REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

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COMMISSIONER OF INTERNAL REVENUE, Petitioner,	CTA EB No. 1997 (CTA Case No. 9249)
	Present:
-versus-	DEL ROSARIO, *PJ*, CASTAÑEDA, JR., UY, FABON-VICTORINO, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, and MODESTO-SAN PEDRO, *JJ*.
	Promulgated:
SONOMA SERVICES, INC., Respondent.	JUN 29 2020 4:15 p.m.

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DECISION

Fabon-Victorino, J.:

In this Petition for Review,[1] the Commissioner of Internal Revenue (CIR) impugns the Decision[2] dated August 15, 2018 and the Resolution[3] dated January 4, 2019 of the Court in Division in CTA Case No. 9249, which granted in full respondent's claim for refund of excess and unutilized creditable withholding taxes (CWT) for calendar year (CY) 2013 in the sum of ₱4,733,500.00.

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1 *Rollo*, pp. 5-17.
2 Ibid. at pp. 10-26.
3 Id. at pp. 45-49.

The following facts remain undisputed.

Petitioner is the head of the Bureau of Internal Revenue (BIR) with legal authority to carry out the functions, duties, and responsibilities of the said office, including *inter alia,* the power to decide, approve, and grant refunds and/or tax credits of overpaid and erroneously paid and collected internal revenue taxes. He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

Respondent Sonoma Services, Inc. is a domestic corporation with principal office at 3rd Floor, Makati Stock Exchange Building, Ayala Triangle, Ayala Avenue, Makati City. It is a registered taxpayer of BIR Revenue Region No. 8, Revenue District Office (RDO) No. 50 with Taxpayer Identification No. 220-858-954-000.

On April 12, 2014, respondent filed with the BIR its Annual Income Tax Return (AITR) for CY 2013 via the electronic filing and payment system (eFPS) indicating therein its choice to claim refund of its alleged excess and unutilized CWT for CY 2013. Consequently, respondent did not carry-over its excess and unutilized CWT for CY 2013 amounting to ₱4,733,500.00 to the succeeding TY.

On June 16, 2015, respondent filed an administrative claim for refund of its alleged excess and unutilized CWT for CY 2013 with the BIR RDO No. 50.

On January 27, 2016, respondent elevated the said CWT claim for refund for CY 2013 with the Court in Division, citing inaction on the part of the petitioner as its ground.

On August 15, 2018, the Court in Division rendered the impugned Decision, the decretal portion of which reads:

> **WHEREFORE**, the present Petition for Review is **GRANTED**. Accordingly, respondent (herein petitioner) is hereby **ORDERED TO REFUND OR TO ISSUE A TAX CREDIT CERTIFICATE** in the amount of **₱4,733,500.00** in favor of petitioner (herein respondent), representing its excess and unutilized CWT for CY 2013.

SO ORDERED.

The Court in Division found respondent to have satisfactorily demonstrated all the requisites of a CWT refund. Its administrative and judicial claims for CWT refund were seasonably instituted on June 16, 2015 and January 27, 2016, respectively. The existence and validity of the CWTs subject of its claim were duly verified via relevant CWT Certificates (BIR Forms No. 2307) issued by its income payors-withholding agents. Moreover, the income payments from which the CWTs originated were fully reported in its AITRs. Finding all the requisites for a valid CWT refund to have been fully complied with, the Court in Division directed petitioner to refund respondent the sum of ₱4,733,500.00 representing its excess and unutilized CWT for CY 2013.

On August 31, 2018, petitioner filed a Motion for Reconsideration of the impugned Decision dated August 15, 2018, but the same was denied by the Court in Division in the equally impugned Resolution of January 4, 2019. Hence, the present recourse.

Petitioner contends that the Court in Division egregiously erred when it admitted in evidence the numerous Certificates of Creditable Withholding Tax at Source (BIR Form No. 2307), pertinent official receipts, cash receipts book, and general ledger identified by respondent's witnesses, namely, Myra O. Aranel and the court-commissioned independent certified public accountant (ICPA) Milgaros F. Padernal, who had no personal knowledge about the preparation and execution of the said documents. Being hearsay evidence, the said documents must be rejected pursuant of Section 36, Rule 130 of the Rules of Court and jurisprudence,[4] which provide that documents to be admissible must be identified by a witness who has personal knowledge of its execution or contents.

Petitioner also theorizes that for a CWT refund to prosper, two (2) requisites must be satisfied: *first,* income payees, like respondent, must submit with the BIR a

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[4] Petitioner relies on the cases of *Dela Llano vs. Biong,* G.R. No. 182356, December 4, 2013; and *Sanvicente vs. People,* G.R. No. 132081, November 26, 2002 in support of his theory.

summary alphalist of withholding agents of income payments subject to withholding tax (SAWT) as required under Revenue Regulations (RR) No. 2-2006; and *second,* income payees must prove actual remittance of the CWTs by presenting a Certification issued by the BIR Revenue Accounting Division attesting that taxes withheld were actually remitted to the BIR. For failure of respondent to meet the foregoing conditions, its 2013 CWT refund must be entirely rejected.

To cap his arguments, petitioner states that tax refunds are in the nature of tax exemptions which must be strictly construed against the taxpayer such as respondent. Its failure to satisfy all the conditions for a successful claim for refund of CWT is fatal to its cause.

Taking a diametrically opposed view,[5] respondent counters that petitioner's objections to the admissibility of its evidence is Johnny come lately for it should have been done during the proceedings below. Such objection is proscribed if done for the first time on appeal,[6] as obtaining in the present case.

Further, it need not prove actual remittance of the CWTs subject of the refund claim given that the law,[7] as well as its implementing regulations[8] only mandate the taxpayer-claimant to establish the *fact of withholding,* which it did, citing a slew of cases[9] as its authority. Besides, the responsibility of remitting taxes withheld pertains to the income payor-withholding agent, and not with the income recipient such as respondent. With the presentation of the pertinent Certificates of Withholding (BIR Forms No. 2307),

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5 Comment dated March 19, 2019 *rollo,* pp. 57-72.

6 Respondent cites Section 36, Rule 132 of the Rules of Court, along with the cases of *Valencia vs. Locquiao,* G.R. No. 122134, October 3, 2003; and *Land Bank of the Philippines vs. Nable,* G.R. No. 176692, June 27, 2012 as bases.

7 Section 58(B) of the NIRC, as amended.

8 Section 2.58(B) and 2.58.3, RR No. 2-98.

9 *Citybank N.A. vs. Court of Appeals,* G.R. No. 107434, October 10, 1997; *Citytrust Finance Corporation vs. Commissioner of Internal Revenue,* CTA Case Nos. 4134 and 4046, promulgated November 11, 1991 and February 24, 1993 respectively; *FEB Investments, Inc. vs. Commissioner of Internal Revenue,* CTA Case No. 5353, August 22, 1997; *Oranbo Realty Corporation vs. Commissioner of Internal Revenue,* CTA Case No. 5335, July 24, 1998; *AP Industrial Corporation vs. Commissioner of Internal Revenue,* CTA Case No. 5360, January 20, 1999.

it was able to satisfactorily prove the existence and validity of its CWTs subject of the present claim.

Also the legal tenet that tax refunds, like tax exemptions are to be strictly construed against the taxpayer is unavailing, counters respondent. It invokes in its favor the principle of *solutio indebitti* which repulses the unjust enrichment of one at the expense of another. Even granting that the doctrine of strict construction of tax exemption finds application in the present case, the bottom line is that it was able to prove satisfaction of all the requisites for its entitlement to a CWT refund as found by the Court in Division.

THE RULING OF THE COURT

The instant petition must fail.

Petitioner's assertion that the Court in Division erroneously admitted respondent's evidence, both documentary and testimonial adduced during the trial on the merits is simply incredulous.

Indeed, a witness can testify only on matters of his own knowledge and perception. His or her testimony cannot be proof as to the truth of what he learned or heard from others.[10] However, to set this rule in motion, a proper and timely objection is necessary.

