Republic of the Philippines
**COURT OF TAX APPEALS**
Quezon City

***EN BANC***

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| **COMMISSIONER OF INTERNAL REVENUE,** Petitioner, | **CTA EB NO. 1357** (CTA Case No. 8639) |
| -versus- | Present: DEL ROSARIO, P.J., CASTAÑEDA, JR. BAUTISTA UY CASANOVA FABON-VICTORINO MINDARO-GRULLA RINGPIS-LIBAN, and MANAHAN, JJ. |
| **SONOMA SERVICES, INC.,** Respondent. | Promulgated: JAN 30 2017 3:02 p.m. |

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# DECISION

***MINDARO-GRULLA, J.:***

Submitted for decision is a Petition for Review for the Court *En Banc* under Rule 4, Section 2(a)(1), in relation to Rule 8, Section 4(b) of the 2005 Revised Rules of the Court of Tax Appeals (RRCTA)[1], as amended, of the Decision[2] dated April 15, 2015, rendered by the Third Division of this

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[1] Sec. 2. *Cases within the jurisdiction of the Court en banc.*- The Court en banc shall exercise exclusive appellate jurisdiction to review by appeal the following:

(a) Decisions or resolutions on motions for reconsideration or new trial of the Court in Division in the exercise of its exclusive appellate jurisdiction over:

(1) Cases arising from administrative agencies- Bureau of Internal Revenue, Bureau of Customs, Department of Finance, Department of Trade and Industry, Department of Agriculture;

xxx xxx xxx

Sec. 4. *Where to appeal; mode of appeal.*-
(a) xxx.
(b) An appeal from a decision or resolution of the Court in Division on a motion for reconsideration or new trial shall be taken to the Court by petition for review as provided in Rule 43 of the Rules of Court. The Court en banc shall act on the appeal.
(c) xxx.

[2] En banc Docket, pp. 15-30.

Court in CTA Case No. 8639, and its Resolution[3] dated August 28, 2015. Petitioner claims that respondent failed to present the necessary documents to prove the income payments with claimed creditable withholding taxes which may be traced as part of the taxable gross income in the income tax return.

Petitioner assailed both the aforesaid Decision and Resolution, the dispositive portions of which, respectively, read as follows:

Decision dated April 15, 2015:

> *"**WHEREFORE**, the instant Petition for Review filed by petitioner Sonoma Services, Inc. on April 12, 2013, is hereby **GRANTED.** Accordingly, respondent is hereby DIRECTED TO REFUND in favor of petitioner the amount of P3,911,850.00, representing its excess and unutilized creditable withholding taxes for the calendar year ended December 31, 2010.*
>
> ***SO ORDERED."***

Resolution dated August 28, 2015:

> *"**WHEREFORE**, the Motion for Reconsideration (of the Decision dated 15 April 2015) posted by respondent on May 6, 2015 is hereby **DENIED,** for lack of merit.*
>
> ***SO ORDERED."***

The pertinent facts as narrated by this Court's Division in its Decision read as follows:

> *"Petitioner[4] [Sonoma Services Inc.] is a duly organized domestic corporation, with principal office located at 35th Floor, Tower One and Exchange Plaza, Ayala Triangle, Ayala Avenue, Makati City. It was incorporated for the primary purpose of carrying on and conducting general services business with any party, including the rendering of management and allied services within the limits allowed by law, including office and*

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[3] En banc Docket, pp. 32-34.
[4] Commissioner of Internal Revenue (CIR) was the respondent before this Court in Division and thereafter the petitioner before this Court en banc.

*clerical support services of any kind, or otherwise, to engage in any preservation, maintenance or repair work upon any and every kind of property, to enter into and execute contracts or relating thereto.*

*Petitioner [Sonoma Services Inc. (SSI)] is a registered taxpayer of Bureau of Internal Revenue (BIR) Revenue Region No. 8, Revenue District Office (RDO) No. 50 with Taxpayer Identification No. 220- 868-954-000.*

*On the other hand, respondent[5] is the Commissioner of the Bureau of Internal Revenue (BIR), with authority, among others, to decide, approve and grant refunds or tax credits of overpaid and erroneously paid or collected internal revenue taxes, with office at the BIR National Office Building, Diliman, Quezon City.*

*On April 15, 2011, petitioner filed its Annual Income Tax Return (ITR) for CY 2010 with the BIR though(sic) the Electronic Filing and Payment System (EFPS), indicating therein its choice for refund of its excess and unutilized CWT for CY 2010.*

*On December 6, 2011, petitioner filed with the BIR RDO No. 50 an administrative claim for refund of the excess and unutilized CWT for CY 2010 in the amount of P3,911,850.00.*

*On April 12, 2013, petitioner filed the instant Petition for Review anchored on alleged inaction of respondent. On June 11, 2013, respondent filed her Answer, praying for the dismissal of the instant Petition for lack of basis. As special and affirmative defenses, respondent avers that petitioner's administrative claim for refund is still pending with BIR which should be given the opportunity to investigate and confirm the veracity of subject claim, before it grants the refund. Moreover, it does not appear from petitioner's documents that the tax subject of refund was erroneously or illegally collected. Likewise, petitioner must establish that it did not carry-over its 2010 alleged unutilized creditable withholding taxes to the succeeding taxable quarters/years, lest it is precluded from claiming a cash refund/tax credit of its alleged excess tax credit for taxable year 2010. Respondent also invokes the presumption that taxes paid and collected are made in accordance with the law and regulations, and that claim for refund partakes the nature of an exemption, hence, must be construed strictly against the claimant. Finally, the*

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[5] Sonoma Services Inc. was the petitioner before this Court in Division and thereafter the respondent before this Court en banc.

*burden of proof rest upon petitioner to establish its entitlement to the relief sought.*

*After the pre-trial conference, the parties submitted their Joint Stipulation of Facts and Issues on August 28, 2013.*

*During the trial, petitioner presented two witnesses, namely, its Financial Accountant Vanessa Maturana-Besas and Independent Certified Public Accountant (ICPA) Katherine O. Constantino.*

*In her Judicial Affidavit, Vanessa Maturana-Besas declared that as petitioner's Financial Accountant, she handles petitioner's tax compliance, including the preparation of its tax returns and other financial reports since 2003.*

*She confirmed that petitioner was incorporated for the primary purpose of carrying on and conducting general services business with any party, including the rendering of management and allied services within the limits allowed by law, including office and clerical support services of any kind, or otherwise, to engage in any preservation, maintenance or repair work upon any and every kind of property, to enter into and execute contracts or relating thereto.*

*For CY 2010, petitioner had gross revenues of P45,500,000.00 and non-operating and taxable other income of P1,865,163.15, or a total gross income of P47,365,163.15, as shown in its electronically-filed Annual ITR. In view thereof, petitioner is liable for Minimum Corporate Income Tax (MCIT) of P178,931.38. However, since petitioner had total tax credits in the sum of P5,178,381.50 in 2010, even after petitioner deducted its MCIT of P178,931.38, there were still excess income tax credits of P4,999,450.12 as of December 31, 2010. The excess tax credits consisted of creditable taxes withheld during the four (4) quarters of 2010 amounting to P3,911,850.00 and the remainder of prior year's excess credits in the amount of P1,087,600.12.*

*She added that petitioner opted to claim for refund of its accumulated CWTs for the four quarters of CY 2010 in the amount of P3,911,850.00, while the remainder of prior year's excess credits that were carried over from CY 2009 amounting to P1,087,600.12, were carried over to the succeeding taxable year 2011. To signify its intention to claim for refund, petitioner placed a tick mark on the box next to the words "to be refunded" in its Annual ITR for CY 2010. To pursue the chosen option, petitioner filed a* *letter with the BIR RDO No. 50, requesting for refund of P3,911,850.00, representing its excess and unutilized CWT for CY 2010.*

*As for petitioner's "prior years credits", she explained that the same can be traced back as early as 2003 and have been carried over and used to pay for petitioner's income tax liability from CY 2003 up to CY 2010. Thus, petitioner's prior years excess credits as of December 31, 2010 amounted to P1,087,600.12, which was then carried over in petitioner's Annual and Quarterly ITRs for CY 2011.*

