REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SECOND DIVISION

AYALA CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 8262

Members:

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

Promulgated:

MAR 2 1 2014 4:25 p.m.

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AMENDED DECISION

CASTAÑEDA, JR., *J.*:

Before this Court are: (a) petitioner's **"MOTION FOR PARTIAL RECONSIDERATION"** filed on November 29, 2013, without respondent's comment; and (b) respondent's **"MOTION FOR PARTIAL RECONSIDERATION (RE: Decision dated 11 November 2013)"** filed through registered mail on November 28, 2013 and received by this Court on December 4, 2013, with petitioner's **"OPPOSITION"** filed on December 27, 2013.

Both Motions are assailing the Decision promulgated on November 11, 2013, which reads:

> "**WHEREFORE,** premises considered, the instant Petition for Review is hereby **PARTIALLY GRANTED.** Accordingly, respondent is hereby **ORDERED TO ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the amount of P64,970,643.22, representing petitioner's unutilized and excess creditable withholding taxes for calendar years 2008 and 2009.
>
> **SO ORDERED.**"

Petitioner's Motion for Partial Reconsideration

Petitioner contends that this Court committed a reversible error in disallowing a portion of its claimed excess creditable withholding tax (CWT) for calendar years (CYs) 2008 and 2009, in the amount of P35,384,746.22, on the ground that the income payments per Schedules of Creditable Taxes Withheld on Sale of Services and Properties and Lease of Properties do not tally with the income indicated in the Summary of Rental Income, Summary of Directors' Fees and Summary of Other Income, as found in the Final Amended Report, submitted by the Court-commissioned Independent Certified Public Accountant (ICPA). The details of the disallowances are as follows[1]:

Exhibit	Period Covered	Payor	Income Payment	Income Tax Withheld
CY 2008				
J7	1st quarter	HR Mall Inc.	P 33,819.84	P 676.40
J14	1st quarter	Isuzu Automotive Dealership, Inc. - Isuzu Alabang	1,281,032.59	64,051.63
J15	1st quarter	Isuzu Cebu Inc. - Isuzu Cebu	1,108,611.00	55,430.55
J16	1st quarter	Manila Water Company	16,768,089.60	2,515,213.44
J19	2nd quarter	HR Mall Inc.	33,281.46	665.63
J21	3rd quarter	Honda Cars Alabang	70,513.50	1,410.27
J41	4th quarter	Honda Cars Makati Incorporated	29,679,569.77	1,483,978.49
J48	4th quarter	Isuzu Automotive Dealership, Inc. - Isuzu Alabang	1,366,798.00	68,339.90
J51	4th quarter	Isuzu Cebu Inc. - Isuzu Cebu	806,702.80	40,335.14
J55	4th quarter	Manila Water Company	29,270,631.32	4,390,594.70
K12	2nd quarter	Honda Makati	10,019,276.20	500,963.81
K16	2nd quarter	Isuzu Automotive Dealership, Inc. - Isuzu Alabang	1,276,605.49	63,830.27
K17	2nd quarter	Isuzu Cebu Inc. - Isuzu Cebu	891,622.20	44,581.11
K34	3rd quarter	Honda Cars	31,925,545.20	1,596,277.26
K36	3rd quarter	Isuzu Automotive Dealership, Inc. - Isuzu Alabang	1,338,945.20	66,947.26
K37	3rd quarter	Isuzu Automotive Dealership, Inc. - Isuzu Alabang	1,160,176.80	58,008.84
K38	3rd quarter	Isuzu Automotive Dealership, Inc. - Isuzu Alabang	1,390,825.40	69,541.27
K39	3rd quarter	Isuzu Cebu Inc. - Isuzu Cebu	931,895.40	46,594.77
K40	3rd quarter	Manila Water Company	52,022,765.72	7,803,404.86
TOTAL - CY 2008			**P 181,376,707.49**	**P 18,870,845.60**
CY 2009				
J75	1st quarter	Honda Cars Makati, Inc.	P 36,023,978.28	P 1,801,198.91
J89	2nd quarter	Honda Cars Makati, Inc.	33,462,593.04	1,672,272.13

[1] Decision, pp. 17-18.

J94	2nd quarter	Isuzu Cebu Inc. - Isuzu Cebu	776,869.20	38,843.66
J95	2nd quarter	Manila Water Company	41,805,416.66	6,270,812.50
J124	3rd quarter	Manila Water Company	29,945,007.45	4,491,751.02
L5	4th quarter	Asiacom Philippines Inc.	107,249.28	9,547.46
L19	4th quarter	Bank of the Philippine Islands	200,000.00	4,000.00
L26	4th quarter	Honda Cars Makati, Inc.	38,770,738.40	2,168,097.81
L30	4th quarter	Isuzu Automotive Dealership, Inc. - Isuzu Alabang	1,135,542.60	56,777.13
L36	4th quarter	John Clements Consultants Inc.	30,000.00	600.00
TOTAL – CY 2009			**P 182,257,394.91**	**P 16,513,900.62**
Grand Total – CYs 2008 and 2009			**P 363,634,102.40**	**P 35,384,746.22**

Petitioner points out that if there are discrepancies between the two schedules as found by this Court, the same can be clarified and fully explained through cross-reference with other documentary exhibits forming part of the Final Amended Report[2] and in the testimony of the ICPA through her Judicial Affidavit.[3] Petitioner attached to its Motion as Annex "A", a detailed list of explanation for each disallowance with cross-reference to relevant pieces of documentary evidence, to easily assist this Court in arriving at the desired reconciliation.

With the aforesaid list, this Court was able to ascertain that the income of P355,335,182.47, related to petitioner's claimed CWT in the amount of P34,228,507.42, formed part of the taxable income reported in its Annual Income Tax Returns for taxable years 2008 and 2009. Thus, the CWT of P34,228,507.42, detailed below, shall be refunded to petitioner in addition to the amount of P64,970,643.22, which was previously granted in the assailed Decision:

Exhibit	Period Covered	Payor/Withholding Agent	Income Payment	Income Tax Withheld
CY 2008				
J14	1st quarter	Isuzu Automotive Dealership, Inc. - Isuzu Alabang	1,281,032.59	64,051.63
J15	1st quarter	Isuzu Cebu Inc. - Isuzu Cebu	859,226.83	42,961.34
J16	1st quarter	Manila Water Company	16,768,089.60	2,515,213.44
K12	2nd quarter	Honda Makati	10,019,276.20	500,963.81
K16	2nd quarter	Isuzu Automotive Dealership, Inc. - Isuzu Alabang	1,276,605.49	63,830.27
K17	2nd quarter	Isuzu Cebu Inc. - Isuzu Cebu	880,638.00	44,031.90
K34	3rd quarter	Honda Cars	31,925,545.20	1,596,277.26

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[2] Exhibit "AAA".
[3] Exhibit "BBB".

K36	3rd quarter	Isuzu Automotive Dealership, Inc. - Isuzu Alabang	1,338,945.20	66,947.26
K37	3rd quarter	Isuzu Automotive Dealership, Inc. - Isuzu Alabang	1,160,176.80	58,008.84
K38	3rd quarter	Isuzu Automotive Dealership, Inc. - Isuzu Alabang	1,390,825.40	69,541.27
K39	3rd quarter	Isuzu Cebu Inc. - Isuzu Cebu	931,895.40	46,594.77
K40	3rd quarter	Manila Water Company	51,092,710.35	7,663,896.56
J41	4th quarter	Honda Cars Makati Incorporated	29,679,569.77	1,483,978.49
J48	4th quarter	Isuzu Automotive Dealership, Inc. - Isuzu Alabang	1,365,477.59	68,273.88
J51	4th quarter	Isuzu Cebu Inc. - Isuzu Cebu	716,180.17	35,809.01
J55	4th quarter	Manila Water Company	22,752,134.40	3,412,820.17
TOTAL CY 2008			**173,438,328.99**	**17,733,199.90**
CY 2009				
J75	1st quarter	Honda Cars Makati, Inc.	36,023,978.28	1,801,198.91
J89	2nd quarter	Honda Cars Makati, Inc.	33,462,593.04	1,672,272.13
J94	2nd quarter	Isuzu Cebu Inc. - Isuzu Cebu	771,512.24	38,575.82
J95	2nd quarter	Manila Water Company	41,805,416.66	6,270,812.50
J124	3rd quarter	Manila Water Company	29,870,347.14	4,480,551.97
L5	4th quarter	Asiacom Philippines Inc.	107,249.28	9,547.46
L26	4th quarter	Honda Cars Makati, Inc.	38,770,738.40	2,168,097.81
L30	4th quarter	Isuzu Automotive Dealership, Inc. - Isuzu Alabang	1,085,018.44	54,250.92
TOTAL CY 2009			**181,896,853.48**	**16,495,307.52**
Grand Total – CYs 2008 and 2009			**355,335,182.47**	**34,228,507.42**

However, the denial of petitioner's claimed CWT in the amount of P1,156,238.80 shall remain due to the following reasons:

Exhibit	Period Covered	Payor/Withholding Agent	Income Payment	Income Tax Withheld
CY 2008				
1) CWT allegedly pertaining to advances made by petitioner to payor but no documents were submitted by petitioner to corroborate the said advances				
J7	1st quarter	HR Mall Inc.	33,819.84	676.40
J19	2nd quarter	HR Mall Inc.	33,281.46	665.63
J21	3rd quarter	Honda Cars Alabang	70,513.50	1,410.27
2) CWT supported by BIR Forms No. 2307 but formed part of the total CWT of P1,452,575.57 not claimed by petitioner (*see*				

Exhibit "AAA", page 5, Procedures and Observations, par. 5)				
J15	1st quarter	Isuzu Cebu Inc. - Isuzu Cebu	249,384.17	12,469.21
K17	2nd quarter	Isuzu Cebu Inc. - Isuzu Cebu	10,984.20	549.21
K40	3rd quarter	Manila Water Company	930,055.37	139,508.30
J48	4th quarter	Isuzu Automotive Dealership, Inc. - Isuzu Alabang	1,320.41	66.02
J51	4th quarter	Isuzu Cebu Inc. - Isuzu Cebu	90,522.63	4,526.13
J55	4th quarter	Manila Water Company	6,518,496.92	977,774.53
TOTAL - CY 2008			**7,938,378.50**	**1,137,645.70**
CY 2009				
1) CWT pertaining to advances made by petitioner to payor but no documents were submitted by petitioner to corroborate the said advances				
L19	4th quarter	Bank of the Philippine Islands	200,000.00	4,000.00
L36	4th quarter	John Clements Consultants Inc.	30,000.00	600.00
2) CWT without BIR Forms No. 2307, thus not claimed by petitioner				
J94	2nd quarter	Isuzu Cebu Inc. - Isuzu Cebu	5,356.96	267.84
J124	3rd quarter	Manila Water Company	74,660.31	11,199.05
3) CWTsupported with BIR Form No. 2307 but the rental income was not recorded in the general ledger, thus not claimed by petitioner				
L30	4th quarter	Isuzu Automotive Dealership, Inc. - Isuzu Alabang with 2307 but not claimed	50,524.16	2,526.21
TOTAL – CY 2009			**360,541.43**	**18,593.10**
Grand Total – CYs 2008 and 2009			**8,298,919.93**	**1,156,238.80**

In sum, this Court finds petitioner entitled to the issuance of a Tax Credit Certificate in the amount of P34,228,507.42, representing excess CWT for calendar years 2008 and 2009, in addition to the amount of P64,970,643.22 originally granted to petitioner per Decision dated November 11, 2013.

Respondent's Motion for Partial Reconsideration

Respondent argues that petitioner failed to prove its compliance with Revenue Memorandum Order (RMO) No. 53-98 and Revenue Regulations (RR) No. 2-2006, in connection with the filing of its administrative claim for refund through the submission of the mandatory documentary requirements provided therein. Respondent contends that such failure of petitioner deprived her of the opportunity and time to study petitioner's claim for refund and to fully exercise her function. Thus, respondent posits that the instant Petition for Review was filed prematurely, in violation of the doctrine of exhaustion of administrative remedies.

In opposition, petitioner contends that respondent was given sufficient time to investigate its claim for the issuance of tax credit certificate and that respondent failed to present testimonial or documentary evidence to warrant the denial of its claim.

This Court finds respondent's arguments without merit.

It must be stressed that Revenue Memorandum Order (RMO) No. 53-98, dated June 1, 1998 and entitled *"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"*, refers mainly to the requirements in the administrative level for claims for refund/tax credit, wherein the taxpayer is required to submit for audit purposes, all his/its pertinent documents/records, to establish the veracity of his/its claim. However, when a taxpayer's claim reaches the judicial level or when the claim is elevated to this Court, the Rules of Court and this Court's own Rules govern the matter of proving the said claim.

Moreover, RR2-2006 indeed prescribes the attachment of the *Summary of 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. However, this Court, in numerous cases, held that the following are the requisites that must be complied with in order to claim a Tax Credit Certificate or Refund of excess creditable withholding tax (CWT): (a) that the claim for refund was filed within the two-year prescriptive period as provided under Section 204(C) in relation to Section 229 of the National Internal Revenue Code (NIRC) of 1997, as amended; (b) that the fact of withholding is 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; and (c) that the income upon which the taxes were withheld were included in the return of the recipient. These requisites were also adopted by the Supreme Court in the case of *United International Pictures AB vs. Commissioner of Internal Revenue.*[4]

[4] G.R. No. 168331, October 11, 2012.

WHEREFORE, respondent's **"MOTION FOR PARTIAL RECONSIDERATION (RE: Decision dated 11 November 2013)"** is **DENIED** for lack of merit.

On the other hand, petitioner's **"MOTION FOR PARTIAL RECONSIDERATION"** is **PARTIALLY GRANTED.** Accordingly, the Decision promulgated on November 11, 2013 is **MODIFIED** and respondent is ordered to issue a Tax Credit Certificate in favor of petitioner in the amount of P99,199,150.64, representing excess CWT for calendar years 2008 and 2009.

SO ORDERED.

JUANITO C. CASTAÑEDA, JR.
Associate Justice

WE CONCUR:

CAESAR A. CASANOVA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

ATTESTATION

I attest that the conclusions in the above Amended Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson's Attestation, it is hereby certified that the conclusions in the above Amended Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice