REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

UNIVATION MOTOR PHILIPPINES, INC. (formerly, NISSAN MOTOR PHILIPPINES, INC.,	**CTA Case No. 9335**
	Members:
Petitioner,	**CASTAÑEDA, JR.,** *Chairperson* **CASANOVA,** *and* **MANAHAN,** *JJ.*
-versus-	
COMMISSIONER OF INTERNAL REVENUE,	Promulgated:
Respondent.	JUL 04 2018 3:38 PM

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RESOLUTION

MANAHAN, *J.*:

To be resolved is respondent Commissioner of Internal Revenue's (CIR) **Motion for Partial Reconsideration (Re: Decision promulgated 3 April 2018)**[1] asking this Court for partial reconsideration of the decision dated April 3, 2018 (assailed decision) and the promulgation of a new one instead. The dispositive portion of the assailed decision reads as follows:

> **WHEREFORE**, premises considered, the instant Petition for Review is **PARTIALLY GRANTED**. Accordingly, respondent is **ORDERED TO ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the amount of **P8,683,185.95**, representing petitioner's excess and unutilized CWT for CY 2013.
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> **SO ORDERED**.

Respondent faulted this Court for granting petitioner's claim for refund of its excess and unutilized creditable withholding taxes (CWT) for taxable year 2013 despite the latter's failure to submit the Summary Alphalist of

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[1] Docket, CTA Case No. 9335, Vol. II, pp. 725-731.

Withholding Agents of Income Payments Subjected to Creditable Withholding Taxes as required under Section 2 of Revenue Regulations (RR) No. 2-2006. Furthermore, respondent cites lack of evidence of actual remittance of taxes withheld as ground for denial of such claim for refund

On the other hand, petitioner in its Comment,[2] reiterates its argument that presentation of Certificates of Creditable Tax Withheld at Source or BIR Form No. 2307 issued by the withholding agents is sufficient proof of the existence and validity of a taxpayer's CWT.

After evaluation of the respondent's grounds for partial reconsideration, we deny the motion for lack of legal basis.

Petitioner is correct that the presentation of BIR Form No. 2307 issued by the withholding agents constitutes sufficient proof of the existence and validity of a taxpayer's CWT. Such argument is supported by law and jurisprudence.

Section 58(B) of the 1997 National Internal Revenue Code, as amended, provides that:

> **SEC. 58. Returns and Payment of Taxes Withheld at Source. –**
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> xxx xxx
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> **(B) Statement of Income Payments Made and Taxes Withheld.** - <u>Every withholding agent required to deduct and withhold taxes under Section 57 shall furnish each recipient, in respect to his or its receipts during the calendar quarter or year, a written statement showing the income or other payments made by the withholding agent during such quarter or year, and the amount of the tax deducted and withheld therefrom</u>, simultaneously upon payment at the request of the payee, but not later than the twentieth (20th) day following the close of the quarter in the case of corporate payee, or not later than March 1 of the following year in the case of individual payee for creditable withholding taxes. For final withholding taxes, the statement should be given to the payee on or before January 31 of the succeeding year. (*Underscoring ours*)

As shown in the abovementioned provision, the withholding agent is required under the law to furnish every

[2] Docket, Vol II, Comment (Re: Motion for Partial Reconsideration dated October 10, 2017), pp. 743-753.

recipient-taxpayer a statement of the taxes deducted and withheld by the former from the latter. Said statement refers to BIR Form No. 2307 or the Certificate of Creditable Tax Withheld at source, which is the proof of the tax withheld by the withholding agent from the income payments to the recipient-taxpayer. The alleged documentary requirement for tax returns with claimed tax credits cited in Section 2 of RR No. 2-2006 is not a mandatory requirement under the law. Any condition or term being prescribed under an administrative issuance which is beyond what the law prescribes is invalid and unconstitutional.[3]

Albeit, what RR No. 2-2006 imposes as penalty for non-submission of such information is a fine of Php1,000.00 for each failure, BUT NOT, denial of CWT claim for refund.

In the case of *Commissioner of Internal Revenue v. Philippine National Bank*,[4] the Supreme Court ruled that the presentation of said statement is enough to prove the tax withheld and the burden to prove the authenticity of such statement is shifted to the petitioner, to wit:

> Thus, **upon presentation of a withholding tax certificate complete in its relevant details and with a written statement that it was made under the penalties of perjury, the burden of evidence then shifts to the Commissioner of Internal Revenue to prove that (1) the certificate is not complete; (2) it is false; or (3) it was not issued regularly**.
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> **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*)

In the case of *Commissioner of Internal Revenue v. Asian Transmission Corporation*,[5] the Supreme Court ruled that recipient-taxpayer need not prove the actual remittance of the

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[3] *Luis K. Lokin, Jr. v. Commission on Elections et al.*, G.R. Nos. 179431-32 and 180443, June 22, 2010; *Republic of the Philippines v. Drugmaker's Laboratories, Inc.*, G.R. No. 190837, March 05, 2014.

[4] G.R. No. 180290, September 29, 2014 as cited in *CIR v. Citadel Holdings, Inc.*, CTA EB No. 1375, May 2, 2017.

[5] G.R. No. 179617, January 19, 2011.

tax withheld made by the withholding agent since remittance is the responsibility of the latter and not of the former, to wit:

> At any rate, the CIR is correct in stating that the taxpayer bears the burden of proof to establish not only that a refund is justified under the law but also that the amount that should be refunded is correct. In this case, however, the CTA-First Division and the CTA-En Banc uniformly found that from the evidence submitted, ATC has established its claim for refund or issuance of a tax credit certificate for unutilized creditable withholding taxes for the taxable year 2001 in the amount of P27,325,856.58. The Court finds no cogent reason to rule differently. As correctly noted by the CTA-En Banc:
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> > x x x **proof of actual remittance** by the respondent **is not needed in order to prove withholding and remittance of taxes** to petitioner. Section 2.58.3 (B) of Revenue Regulation No. 2-98 clearly provides that proof of **remittance is the responsibility of the withholding agent and not of the taxpayer-refund claimant.** It should be borne in mind by the petitioner that payors of withholding taxes are by themselves constituted as withholding agents of the BIR. The taxes they withhold are held in trust for the government. In the event that the withholding agents commit fraud against the government by not remitting the taxes so withheld, such act should not prejudice herein respondent who has been duly withheld taxes by the withholding agents acting under government authority. Moreover, pursuant to Section 57 and 58 of the NIRC of 1997, as amended, the withholding of income tax and the remittance thereof to the BIR is the responsibility of the payor and not the payee. Therefore, respondent, x x x has no control over the remittance of the taxes withheld from its income by the withholding agent or payor who is the agent of the petitioner. The Certificates of Creditable Tax Withheld at Source issued by the withholding agents of the government are prima facie proof of actual payment by herein respondent-payee to the government itself through said agents. We stress that the pertinent provisions of law and the established jurisprudence evidently demonstrate that there is no need for the claimant, respondent in this case, to prove actual remittance by the withholding agent (payor) to the BIR... (*Emphasis supplied*)

Thus, petitioner need not prove the actual remittance of the tax withheld made by the concerned withholding agent. The adducement and presentation of BIR Form No. 2307 as petitioner's evidence of remittance of said tax withheld is enough. The burden is on the respondent to prove that said document is not authentic.

There being no new issues or matters raised by the respondent in the instant motion, this Court finds no compelling reason to reverse the ruling in the assailed decision.

WHEREFORE, premises considered, respondent's **Motion for Partial Reconsideration (Re: Decision promulgated 3 April 2018)** is hereby **DENIED** for lack of merit. Accordingly, the assailed decision promulgated on April 3, 2018 is hereby **AFFIRMED**.

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

CAESAR A. CASANOVA
Associate Justice