*She further testified that the accumulated CWTs in the total amount of P3,911,850.00 were duly supported by Certificates of Creditable Tax Withheld at Source (BIR Form 2307) issued to petitioner by its income payors/withholding agents for the four quarters of CY 2010.*

*On cross-examination, the witness clarified that petitioner has more or less 20 clients, to which it has management contracts to provide accounting services and property maintenance services, which includes payment of real property taxes and payment of association dues.*

*ICPA Katherine 0. Constantino, also executed a Judicial Affidavit, stating that based on her audit, petitioner's total excess and unutilized CWT for CY 2010 amounted to P3,911,850.00.*

*She explained that based on the Annual ITR for CY 2010, petitioner's MCIT amounted to P178,931.38, its prior years excess credits amounted to P1,266,531.50 and the Creditable Tax Withheld for the four quarters of CY 2010 amounted to P3,911,850.00. In fine, petitioner's prior years excess credits were sufficient to cover its income tax due, resulting to an overpayment of P4,999,450.12.*

*She corroborated the testimony of petitioner's lone witness that petitioner chose the option to be refunded for its excess creditable withholding taxes for CY 2010 in the amount of P3,911,850.00 and that it did not carry over and applied to the succeeding taxable year 2011 the said amount.*

*Based on her audit, all the expanded withholding taxes claimed by petitioner in the amount of P3,911,850.00 were properly documented and represent revenues that were claimed, reported in the ITRs for 2010 and were not carried over in the succeeding periods now(sic) was used in the income tax payments for said year.*

> *On December 3, 2013, petitioner formally offered its evidence and rested. On March 13, 2014, respondent opted not to present any evidence in support of its defense."*

On April 15, 2015, this Court's Division granted respondent's petition, ordered the refund of P3,911,850.00 representing the excess and unutilized creditable withholding taxes for calendar year 2010.Petitioners filed a Motion for Reconsideration. Said motion was denied for lack of merit, hence, the present petition.

Petitioner raised the following issues:

I. WHETHER THE HONORABLE THIRD DIVISION OF THE CTA ERRED IN GRANTING RESPONDENT'S PETITION FOR REVIEW FILED ON 12 APRIL 2013.

II. WHETHER THE HONORABLE THIRD DIVISION OF THE CTA ERRED IN DENYING HEREIN PETITIONER'S MOTION FOR RECONSIDERATION.

Petitioner argued that the failure of respondent to present documents such as, but not limited to, official receipts, sales invoices, detailed general ledger, sales register, reconciliation schedules or any other document whereby the income payments related to the claimed creditable withholding taxes may be traced and confirmed as forming part of the taxable gross income reflected in the Annual Income Tax returns, is fatal to its claim.

In the Comment [6] filed on December 14, 2015, respondent claims that the accounting records and pertinent agreements to prove that the income from the claimed refund was reported as part of the revenue declared in the income tax return such as Official Receipts covering the administrative fees received by respondent (Exhibits "P-45" to "P-98"); General Ledger (Exhibits P-113" to "P-122"); and

[6] En banc Docket, pp. 48-56.

Management Services Agreements (Exhibits "P-99" to "P-109").

We resolve to deny the petition. It has no merit.

It is an established rule that in the claim for refund of excess and unutilized Creditable Withholding Tax (CWT), the taxpayer must prove that the claim was filed within 2 years from payment, the income received was declared as part of the gross income and the fact of withholding by a copy of a statement duly issued by the payor to the payee showing the amount paid and the amount of tax withheld. To wit:

> *"As implemented by the applicable rules and regulations and as interpreted in a vast array of decisions, a taxpayer who seeks a refund of excess and unutilized CWT must:*
>
> *1) File the claim with the CIR within the two-year period from the date of payment of the tax;*
>
> *2) Show on the return that the income received was declared as part of the gross income; and*
>
> *3) Establish the fact of withholding by a copy of a statement duly issued by the payor to the payee showing the amount paid and the amount of tax withheld."*[7]

In this case, it is undisputed that respondent filed its claim with the Commissioner of Internal Revenue (CIR) within the two-year period from the date of payment of the tax and the fact of withholding by a copy of a statement duly issued by the payor to the payee showing the amount paid and the amount of tax withheld.

The alleged failure of respondent to present documents such as, but not limited to, official receipts, sales invoices, detailed general ledger, sales register, reconciliation schedules or any other document whereby the income payments related to the claimed creditable withholding taxes may be traced and confirmed, has no basis.

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[7] WINEBRENNER & IÑIGO INSURANCE BROKERS, INC. vs. COMMISSIONER OF INTERNAL REVENUE, G.R. No. 206526, January 28, 2015.

Upon a re-examination of the records, we find that respondent indeed complied with the requirements for claiming for refund of excess and unutilized Creditable Withholding Tax (CWT) and that this Court's Division correctly ruled as follows:

> *"xxx [T]he two-year prescriptive period for claiming a refund commences to run from the date of filing of the Final Adjustment Return (FAR). It is only when the FAR 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.*
>
> *Petitioner[8] filed its Annual ITR for CY 2010 through EFPS on April 15, 2011. Petitioner has two years from the filing of the FAR within which to file a claim for refund of excess CWT, both in the administrative and judicial levels. Counting from April 15, 2011, petitioner had until April 15, 2013 within which to file both its administrative and judicial claims. Hence, the administrative claim filed on December 6, 2011 and the Petition for Review filed on April 12, 2013, were seasonably filed.*
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> *Anent the second and third requisites, xxxxx.*
>
> *Petitioner submitted Certificates of Creditable Tax Withheld at Source duly issued to it by various withholding agents showing that creditable taxes in the aggregate amount of P3,911,850.00 were withheld on professional fees it received in the year 2010, detailed as follows:*
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> *xxx xxx xxx.*
>
> *It is worth to note that the creditable taxes of P3,911,850.00 were withheld on income payments for professional fees of P26,279,000.00. However, petitioner's reported sales of services in its Annual ITR for 2010 amounted to P45,500,000.00, which is higher by P19,221,000.00 as compared with the income payments per certificates of P26,279,000.00.*
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> *xxx xxx xxx.*
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> *The difference, as explained by the ICPA, represented administration fee generated from clients who were individuals and whose remittances were not subjected to withholding taxes. Various official receipts issued by petitioner to individual clients showed that no*

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[8] Sonoma Services Inc. was the petitioner before this Court in Division and thereafter the respondent before this Court en banc.

> *tax was withheld on the income payments of P19,221,000.00. xxx"*[9]

Contrary to petitioner's allegation of non-submission of documents to trace and confirm that the income payments related to the claimed creditable withholding taxes were part of the taxable gross income reflected in the income tax return, respondent was able to submit such documents.

> ***"Indeed, petitioner submitted evidence justifying the grant of the claim for refund. Among the documents it presented are the summary of official receipts of administrative fees for CY 2010, official receipts of administrative fees for CY 2010, management services agreements and cost recovery agreements between petitioner and its clients/withholding agents for CY 2010 and general ledgers for CY 2010 for administration fees, recovery on costs, rental expense, insurance expense, supplies, advertising and promotions, representation expense, transportation, bank charges and miscellaneous expense. In other words, petitioner submitted sufficient evidence to prove its entitlement to the relief sought".***[10] *(Emphasis Supplied)*

Evidently there is no basis to claim that respondent failed to present documents whereby the income payments related to the claimed creditable withholding taxes may be traced and confirmed.

Accordingly, finding no reversible error, the Court En Banc finds no cogent reason or justification to disturb the conclusions reached by the CTA Third Division.

**WHEREFORE** premises considered, the petition is **DENIED** for lack of merit. The Decision of the Third Division of this Court in CTA Case No. 8639, promulgated on April 15, 2015 and its Resolution promulgated on August 28, 2015, are **AFFIRMED**. No pronouncement as to costs.

**SO ORDERED.**

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

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[9] En banc Docket, pp. 15-30.
[10] En banc Docket, pp. 32-34.

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

**ESPERANZA R. FABON-VICTORINO**
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**