of the payors and withholding agents, are required; and,

4. Petitioner failed to prove that its Quarterly Income Tax Returns (ITRs) for TY 2016 and Annual ITR for TY [2014] *(marked as Exhibits "P-5", "P-6", "P-7", and "P-26")* were executed under the pain of perjury and made under oath.

In its Comment/Opposition, petitioner seeks that respondent's motion for reconsideration be denied. It states the following counter-arguments:

1. The Motion for Reconsideration should be denied for lack of merit considering that the Court correctly ruled that petitioner should be refunded the amount of ₱11,613,232.95, representing its excess and unutilized CWT for taxable year 2015;

2. The Court correctly ruled that both administrative and judicial claims were seasonably filed, hence, the Court has jurisdiction to hear and decide the Petition for Review;

3. The determination of the sufficiency and weight of the evidence at the judicial level is not governed by RR No. 2-98, as amended by RR No. 2-2006, but by the Rules of Court and prevailing jurisprudence, which determination lies within the sound discretion and judgment of the Court;

4. Proof of actual remittance to the BIR of the withheld taxes and testimonial evidence of all the payors and withholding agents are not conditions to claim for a refund of unutilized tax credits; and,

5. Petitioner's Annual and Quarterly ITRs were identified under oath and under the pain of perjury.

The Court will discuss in *seriatim* the points raised by petitioner.

Reckoning of the two (2)-year prescriptive period

Petitioner asserts that the reckoning of the two (2)-year prescriptive period should be from the date of the monthly remittance of the claimed CWT for TY 2015; that the deadline for the filing of the withholding tax return and payment must be made on or before January 10 or 15, 2016, thus, petitioner had until January 10 or 15, 2017 within which to file its claim for refund at the administrative and judicial levels; and, that petitioner's filing of its administrative and judicial claims on February 27, 2017 and April 11, 2018, respectively, was way beyond the prescriptive period.

Petitioner's argument is devoid of merit.

To begin with, this case involves a claim for refund pursuant to Section 229 of the NIRC of 1997, as amended, representing **unutilized and excess CWT** for TY 2015.

It bears stressing that a taxpayer who contributes to the withholding tax system, does so to perform and extinguish his tax obligation for the year concerned.[1] Under the creditable withholding tax system, in particular, taxes withheld on certain income payments are intended to equal or at least approximate the tax due of the payee on said income.[2] The amount of creditable tax withheld shall be allowed as a tax credit against the income tax liability of the payee in the quarter of the taxable year in which income was earned or received.[3]

The income recipient (taxpayer) under the creditable withholding tax system is required to file an ITR.[4] Under Section 76 of the NIRC of 1997, as amended, if the sum of the quarterly tax payments made during year is not equal to the total tax due on the entire taxable income of that year, the taxpayer corporation shall either: (i) pay the balance of tax still due; (ii) carry-over the excess credit; or, (iii) be credited or refunded with the excess amount paid, as the case may be.[5] There will be excess CWT if the total income

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[1] Finley J. Gibbs and Diane P. Gibbs vs. Commissioner of Internal Revenue and Court of Tax Appeals, G.R. No. L-17406, November 29, 1965.
[2] Section 2.57(B), RR No. 2-98.
[3] Section 2.58.3, RR No. 2-98.
[4] Section 2.57(B), RR No. 2-98.
[5] Section 76, NIRC of 1997, as amended, states:
"SEC. 76. *Final Adjustment Return*. - Every corporation liable to tax under Section 27 shall file a final adjustment return covering the total taxable income for the preceding calendar or fiscal year. If the sum of the quarterly tax payments made during the said taxable year is not equal to the total tax due on the entire taxable income of that year, the corporation shall either:
(A) Pay the balance of tax still due; or
(B) Carry-over the excess credit; or
(C) Be credited or refunded with the excess amount paid, as the case may be.
In case the corporation is entitled to a tax credit or refund of the excess estimated quarterly income taxes paid, the excess amount shown on its final adjustment return may be carried over and credited against the estimated quarterly income tax liabilities for the taxable quarters of the succeeding taxable years. Once the option to carry-over and apply the excess quarterly income tax against income tax due for the taxable quarters of the succeeding taxable years has been

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tax payments made exceeds the income tax due for the year. It is only when the Final Adjustment Return covering the whole year is filed that the taxpayer would know whether a tax is still due or a refund can be claimed based on the adjusted and audited figures.[6]

Respondent erroneously contends that the reckoning of the two (2)-year prescriptive period is the date of the monthly remittance of the claimed CWT. A similar issue had long been settled in *Commissioner of Internal Revenue vs. The Philippine American Life Insurance Co., et al.*,[7] *viz.:*

> "Petitioner poses the following question: In a case such as this, where a corporate taxpayer remits/pays to the BIR tax withheld on income for the first quarter but whose business operations actually resulted in a loss for that year, as reflected in the Corporate Final Adjustment Return subsequently filed with the BIR, **should not the running of the prescriptive period commence from the remittance/payment at the end of the first quarter of the tax withheld *instead* of from the filing of the Final Adjustment Return**?
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> xxx xxx xxx
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> It is true that in the *Pacific Procon* case, we held that the right to bring an action for refund had prescribed, the tax having been found to have been paid at the end of the first quarter when the withholding tax corresponding thereto was remitted to the Bureau of Internal Revenue, not at the time of filing of the Final Adjustment Return in April of the following year.
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> **However, this case was overturned by the Court in *Commissioner of Internal Revenue v. TMX Sales Incorporated and the Court of Tax Appeals***, wherein we said:
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> > . . . in resolving the instant case, it is necessary that we consider not only Section 292 (now Section 230) of the National Internal Revenue Code but also the other provisions of the Tax Code, particularly Sections 84, 85 (now both incorporated as Section 68), Section 86 (now Section 70) and Section 87 (now Section 69) on Quarterly Corporate Income Tax Payment and Section 321 (now Section 232) on keeping of books of accounts. All these provisions of the Tax Code should be harmonized with each other.
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> Section 292 (now Section 230) stipulates that the two-year prescriptive period to claim refunds should be counted from date of payment of the tax sought to be refunded. When applied to tax

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made, such option shall be considered irrevocable for that taxable period and no application for cash refund or issuance of a tax credit certificate shall be allowed therefor."

[6] Commissioner of Internal Revenue vs. TMX Sales, Inc., et al., G.R. No. 83736, January 15, 1992.

[7] G.R. No. 105208, May 29, 1995.

payers filing income tax returns on a quarterly basis, the date of payment mentioned in Section 292 (now Section 230) must be deemed to be qualified by Sections 68 and 69 of the present Tax Code which respectively provide:

> Sec. 68 Declaration of Quarterly Income Tax. — Every corporation shall file in duplicate a quarterly summary declaration of its gross income and deductions on a cumulative basis for the preceding quarter or quarters upon which the income tax, as provided in Title II of this Code shall be levied, collected and paid. The Tax so computed shall be decreased by the amount of tax previously paid or assessed during the preceding quarters and shall be paid not later than sixty (60) days from the close of each of the first three (3) quarters of the taxable year.
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> Sec. 69. Final Adjustment Return. — Every corporation liable to tax under Section 24 shall file a final adjustment return covering the total net income for the preceding calendar or fiscal year. If the sum of the quarterly tax payments made during the said taxable year is not equal to the total tax due on the entire taxable net income of that year the corporation shall either:
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> (a) Pay the excess still due; or
> (b) Be refunded the excess amount paid, as the case may be.
>
> In case the corporation is entitled to a refund of the excess estimated quarterly income taxes paid, the refundable amount shown on its final adjustment return may be credited against the estimated quarterly income tax liabilities for the taxable quarters of the succeeding taxable year.

It may be observed that although quarterly taxes due are required to be *paid* within sixty days from the close of each quarter, the fact that the amount shall be *deducted* from the tax due for the succeeding quarter shows that until a final adjustment return shall have been filed, the taxes paid in the preceding quarters are merely partial taxes due from a corporation. Neither amount can serve as the final figure to quantify what is due the government nor what should be refunded to the corporation.

This interpretation may be gleaned from the last paragraph of Section 69 of the Tax Code which provides that the refundable amount, in case a refund is due a corporation, is that amount which is shown on its final adjustment return and not on its quarterly returns.

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Clearly, the prescriptive period of two years should commence to run only from the time that the refund is

> **ascertained, which can only be determined after a final adjustment return is accomplished**. *(Boldfacing supplied)*

Thus, the two (2)-year prescriptive period for claiming a refund of excess CWT or overpaid income tax commences to run on the date of filing of the Final Adjustment Return as it is from that time the refundable amount is ascertained.

Non-compliance with RR No. 2-98, as amended by RR No. 2-2006, on the claim for refund is inconsequential

Respondent asserts that the claim for refund should be denied outright as petitioner failed to submit the documentary requirements, specifically, the SAWT and the MAP, prescribed under RR No. 2-98, as amended by RR No. 2-2006.

Notably, the foregoing argument of the respondent was only raised for the first time in this motion. At any rate, the non-submission of complete supporting documents in the administrative level is not fatal to the petitioner's judicial claim. Whatever deficiency in the substantiation of petitioner's claim for refund before the administrative level is immaterial in this judicial claim more so as respondent did not even act on petitioner's claim.