Section 36, Rule 132 of the Rules of Court states, among others, that in cases of a written formal offer of evidence, a party must interpose his objections, if any, within three (3) days after notice of the offer unless the Court prescribes a different period. Evidence not objected to is deemed admitted and may be validly considered by the court in arriving at its judgment.[11] This is true even if by its nature the evidence is inadmissible and would have surely been rejected if it had been challenged at the proper time.[12]

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10 See Section 36, Rule 130 of the Rules of Court; and *People of the Philippines vs. Estibal,* G.R. No. 208749, November 26, 2014.

11 *Caraan vs. Court of Appeals,* G.R. No. 140752, November 11, 2005.

12 *Lorenzana vs. Lelina,* G.R. No. 187850, August 17, 2016.

The record shows that petitioner failed[13] to interpose any objection on respondent's formal offer of evidence despite opportunity[14] granted by the Court in Division. Hence, even if the pieces of evidence enumerated by petitioner were indeed hearsay evidence, for lack of a proper and seasonable objection thereto, the Court in Division correctly admitted respondent's formally offered documents, i.e., Certificates of Creditable Withholding Tax at Source (BIR Forms No. 2307), official receipts, cash receipts book, and general ledger. Petitioner's right to impugn the admissibility of evidence is a mere privilege which can be waived as obtaining in the present case. Necessarily, the objection must be made at the earliest opportunity, lest silence when there is opportunity to speak may operate as a waiver of objections.[15]

Petitioner further argues that respondent's failure to submit the pertinent SAWTs pursuant to RR No. 2-2006, as well as present proof of actual remittance is fatal to its refund claim.

The Court is not persuaded.

Jurisprudence[16] teaches us that there are three essential conditions for the grant of a claim for refund of creditable withholding income tax, to wit: (1) the claim is filed with the Commissioner of Internal Revenue within the two-year period from the date of payment of the tax; (2) it is shown on the return of the recipient that the income payment received was declared as part of the gross income; and (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.

Evidently, petitioner may not impose upon respondent submission of SAWTs as a precondition for entitlement to a

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13 Records Verification Report dated March 2, 2017, docket (CTA Case No. 9249), p. 378.

14 See Minutes of Hearing dated January 25, 2017, docket (CTA Case No. 9249), p. 257.

15 See *Catuira vs. Court of Appeals,* G.R. No. 105813, September 12, 1994.

16 See *Commissioner of Internal Revenue vs. Univation Motor Philippines, Inc. (formerly Nissan Motors Philippines, Inc.),* G.R. No. 231851, April 10, 2019.

CWT refund simply because it is neither required by law nor jurisprudence on the matter. Administrative agency issuing regulations may not enlarge, alter or restrict the provisions of the law it administers, and it cannot engraft additional requirements not contemplated by the legislature.[17] To do so constitutes lawmaking, which is generally reserved for Congress.[18]

Neither is proof of actual remittance required for a successful prosecution of a CWT refund. Section 58(A) of the NIRC, as amended provides that withholding agents are specifically mandated not only to withhold taxes due on income payments made to a taxpayer, but also to hold such monies in trust, and subsequently remit or pay the same to the government, thus:

> SEC. 58. Returns and Payment of Taxes Withheld at Source. –
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> (A) Quarterly Returns and Payments of Taxes Withheld. - Taxes deducted and withheld under Section 57 by withholding agents shall be covered by a return and paid to, except in cases where the Commissioner otherwise permits, an authorized agent bank, Revenue District Officer, Collection Agent, or duly authorized Treasurer of the city or municipality where the withholding agent has his legal residence or principal place of business, or where the withholding agent is a corporation, where the principal office is located.
>
> <u>The taxes deducted and withheld by the withholding agent shall be held as a special fund in trust for the government until paid to the collecting officers.</u>
>
> xxx xxx xxx (emphasis supplied)

Section 58(B) and (C) of the same Code underscores the responsibility of withholding agents to *deduct and remit* taxes due on their income payments requiring them to submit annual information return, as well as to provide the recipients of income written statements with the following information: a) the amount of income paid; b) the details of the person to whom such payment was made; and c) the

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17 See *Commissioner of Internal Revenue vs. Central Luzon Drug Corporation,* G.R. No. 159647, April 15, 2005.

18 See *Soriano vs. Secretary of Finance,* G.R. No. 184450, January 24, 2017.

specific details of the sums they deducted and withheld, to wit:

> SEC. 58. Returns and Payment of Taxes Withheld at Source. –
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> xxx xxx xxx
>
> (B) Statement of Income Payments Made and Taxes Withheld. - *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,* 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. xxx
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> (C) Annual Information Return. - Every withholding agent required to deduct and withhold taxes under Section 57 *shall submit to the Commissioner an annual information return containing the list of payees and income payments, amount of taxes withheld from each payee and such other pertinent information as may be required by the Commissioner*. xxx

More importantly, Section 2.58.3 (B) of RR No. 2-98 confirms that proof of remittance of creditable taxes withheld lies with the payor-withholding agent and not with the income recipient, *viz.*:

> SECTION 2.58.3. *Claim for Tax Credit or Refund.* –
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> xxx xxx xxx
>
> (B) Claims for tax credit or refund of any creditable income tax which was deducted and withheld on income payments shall be given due course only when it is shown that the income payments 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.

> ***Proof of remittance is the responsibility of the withholding agent.*** (emphasis supplied)

As it stands, a withholding agents' bounden duty is to guarantee that the pertinent income taxes they withheld on taxpayers are paid in favor of the government. On that account, proof of actual remittance thereof rests not with the income payee, but with the income payors-withholding agents. No less than the Supreme Court elucidated this position in the case of *Commissioner of Internal Revenue vs. Asian Transmission Corporation*[19] where it held that:

> 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. xxx

On the strength of the above observations, respondent, being the income earner and payee of the CWTs, is neither legally mandated to compulsorily demonstrate by proof that the CWTs subject of the refund claim were remitted to the BIR for such task is fittingly imputable to its income payors-withholding agents. To subscribe to petitioner's reasoning would effectively place on respondent the burden of establishing a legal obligation not properly pertaining to it. To repeat, respondent only needs to prove the fact of *withholding* and not the actual remittance of the taxes withheld.

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[19] G.R. No. 179617, January 11, 2011.

Significantly, Section 58(B)[20] of the NIRC, as amended enumerates the document that will prove the fact of withholding. Payors/withholding-agents are mandated, *inter alia,* to provide respondent-income payee a written statement containing the amount of income or yield paid along with the amount of tax deducted and withheld therefrom. Such documents are embodied in the various Certificates of Creditable Tax Withheld at Source (BIR Form No. 2307) duly issued by respondent's income payors/withholding agents.[21] Since the foregoing certificates were duly signed and prepared under the penalties of perjury, the figures appearing therein are presumed to be true and correct,[22] and may be taken at their face value.[23]

With respondent's presentation of several Certificates of Creditable Tax Withheld at Source (BIR Forms No. 2307)[24] issued in its favor by its payors – withholding agents, it has adequately established the existence and validity of CWTs subject of the refund in the aggregate sum of ₱4,733,500.00.

WHEREFORE, the Petition for Review dated February 1, 2019 filed by the Commissioner of Internal Revenue is **DENIED**. The impugned Decision dated August 15, 2018 and Resolution dated January 4, 2019 rendered by the Court in Division are **AFFIRMED**.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

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20 See pages 7-8 of this Decision.

21 The document which may be accepted as evidence of 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. See *Banco Filipino Savings and Mortgage Bank vs. Court of Appeals, et al.,* G.R. No. 155682, March 27, 2007.

22 See *Commissioner of Internal Revenue vs. TEAM [Philippines] Operations Corporation [Formerly Mirant (Phils) Operations Corporation],* G.R. No. 179260, April 2, 2014.

23 See *Philippine Airlines, Inc. (PAL) vs. Commissioner of Internal Revenue,* G.R. Nos. 206079-80, January 17, 2018.

24 Exhibits P-14-1 to P-14-24.

We Concur:

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate 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

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above 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