REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-versus-

TULLET PREBON (PHILIPPINES) INC.,
Respondent.

CTA *EB* No. 2576
(CTA Case No. 9562)

Present:

DEL ROSARIO, *P.J.,*
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO,
CUI-DAVID,
FERRER-FLORES, *and*
ANGELES, *JJ.*

Promulgated:
MAY 17 2024 4:15pm

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RESOLUTION

CUI-DAVID, J.:

This resolves petitioner's *Motion for Reconsideration (Re: Decision promulgated 16 February 2023)* filed on March 1, 2023, with respondent's *Comment (Re: Motion for Reconsideration dated March 1, 2023)* filed on April 11, 2023.

Petitioner prays for the reversal and setting aside of the Decision dated February 16, 2023 (assailed Decision), with the following dispositive portion:

> **WHEREFORE**, premises considered, the instant *Petition for Review* is **DENIED** for lack of merit. Accordingly, the June 17, 2021 Decision and the February 24, 2022 Resolution of the Court's First Division in CTA Case No. 9562 are **AFFIRMED** *in toto.*
>
> **SO ORDERED.**

Petitioner argues that the Court erred in ruling that respondent is entitled to the ₱5,310,177.10 refund representing the alleged excess and unutilized Creditable Withholding Taxes (CWTs) for calendar year (CY) 2014 because respondent did not provide supporting documents to show that the income from which CWT is being claimed was declared in its Annual Income Tax Return (AITR) for CY 2014; hence, there is no direct linkage between the CWT and the income as reflected in the said AITR.

Petitioner further claims that respondent failed to prove actual remittance of the alleged excess taxes to the BIR, which is indispensable in its claim for refund of excess CWT.

Petitioner also insists that respondent did not submit the documents to prove its claim for unutilized and excess CWT under Revenue Memorandum Order (RMO) No. 53-98[1] and Revenue Regulations (RR) No. 2-2006.[2] The taxpayer's failure to submit relevant documents makes the administrative claim for tax credit or refund *pro forma* and shall be construed as if no administrative claim was filed.

Petitioner asserts that respondent's failure to submit relevant documents deprived petitioner of the opportunity to study respondent's claim for a refund and to fully exercise its function. Thus, this Court should dismiss respondent's petition for prematurity or lack of cause of action.

On the other hand, respondent counters that petitioner's arguments are a nearly verbatim reiteration of petitioner's Petition for Review before this Court and his motion for reconsideration of the Decision dated June 17, 2021 rendered by the First Division in CTA Case No. 9562, without addressing any of this Court's rulings.

Respondent states that the records show indisputable evidence that the income from which the CWTs being claimed for refund was withheld was declared as part of the gross income reported in its AITR. Respondent adds that its presentation of the Certificates of Creditable Tax Withheld at

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[1] 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, June 21, 1998.

[2] SUBJECT: Mandatory Attachments of the Summary Alphalist of Withholding Agents of Income Payments Subjected to Tax Withheld at Source (SAWT) to Tax Returns With Claimed Tax Credits due to Creditable Tax Withheld At Source and of the Monthly Alphalist of Payees (MAP) Whose Income Received Have Been Subjected to Withholding Tax to the Withholding Tax Remittance Return Filed by the Withholding Agent/Payor of Income Payment, December 1, 2005.

Source constitutes sufficient proof of the existence of its CWTs. Proof of actual remittance of CWT to the BIR is not a requirement for proving entitlement to a claim for refund of excess and unutilized CWT. The documents mentioned in RMO No. 53-98 and RR No. 2-2006 are not essential in proving entitlement to a claim for refund of excess and unutilized CWT.

The Motion lacks merit.

After a judicious review of petitioner's arguments, the Court *En Banc* resolves to deny the instant Motion.

A perusal of the records shows that respondent was able to substantiate its claim for refund of excess and unutilized CWTs. This was addressed and sufficiently explained in the assailed Decision, as follows:

> ***The income payments upon which the CWTs were being claimed were declared in respondent's AITR.***
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> ... ...
>
> Petitioner further claims that respondent did not provide *supporting documents* to show that the income, which is the basis of the CWTs sought to be refunded, was declared in its AITR.[3] However, petitioner failed to specify the *supporting documents* that respondent must submit to prove that the subject income from which taxes were withheld was declared in the AITR.[4] Allegations must be proven by sufficient evidence because a mere allegation is not evidence.[5]
>
> On the contrary, a meticulous examination of respondent's evidence, particularly the Schedule of Creditable Withholding Tax, the pertinent Certificates of Creditable Tax Withheld at Source (BIR Forms No. 2307) for CY 2014, and the uncontroverted testimony of the Court-commissioned ICPA, proves that the income payments relative to the claimed CWTs were indeed declared as part of respondent's gross income in its AITR.

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[3] Par. 6, Petition for Review, *EB* Docket, p. 3.
[4] *Id.*
[5] *Spouses Nilo Ramos and Eliadora Ramos v. Raul Obispo and Far East Bank and Trust Company*, G.R. No. 193804, February 27, 2013, citing *Real v. Sangu Philippines, Inc.*, G.R. No. 168757, January 19, 2011, citing *General Milling Corporation v. Casio*, G.R. No. 149552, March 10, 2010.

Respondent need not prove actual remittance of tax for its claim for refund or credit of excess CWT to prosper.

... ...

In *Commissioner of Internal Revenue v. Philippine National Bank*,[6] the Supreme Court ruled that proof of actual remittance is not a condition to claim a refund of CWT[.]

... ...

From the foregoing, proof of actual remittance of withheld taxes is not an indispensable requirement in claims for refund/credit of CWTs. The certificate of creditable tax withheld at source proves that taxes are withheld.

Here, the fact of withholding was sufficiently established by respondent upon presentation of the relevant Certificates of Creditable Tax Withheld at Source (BIR Forms No. 2307) for CY 2014.

Non-submission of the documents required under RMO No. 53-98 and RR No. 2-2006 does not result in the denial of respondent's claim for refund or credit.

... ...

The aforesaid ruling of the Court in Division finds support in the recent case of *Philippine National Bank v. Commissioner of Internal Revenue*,[7] thus:

> ... The Court rejects the CIR's contention that PNB cannot be deemed to have filed its administrative claim because the latter failed to submit all of the documents mentioned in RMO No. 53-98 and RR No. 2-2006.
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> ... And at any rate, **a cursory reading of RMO No. 53-98 and RR No. 2-2006 reveals that neither issuance explicitly states that the failure to submit the required documents is tantamount to a non-filed claim**. In fact, Section 5 of RR No. 2-2006 merely provides a penalty of fine for non-submission of these documents. (*Emphasis supplied*)

[6] G.R. No. 180290, September 29, 2014.
[7] G.R. Nos. 242647 & 243814, G.R. Nos. 242842-43, March 15, 2022.

Given the foregoing, the Court *En Banc* finds no compelling reason to reverse, amend, or modify the assailed Decision promulgated on February 16, 2023.

WHEREFORE, petitioner's *Motion for Reconsideration (Re: Decision promulgated 16 February 2023)* is **DENIED** for lack of merit.

SO ORDERED.

LANEE S. CUI-DAVID
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

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Marian Ivy F. Reyes-Fajardo
MARIAN IVY F. REYES-FAJARDO
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice

HENRY S. ANGELES
Associate Justice