When a claim for refund is elevated to this Court, the Rules of Court governs.[8] This Court is not precluded from accepting evidence even if the same were not presented at the administrative level.[9] Cases filed in this Court are litigated *de novo*,[10] and a taxpayer-claimant may present new and additional evidence before this Court to support its claim for refund. The question of whether the evidence submitted by a party is sufficient to warrant the granting of the taxpayer-claimant's prayer lies within the sound discretion and judgment of the Court.[11]

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[8] Pilipinas Total Gas, Inc. vs. Commissioner of Internal Revenue, G.R. No. 207112, December 8, 2015.
[9] Philippine Airlines, Inc. (PAL) vs. Commissioner of Internal Revenue, G.R. Nos. 206079-80, January 17, 2018.
[10] Commissioner of Internal Revenue vs. Philippine National Bank, G.R. No. 180290, September 29, 2014.
[11] Pilipinas Total Gas, Inc. vs. Commissioner of Internal Revenue, G.R. No. 207112, December 8, 2015.

Proof of actual remittance is not a condition to a claim for refund of excess CWT

Respondent argues that petitioner is not entitled to the refund as petitioner failed to prove that the creditable taxes withheld by the payors were remitted to the BIR. Respondent avers that the evidence presented by petitioner, *i.e., certificates of creditable taxes withheld accomplished by its withholding agents showing the amount deducted and withheld from its income in support of the tax refund*, does not constitute conclusive evidence of payment and remittance to the BIR of the taxes withheld on petitioner's income. It states further that the act of withholding is one thing while the act of remittance is another thing. According to respondent, the best evidence of remittance is the certification from the BIR's Revenue Accounting Division as to the fact of remittance of the tax withheld.

The foregoing contentions are patently erroneous.

In ***Commissioner of Internal Revenue vs. Philippine National Bank***,[12] the Supreme Court categorically declared that proof of actual remittance of tax is not a condition to claim for refund of unutilized CWTs, *viz.:*

> "The certificate of creditable tax withheld at source is the competent proof to establish the fact that taxes are withheld. xxx
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> xxx xxx xxx
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> **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

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

> 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 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**." *(Boldfacing supplied)*

Contrary to respondent's contention, proof of actual remittance of the taxes withheld is not required, as the certificate of creditable tax withheld at source is *prima facie* proof of actual payment to the government by the taxpayer through the withholding agents.

Respondent's allegation that petitioner's Quarterly ITRs for TY 2016 and Annual ITR for 2014 were not executed under the pain of perjury and made under oath

Respondent claims that petitioner failed to prove that its Quarterly ITRs for TY 2016 and Annual ITR for TY 2014 marked as Exhibits "P-5", "P-6", "P-7", and "P-26", respectively, were executed under pain of perjury and made under oath.

This Court will not discuss respondent's concerns about petitioner's Quarterly ITRs for TY 2016 marked as Exhibit "P-5", "P-6", and "P-7", as the same were not used as basis in reaching the conclusion in the assailed Decision. The Court will tackle respondent's issue about petitioner's Annual ITR for TY 2014 marked as Exhibit "P-26", which was mentioned on pages 18-19 of the assailed Decision. This Court found the submission of petitioner's Annual ITR for TY 2014 sufficient to prove petitioner's *"Prior Year's*

Excess Credits other than MCIT" but only in the amount of ₱2,831,752.00.

A perusal of the case records would readily disclose that petitioner's Annual ITR for TY 2014 marked as Exhibit "P-26", was signed under the penalties of perjury by Carlos Simon Casas under the portion *"Signature over printed name of Treasure/Assistant Treasurer"* in compliance with the provision of Section 52 of the NIRC of 1997, as amended, which reads:

> "SEC. 52. *Corporation Returns.* -
>
> (A) *Requirements.* - Every corporation subject to the tax herein imposed, except foreign corporations not engaged in trade or business in the Philippines, shall render, in duplicate, a true and accurate quarterly income tax return and final or adjustment return in accordance with the provisions of Chapter XII of this Title.
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> **The return shall be filed by the president, vice-president or other principal officer, and shall be sworn to by such officer and by the treasurer or assistant treasurer**." *(Boldfacing & underscoring supplied)*

As petitioner's ITR for TY 2014 was signed by Carlos Simon Casas under the portion *"Signature over printed name of Treasurer/Assistant Treasurer"*, there is no basis for respondent's claim that the same was not made under oath and signed under the penalties of perjury.

All told, this Court finds no reversible error in the assailed Decision that would warrant its modification or reversal.

WHEREFORE, premises considered, respondent's Motion for Reconsideration filed on July 23, 2021 is **DENIED** for lack of merit.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

WE CONCUR:

CATHERINE T. MANAHAN
Associate Justice

(No Part)
MARIAN IVY F. REYES-FAJARDO
Associate Justice