REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

DAVAO CITY WATER DISTRICT,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case Nos. 8505 & 8575

Members:

BAUTISTA, *Chairperson*
FABON-VICTORINO, and
RINGPIS-LIBAN, *JJ.*

Promulgated:

APR 27 2016 ~~3:50 p.m.~~

x- x

RESOLUTION

***Fabon-Victorino, J.*:**

Before the Court is the Motion for Partial Reconsideration of the Decision[1] promulgated on October 12, 2015, filed by petitioner Davao City Water District, the dispositive portion of which reads as follows:

> **WHEREFORE**, the instant consolidated Petitions for Review are hereby **DENIED** due to insufficiency of evidence.
>
> **SO ORDERED**.

In assailing the Court's ruling, petitioner asserts that although the Independent Certified Public Accountant (ICPA) Report submitted to the Court is relatively short consisting only of summary and certifications, the same is not a worthless piece of evidence. Allegedly, the Court commissioned the ICPA to determine factual issues through the examination of the taxpayer's voluminous records pertinent to the case. Thus, to introduce the voluminous

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[1] Docket, pp. 1269-1284.

BIR Form No. 2307 in evidence to form part of the record, in addition to the ICPA Report, would defeat the very essence of commissioning the ICPA.

Petitioner also submits that the ICPA Report contained enough entries for the Court to determine compliance with the two-year prescriptive period for the filing of the judicial claims for refund.

Lastly, petitioner is not convinced that only BIR Form No. 2307 is acceptable for the purpose of proving the fact of withholding saying that this will render ineffectual the provision of Rule 13[2] of the Revised Rules of the Court of Tax Appeals (RRCTA), in relation to Section 5[3], Rule 12 thereof.

In rejecting petitioner's stance, respondent counters that the Court is not bound by the findings of the ICPA. Moreover, the ICPA Report is but a tool or guide to aid the Court in the resolution of the case. The determination of the merit or the probative value of such Report belongs to the Court. Thus, petitioner cannot insist that the ICPA's finding is sufficient in support of its claims for refund. Petitioner must present to the Court documents supporting its allegations in the consolidated Petitions for Review for the Court cannot dispense such presentation simply because it already submitted an ICPA Report.

The Court finds for respondent.

In asking for partial reconsideration of the Decision dated October 12, 2015, petitioner is effectively agreeing with the Court's ruling albeit only partially and at the same time assailing a portion of it. However, in its prayer, petitioner actually wants the Court to reverse and set aside its judgment denying its consolidated Petitions for Review due to insufficiency of evidence.

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[2] *Trial by Commissioner.*
[3] *Presentation of voluminous documents or long accounts.*

In any event, let it be stressed that the Court is not bound by the finding of the ICPA. The ICPA is commissioned merely to assist the Court in the determination of merit of taxpayer's claim for refund/tax credit. The Court may adopt totally or partially the ICPA's Report depending on its own appreciation of the documents upon which the ICPA report is based. In other words, the Court will examine and verify the documents audited or examined by the ICPA. Precisely the requirements to present to the Court and formally offer each and every document in support of taxpayer's claim for refund/tax credit. In fact, on the basis of its own finding, the Court may render judgment without considering the ICPA Report. The ICPA Report is only persuasive in nature and not conclusive upon the Court. On the matter, Section 3, Rule 13 of the RRCTA, relevantly provides, thus:

> SEC. 3. *Findings of independent CPA*. — <u>The submission by the independent CPA of pre-marked documentary exhibits shall be subject to verification and comparison with the original documents</u>, the availability of which shall be the primary responsibility of the party possessing such documents and, secondarily, by the independent CPA. **The findings and conclusions of the independent CPA may be challenged by the parties and shall not be conclusive upon the Court, which may, in whole or in part, adopt such findings and conclusions subject to verification**. (*Underscoring and boldfacing supplied*)

Evidently, the availment of the services of an ICPA pursuant to Rule 13 of the Revised Rules fo the CTA does not relieve petitioner of the mandatory requisites of premarking photocopies of documentary exhibits and **submitting them all to the Court after the ICPA shall have examined and compared them with the originals. Without presentation and formal offer of these pre-marked documents — from which the alleged summary and schedules were based - the Court**

cannot verify the authenticity and veracity of the ICPA's conclusions.[4]

In the instant consolidated Petitions for Review, petitioner failed to present any Monthly Withholding Tax Return to prove the actual payment/remittance of the alleged erroneously withheld income taxes. Without the said documents, the Court cannot with certainty determine if the two-year prescriptive period for purposes of the claims for refund has been complied with. On this score alone, petitioner's judicial claim must fail.

Thus, the Court finds no cogent reason to disturb the assailed Decision of October 12, 2015.

WHEREFORE, petitioner's *Motion for Partial Reconsideration* dated November 3, 2015, is hereby **DENIED,** for lack of merit.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

We concur:

LOVELL R. BAUTISTA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

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[4] *Philippine Long Distance Telephone Company vs. Commissioner of Internal Revenue*, G.R. No. 157264, January 31, 2008, citing *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue,* G.R. No. 145526, March 16, 2007 and *Commissioner of Internal Revenue vs. Manila Mining Corporation*, G.R. No. 153204, August 31, 2005.