REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL THIRD DIVISION

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AZ CONTRACTING SYSTEM SERVICE, INC., Petitioner,	**CTA Case No. 9558**
	Members:
- versus -	**UY,** *Chairperson,* **RINGPIS-LIBAN,** *and* **MODESTO-SAN PEDRO,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	***Promulgated:*** MAY 1 1 2023 12:42 p.m.

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RESOLUTION

UY, *J.*:

Records show that in the *Resolution*[1] dated March 7, 2023, the Court, among others things, resolved that respondent's *Motion for Partial Reconsideration (Re: Decision promulgated 30 June 2020)*[2] filed on August 18, 2020 shall be submitted for resolution upon receipt of the dockets of the case from the Supreme Court.

On April 4, 2023, the Court received a Transmittal Letter dated March 30, 2023 from the Supreme Court, returning the records of the case, consisting of two (2) dockets (Volumes 1 & 2), Bureau of Internal Revenue (BIR) Records [six (6) folders in one (1) bundle] and Transcript of Stenographic Notes dated March 20, 2018 and August 7, 2018, which was noted in the *Minute Resolution* dated April 12, 2023.

Considering receipt of the dockets of this case, this Court shall now resolve respondent's *Motion for Partial Reconsideration*, with petitioner's *Comment/Opposition* filed on September 7, 2020.[3]

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[1] Docket – Vol. 2, pp. 864 to 874.
[2] Docket – Vol. 2, pp. 782 to 789.
[3] Docket – Vol. 2, pp. 792 to 796.

In the said *Motion for Partial Reconsideration*, respondent prays that the *Decision* promulgated on June 24, 2020 [sic] be reversed and set aside, and another one be rendered denying the entire claim for refund. The dispositive portion of the assailed *Decision* reads:

Decision **dated June 30, 2020:**

> "**WHEREFORE**, in light of the foregoing considerations, the instant *Petition for Review* is **PARTIALLY GRANTED**. Accordingly, respondent is hereby **ORDERED TO REFUND OR ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner the total amount of **₱13,556,461.56** representing petitioner's excess and unutilized Creditable Withholding Tax for the calendar year ended December 31, 2014.
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> **SO ORDERED.**"

Respondent's arguments:

In his *Motion for Partial Reconsideration*, respondent claims that petitioner did not provide enough supporting documents to show that the income, from which creditable withholding taxes (CWT) are being claimed, was declared in petitioner's Annual Income Tax Return (AITR). Allegedly, there is no direct linkage between the CWT and the income as reflected in the AITR. According to respondent, this is a clear violation of the requirement that gross income as reported in the AITR must include the portion of income to which respondent is requesting for the refund of the CWT. Thus, if said income was not declared by respondent, such CWT must be disallowed from the claim.

Respondent also avers that proof of actual remittance to the BIR of the taxes withheld is indispensable in a claim for refund of excess CWT.

Likewise, respondent posits that a claim for refund must be accompanied by complete supporting and relevant documents, in accordance with the National Internal Revenue Code (NIRC) of 1997, as amended, and other rules and regulations, particularly Revenue Memorandum Order (RMO) No. 53-98,[4] before it can be acted upon by respondent and subsequently, by this Court. Absent which, the claim refund must be denied.

[4] SUBJECT: Checklist of Documents to be Submitted by a Taxpayer upon Audit of his Tax Liabilities as well as of the Mandatory Reporting Requirements to be Prepared by a Revenue Officer, all of which Comprise a Complete Tax Docket.

Finally, respondent argues that claims for refund, partaking of the nature of exemptions, are strictly construed against the claimant and cannot be allowed unless granted in the most explicit and categorical language. As such, petitioner had the obligation not only to point out the specific provision of law which entitles it to the refund sought, but also to prove its entitlement thereto. Purportedly, petitioner failed to prove that there has been erroneous or illegally assessed or collected internal revenue taxes, and has not proven its entitlement to the refund being claimed.

Petitioner's counter-arguments:

In its *Comment/Opposition*, petitioner counter-argues that respondent's *Motion for Partial Reconsideration* should be denied outright considering that in the *Resolution* dated August 22, 2017, respondent was declared in default. Said *Resolution* was affirmed by the Court in the *Resolution* dated November 9, 2017. Thus, as a consequence of being declared in default, respondent cannot appeal from the judgment rendered by the Court on the merits nor file a Motion for Reconsideration or New Trial over the same.

Petitioner also maintains that it has sufficiently proven that it is entitled to its claim of unutilized CWT for calendar year (CY) 2014. Petitioner reiterates that it has duly established that it filed both the administrative and judicial claims for refund within the two (2)-year prescriptive period provided for in Section 229 of the NIRC of 1997, as amended; it was able to establish the fact of withholding through the Certificates of Creditable Tax Withheld at Source (BIR Forms No. 2307) issued by the different payors to petitioners showing the amount paid and the amount of tax withheld; and it was able to prove that the income payments from which the CWT were withheld were duly declared as part of its gross income for the taxable year in question.

THE COURT'S RULING

Respondent's *Motion for Partial Reconsideration* lacks merit.

Respondent is not barred from filing a Motion for Partial Reconsideration or appealing the Decision dated June 30, 2022.

In its *Comment/Opposition*, petitioner claims that respondent's *Motion for Partial Reconsideration* should be denied outright considering that respondent has been declared in default.

Petitioner is mistaken.

Section 3 (a), Rule 9 of the Rules of Court provides for the effect of an order of default, to wit:

> "RULE 9
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> *Effect of Failure to Plead*
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> SECTION 3. *Default; Declaration of.* — If the defending party fails to answer within the time allowed therefor, the court shall, upon motion of the claiming party with notice to the defending party, and proof of such failure, declare the defending party in default. Thereupon, the court shall proceed to render judgment granting the claimant such relief as his or her pleading may warrant, unless the court in its discretion requires the claimant to submit evidence. Such reception of evidence may be delegated to the clerk of court.
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> (a) *Effect of order of default.* — A party in default shall be entitled to notices of subsequent proceedings but **shall not take part in the trial**." *(Emphasis supplied)*

From the foregoing provision, it is clear that the party declared in default shall not take part **in the trial**. However, being declared in default does not bar the defaulting party from filing a Motion for Reconsideration of the Decision rendered by a court.

As explained by the Supreme Court in *Social Security System v. Hon. Nazar U. Chavez, et al.*,[5] a judgment of default does not imply a waiver of *all* rights, to wit:

> We must stress, however, that a judgment of default against the petitioner who failed to appear during pre-trial or, for that matter, any defendant who failed to file an answer, **does not imply a waiver of all of their rights,**

[5] G.R. No. 151259, October 13, 2004.

> **except their right to be heard and to present evidence to support their allegations.** Otherwise, it would be meaningless to request presentation of evidence every time the other party is declared in default. If it were so, a decision would then automatically be rendered in favor of the non-defaulting party and exactly to the tenor of his prayer. The law also gives the defaulting parties some measure of protection because plaintiffs, despite the default of defendants, are still required to substantiate their allegations in the complaint." *(Emphasis supplied)*

In *Rural Bank of Sta. Catalina, Inc., represented by The Philippine Deposit Insurance Corporation, in its capacity as Liquidator v. Land Bank of the Philippines,*[6] the Supreme Court explicitly stated that a defending party declared in default has the right to appeal from the judgment by default and assail said judgment, to wit:

> "It bears stressing that **a defending party declared in default loses his standing in court and his right to adduce evidence and to present his defense. He, however, <u>has the right to appeal from the judgment by default and assail said judgment</u> on the ground, *inter alia*, that the amount of the judgment is excessive or is different in kind from that prayed for, or that the plaintiff failed to prove the material allegations of his complaint, or that the decision is contrary to law.** Such party declared in default is proscribed from seeking a modification or reversal of the assailed decision on the basis of the evidence submitted by him in the Court of Appeals, for if it were otherwise, he would thereby be allowed to regain his right to adduce evidence, a right which he lost in the trial court when he was declared in default, and which he failed to have vacated. In this case, the petitioner sought the modification of the decision of the trial court based on the evidence submitted by it only in the Court of Appeals." *(Emphasis and underscoring supplied)*

From the foregoing, it is clear that while respondent lost his right to be heard and to present evidence to support his allegations, respondent still has the right to appeal from the judgment by default and assail said judgment, albeit only on specific and limited grounds. Thus, We shall proceed with the resolution of respondent's *Motion for Partial Reconsideration*.

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[6] G.R. No. 148019, July 26, 2004.

Petitioner was able to prove, in part, that the income, upon which the taxes were withheld, was declared as part of its gross income.

To exercise the option of refund or tax credit under Section 76 (C)[7] of the NIRC of 1997, as amended, one of the requirements that the taxpayer must comply with is that the income upon which the taxes were withheld was included in the return of the recipient, i.e., declared as part of the gross income.[8]

Section 2.58.3 (B) of Revenue Regulations (RR) No. 2-98,[9] as amended, provides:

> "(B) Claims for tax credit or refund of any creditable income tax which was deducted and withheld on income payments shall be given due course only when it is shown that **the income payment has been declared as part of the gross income** and the fact of withholding is established by a copy of the withholding tax statement duly issued by the payor to the payee showing the amount paid and the amount of tax withheld therefrom.
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> Proof of remittance is the responsibility of the withholding agent." *(Emphasis supplied)*

As explained in the assailed *Decision*,[10] petitioner's revenues recorded in the general ledger book were traced in order to ascertain that the related income was duly reported as revenues in CY 2014. The Court adopted the findings of the Independent Certified Public

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[7] 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: x x x

(C) Be credited or refunded with the excess amount paid, as the case may be.

[8] *Republic of the Philippines, represented by the Commissioner of Internal Revenue v. Team (Phils.) Energy Corporation (formerly Mirant (Phils.) Energy Corporation)*, G.R. No. 188016, January 14, 2015.

[9] SUBJECT: Implementing Republic Act No. 8424, "An Act Amending the National Internal Revenue Code, as Amended" Relative to the Withholding on Income Subject to the Expanded Withholding Tax and Final Withholding Tax, Withholding of Income Tax on Compensation, Withholding of Creditable Value-Added Tax and Other Percentage Taxes.

[10] Docket – Vol. 2, pp. 764 to 766.

Accountant (ICPA) that there is a discrepancy of ₱76,270,736.10 between "*Gross Sales Subject to Withholding Tax per Schedule*" and "*Sales per General Ledger/Annual Income Tax Return*". Upon this Court's further verification of the evidence submitted by petitioner and the ICPA, the Court also disallowed the total amount of ₱1,279,141.81.

Thus, there is no merit in respondent's claim that petitioner did not provide enough supporting documents to show that the income from which CWT are being claimed was declared in petitioner's AITR.

Proof of actual remittance of taxes to the BIR is not indispensable in a claim for refund of excess CWT.

In *Commissioner of Internal Revenue v. Philippine National Bank,*[11] the Supreme Court held that the certificate of creditable tax withheld at source is the competent proof to establish the fact that taxes were withheld. In the same case, the Supreme Court categorically stated that proof of actual remittance is not a condition to claim for a refund of unutilized tax credits, to wit:

> "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." *(Emphasis supplied)*

From the foregoing, it is clear that there is no requirement on the part of petitioner to prove that it has remitted the tax. Petitioner's compliance with the requirement that the fact of withholding must be established by a copy of a statement duly issued by the payor (withholding agent) to the payee, showing the amount paid and the amount of tax withheld therefrom,[12] is shown through the presentation of its relevant Certificates of Creditable Tax Withheld at Source (BIR Form No. 2307).

[11] G.R. No. 180290, September 29, 2014.
[12] Section 2.58.3 (B) of RR No. 2-98.

Petitioner's alleged failure to submit the documents listed under RMO No. 53-98 is not fatal to its administrative and judicial claims for refund.

A perusal of RMO No. 53-98 reveals that there is nothing in the said RMO which requires the submission of all the documents specified therein before a taxpayer may be entitled to a refund.

In *Commissioner of Internal Revenue v. Univation Motor Philippines, Inc. (Formerly Nissan Motor Philippines, Inc.)*[13] (or *Univation* case), the Supreme Court held that failure to submit the complete documents at the administrative level is not fatal to a claim for refund at the judicial level brought about by the inaction of the Commissioner of Internal Revenue, to wit:

> "Petitioner CIR argued that failure of the respondent to submit the required complete documents as required by Revenue Memorandum Order No. 53-98 and Revenue Regulations No. 2-2006 rendered the petition with the CTA dismissible on the ground of lack of jurisdiction. It reasoned out that when a taxpayer prematurely filed a judicial claim with the CTA, the latter has no jurisdiction over the appeal.
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> In the instant case, **respondent's failure to submit the complete documents at the administrative level did not render its petition for review with the CTA dismissible for lack of jurisdiction**. At this point, it is necessary to determine the grounds relied upon by a taxpayer in filing its judicial claim with the CTA. The case of *Pilipinas Total Gas, Inc. v. Commissioner of Internal Revenue* is instructive, thus:
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>> **A distinction must, thus, be made between administrative cases appealed due to inaction and those dismissed at the administrative level due to the failure of the taxpayer to submit supporting documents.** If an administrative claim was dismissed by the CIR due to the taxpayer's failure to submit complete documents despite notice/request,

[13] G.R. No. 231581, April 10, 2019.

> then the judicial claim before the CTA would be dismissible, not for lack of jurisdiction, but for the taxpayer's failure to substantiate the claim at the administrative level. When a judicial claim for refund or tax credit in the CTA is an appeal of an unsuccessful administrative claim, the taxpayer has to convince the CTA that the CIR had no reason to deny its claim. It, thus, becomes imperative for the taxpayer to show the CTA that not only is he entitled under substantive law to his claim for refund or tax credit, but also that he satisfied all the documentary and evidentiary requirements for an administrative claim. It is, thus, crucial for a taxpayer in a judicial claim for refund or tax credit to show that its administrative claim should have been granted in the first place. Consequently, a taxpayer cannot cure its failure to submit a document requested by the BIR at the administrative level by filing the said document before the CTA.

In this case, **it was the inaction of petitioner CIR which prompted respondent to seek judicial recourse with the CTA**. Petitioner CIR did not send any written notice to respondent informing it that the documents it submitted were incomplete or at least require respondent to submit additional documents. **As a matter of fact, petitioner CIR did not even render a Decision denying respondent's administrative claim on the ground that it had failed to submit all the required documents.**

Considering that the administrative claim was never acted upon, there was no decision for the CTA to review on appeal *per se*. However, this does not preclude the CTA from considering evidence that was not presented in the administrative claim with the BIR. Thus, RA No. 1125 states:

> Section 8. *Court of record; seal; proceedings.* — The Court of Tax Appeals shall be a court of record and shall have a seal which shall be judicially noticed. It shall prescribe the form of its writs and other processes. It shall have the power to promulgate rules and

> regulations for the conduct of the business of the Court, and as may be needful for the uniformity of decisions within its jurisdiction as conferred by law, but such proceedings shall not be governed strictly by technical rules of evidence.

> The law creating the CTA specifically provides that proceedings before it shall not be governed strictly by the technical rules of evidence. The paramount consideration remains the ascertainment of truth. Thus, **the CTA is not limited by the evidence presented in the administrative claim in the Bureau of Internal Revenue. The claimant may present new and additional evidence to the CTA to support its case for tax refund.**

> **Cases filed in the CTA are litigated *de novo*** as such, respondent "should prove every minute aspect of its case by presenting, formally offering and submitting x x x to the Court of Tax Appeals all evidence x x x required for the successful prosecution of its administrative claim." Consequently, the CTA may give credence to all evidence presented by respondent, including those that may not have been submitted to the CIR as the case is being essentially decided in the first instance." *(Emphasis supplied)*

In this case, petitioner filed the instant *Petition for Review* on March 30, 2017 due to respondent's failure to act on its administrative claim for refund.

Applying the Supreme Court's pronouncement in the *Univation* case, respondent cannot invoke petitioner's alleged non-compliance with RMO No. 53-98 as basis for the denial of petitioner's claim for tax refund or credit.

Moreover, as explained by the Supreme Court in *Pilipinas Total Gas, Inc. v. Commissioner of Internal Revenue*[14] (*Total* case), RMO No. 53-98 does not require the submission of the complete documents enumerated therein in order for a taxpayer's claim for refund or credit to be granted, to wit:

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[14] G.R. No. 207112, December 8, 2015.

"As can be gleaned from the above, **RMO No. 53-98 is addressed to internal revenue officers and employees, for purposes of equity and uniformity, to guide them as to what documents they may require taxpayers to present upon audit of their tax liabilities. Nothing stated in the issuance would show that it was intended to be a benchmark in determining whether the documents submitted by a taxpayer are actually complete to support a claim for tax credit or refund of excess unutilized excess VAT.** As expounded in *Commissioner of Internal Revenue v. Team Sual Corporation (formerly Mirant Sual Corporation)*:

> The CIR's reliance on RMO 53-98 is misplaced. <u>There is nothing in Section 112 of the NIRC, RR 3-88 or RMO 53-98 itself that requires submission of the complete documents enumerated in RMO 53-98 for a grant of a refund or credit of input VAT.</u>[15] The subject of RMO 53-98 states that it is a "Checklist of Documents to be Submitted by a Taxpayer upon **Audit**[16] of his Tax Liabilities . . . ." In this case, TSC was applying for a grant of refund or credit of its input tax. There was no allegation of an audit being conducted by the CIR. Even assuming that RMO 53-98 applies, it specifically states that some documents are required to be submitted by the taxpayer "if applicable."
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> <u>Moreover, if TSC indeed failed to submit the complete documents in support of its application, the CIR could have informed TSC of its failure, consistent with Revenue Memorandum Circular No. (RMC) 42-03.</u>[17] However, the CIR did not inform TSC of the document it failed to submit, even up to the present petition. The CIR likewise raised the issue of TSC's alleged failure to submit the complete documents only in its motion for reconsideration of the CTA Special First

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[15] Underscoring by the Supreme Court.
[16] Emphasis by the Supreme Court.
[17] Underscoring by the Supreme Court.

> Division's 4 March 2010 Decision. Accordingly, we affirm the CTA EB's finding that TSC filed its administrative claim on 21 December 2005, and submitted the complete documents in support of its application for refund or credit of its input tax at the same time.
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> As explained earlier and underlined in *Team Sual* above, **taxpayers cannot simply be faulted for failing to submit the complete documents enumerated in RMO No. 53-98, absent notice from a revenue officer or employee that other documents are required**. Granting that the BIR found that the documents submitted by Total Gas were inadequate, **it should have notified the latter of the inadequacy by sending it a request to produce the necessary documents in order to make a just and expeditious resolution of the claim.**
>
> **Indeed, a taxpayer's failure with the requirements listed under RMO No. 53-98 is not fatal to its claim for tax credit or refund of excess unutilized excess VAT.** This holds especially true when the application for tax credit or refund of excess unutilized excess VAT has arrived at the judicial level. After all, in the judicial level or when the case is elevated to the Court, the Rules of Court governs. Simply put, the question of whether the evidence submitted by a party is sufficient to warrant the granting of its prayer lies within the sound discretion and judgment of the Court." *(Emphasis supplied)*

While the *Total* case involves a claim for refund or credit of unutilized value-added tax, We find that the principle enunciated therein is also applicable to a claim for refund of unutilized CWT.

Thus, based on the *Total* case, a taxpayer's failure to submit the requirements listed under RMO No. 53-98 is not fatal to its claim for tax credit or refund considering that RMO No. 53-98 is merely a guide to revenue officers as to what documents they may require taxpayers to present upon audit of their tax liabilities, and is never intended to be a benchmark in determining whether the documents submitted by a taxpayer are actually complete to support a claim for tax credit or refund.

From the foregoing, and as discussed in the assailed *Decision*, petitioner has, to a certain extent, sufficiently proven its entitlement to the refund of its unutilized excess CWT for CY 2014, negating respondent's claim to the contrary.

Hence, the Court finds no compelling reason to reconsider, modify, or reverse the assailed *Decision*.

WHEREFORE, in light of the foregoing considerations, respondent's *Motion for Partial Reconsideration (Re: Decision promulgated 30 June 2020)* is **DENIED** for lack of merit.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

(On Official Leave)
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice