REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

DOOSAN HEAVY INDUSTRIES & CONSTRUCTION CO. LTD.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 8796

Members:

CASTAÑEDA, JR., Chairperson,
CASANOVA, and
COTANGCO-MANALASTAS, *JJ.*

Promulgated:

JAN 0 6 2016

1:53 p.m.

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RESOLUTION

CASTAÑEDA, JR., *J.*:

For resolution of this Court is respondent's **Motion for Reconsideration (Re: Decision dated 16 October 2015)** filed on November 3, 2015, with petitioner's **Opposition/Comment (to Respondent's Motion for Reconsideration)** filed on November 16, 2015.

Respondent argues in the instant motion that petitioner failed to prove the fact of withholding of taxes and its actual remittance to the BIR. Said arguments are premised upon petitioner's failure to identify the Withholding Tax Certificates (WTC) and to submit them in the administrative level.

On the other hand, petitioner avers that it need not present any witness to identify the subject WTCs and that it presented the same in the administrative level. Further, petitioner asserts that proof of actual remittance is not necessary in order to be entitled to its claim for refund.

The issues to be resolved by this Court are: (1) Whether petitioner failed to present the WTCs in the administrative level; (2) Whether failure to identify the WTCs is fatal to petitioner's claim; and (3) Whether proof of actual remittance of the withholding tax is necessary before petitioner may claim for refund.

The Court denies the instant motion.

Petitioner presented the WTCs in the administrative level

At the onset, the Court observes that respondent merely made a rehash of her arguments which have already been scrutinized by this Court in the assailed Decision.

Re-examination of the records reveals that indeed, petitioner submitted the subject WTCs at the time when petitioner filed its administrative claim. Thus, this Court held in the assailed Decision that:

> "On the other hand, contrary to respondent's claim, petitioner submitted the pertinent BIR certificates at the time the letter claims were filed on January 23, 2014 and February 6, 2014, respectively. In the said letters, petitioner indicated that it enclosed, among others, the Annual ITRs for CY 2011 and 2012 including the attachments (Audited Financial Statements, Certificates of Creditable Tax Withheld at Source and SAWT)."

Moreover, the Court has consistently ruled that respondent ought to know the records of all taxpayers.[1] Hence, respondent cannot continuously assert that petitioner failed to submit the subject

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[1] *CBK Power Company Limited v. Commissioner of Internal Revenue*, CTA Case No. 8624, November 23, 2015, penned by Associate Justice Caesar A. Casanova, citing *Commissioner of Internal Revenue vs. Dakudao & Sons, Incorporated*, C.T.A. E. B. Case No. 1150 (CTA Case No. 8501), May 12, 2015, citing *Diageo Philippines v. Commissioner of Internal Revenue*, CTA Case Nos. 7846 and 7865, January 16, 2012, citing *BPI-Family Savings Bank, Inc. v. Court of Appeals*, et al., G.R. No. 122480, April 12, 2000, and *Commissioner of Internal Revenue v. Ironcon Builders and Development Corporation*, G.R. No. 180042, February 8, 2010.

WTCs, where the BIR is already in possession thereof and is therefore, ought to have knowledge of the same.

Petitioner duly proved the fact of withholding

Respondent contends that failure to identify the WTCs is fatal to petitioner's claim.

However, this issue presented by respondent is not novel. In the case of *Commissioner of Internal Revenue v. F.F. Cruz and Company, Inc.*[2] the Court already addressed the situation where petitioner questioned the failure of respondent to prove the authenticity of the WTCs. Ruling in favor of respondent, The Court *En Banc* held that:

> "The testimonial evidence of the person, who made entries in the Certificate of Creditable Tax Withheld at Source, or also known as BIR Form 2307, is not an indispensable requirement. The fact of withholding is sufficiently established by a certificate issued by the payor primarily attesting the amount of taxes withheld from the income payments received by the payee. The Supreme Court made the following pronouncement in the case of *Banco Filipino Savings and Mortgage Bank vs. Court of Appeals, Court of Tax Appeals and Commissioner of Internal Revenue:*
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>> 'In fine, the document which may be accepted as evidence of third condition, that is the fact of withholding, must emanate from the payor itself, and not merely from the payee, and must indicate the name of the payor, the income payment basis of the tax withheld, the amount of the tax withheld and the nature of the tax paid.
>>
>> At the time material to this case, the requisite information regarding withholding taxes from the sale of acquired assets can be found in BIR Form No. 1743.1. As described in Section 6 (of) Revenue Regulations No. 6-85, BIR Form No. 1743.1 is a written statement issued by the payor as withholding agent showing the income or other

[2] CTA EB No. 372, June 12, 2008, penned by Associate Justice Erlinda P. Uy.

> payments made by the said withholding agent during a quarter or year and the amount of the tax deducted and withheld therefrom. It readily identifies the payor, the income payment and the tax withheld. It is complete in the relevant details which would aid the courts in the evaluation of any claim for refund of creditable withholding taxes.'

In the same *Banco Filipino Savings and Mortgage Bank* case cited by the Court in Division, the Supreme Court elucidated that there are three conditions for the grant of a claim for refund of creditable withholding tax, to wit: xxx xxx xxx 3) the fact of withholding is established by a copy of a statement duly issued by the payor to the payee showing the amount paid and the amount of the tax withheld therefrom. The third condition is specifically imposed under Section 10 of Revenue Regulations No. 6-85 (as amended), thus:

> 'Sec. 10. *Claim for tax credit or refund.* - (a) Claims for Tax Credit or Refund of income tax deducted and withheld on income payments shall be given due course only when it is shown on the return that the income payment received 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* xxx.'

xxx xxx xxx

In this regard, the document which may be accepted as evidence in compliance with the third condition, that is, the fact of withholding, must emanate from the payor itself, and not merely from the payee, and must indicate the name of the payor, the income payment basis of the tax withheld, the amount of the tax withheld and the nature of the tax paid. A perusal of the contents of the subject Certificates (BIR Form No. 2307, formerly Form No. 1743-750) would readily show that the Certificates are such documents, complete in the relevant details which would aid the courts in the evaluation of any claim for refund of creditable withholding taxes."

Records show that petitioner presented the subject WTCs issued by its client for taxable years 2011 and 2012, respectively. Following the ruling of the Court *En Banc* in the *F.F. Cruz case*, this Court finds that the WTCs presented by petitioner are sufficient proof of the fact of withholding.

Proof of actual remittance of the taxes withheld is not necessary

Finally, respondent insists that petitioner should have presented proof of actual remittance of the taxes withheld.

However, this issue has been extensively discussed and resolved in the assailed Decision. Hence, this Court reiterates the rule that Certificates of Creditable Tax Withheld at Source (BIR Form No. 2307) issued by withholding agents are *prima facie* proof of actual payment of creditable withholding taxes by the payee-taxpayer to the government, with no further need to present the various payors and withholding agents in order to establish the fact of withholding and remittances made.[3] Moreover, there is no rule or regulation that requires petitioner to present before the Court proof of remittance to the BIR in order to be entitled to a refund.[4]

In fine, respondent failed to present arguments which would warrant the reversal of the assailed Decision.

WHEREFORE, in view thereof, respondent's Motion for Reconsideration (Re: Decision dated 16 October 2015) is hereby **DENIED**, for lack of merit.

SO ORDERED.

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

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[3] *Commissioner of Internal Revenue v. Sonoma Services, Inc.*, Resolution, CTA EB NO. 1163 (CTA Case No. 8458), September 4, 2015, penned by Associate Justice Amelia R. Cotangco-Manalastas.
[4] *Commissioner of Internal Revenue v. Philippine Bank of Communications*, Resolution, CTA EB NO. 1085 (CTA Case No. 8084), July 24, 2015, penned by Associate Justice Esperanza R. Fabon-Victorino.

WE CONCUR:

CAESAR A. CASANOVA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice