REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

Third Division

RCD REALTY MARKETING CORPORATION,	**CTA CASE NO. 8468**
Petitioner,	Members:
	Bautista, *Chairperson*
- *versus* -	***Fabon-Victorino,*** *and*
	Ringpis-Liban, JJ.
COMMISSIONER OF INTERNAL REVENUE,	Promulgated:
Respondent.	JUN 22 2016 3:00 p.m.

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AMENDED DECISION

BAUTISTA, J:

For resolution are:

1. Petitioner's "Motion for Partial Reconsideration" filed on February 29, 2016, with respondent's "Comment/Opposition" filed by registered mail on March 22, 2016; and

2. Respondent's "Motion for Partial Reconsideration" filed by registered mail on March 2, 2016, with petitioner's "Comment (to Motion for Partial Reconsideration)" ("Comment") filed on March 31, 2016.

The parties move for the reconsideration of the Decision[1] of the Court dated February 1, 2016, which partially granted the Petition for Review, the dispositive portion of which states:[2]

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[1] *Records, CTA Case No. 8468, Decision,* pp. 4724-4745.
[2] *Id., Decision,* p. 4744.

WHEREFORE, premises considered, the 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 **ONE ILLION FOUR HUNDRED SIXTY FOUR THOUSAND THREE HUNDRED FORTY SIX AND 14/100 PESOS (Php1,464,346.14).**

SO ORDERED.

Petitioner's Motion for Partial Reconsideration

Petitioner avers that the Court erred in disallowing the amount of Php271,231.10 on the ground that Certificate of Withholding Tax ("CWT") or BIR Form No. 2307 did not bear its taxpayer identification number ("TIN"); that it complied with the requirements to prove its entitlement to refund; that the CWT were properly authenticated and identified by its witness, Ms. Maricel Relosa, as the certificates that were issued to it by its customers; that the CWT that were identified and authenticated by the witness in open court are complete in its relevant details; that failure of the payors to indicate petitioner's TIN in the CWT is an omission that is not attributable to petitioner since they did not have a hand in the preparation thereof; that failure of the respondent to object to the failure to indicate the TIN in the CWT is considered an admission of its validity and compliance; and that to deny petitioner's claim for refund when it properly and clearly established its entitlement thereto by reason of its failure to indicate its TIN in the CWT would result to unjust enrichment on the part of the State.

In her Comment, respondent manifests that she is adopting the factual findings and legal conclusions made by the Court in its Decision dated February 1, 2016, insofar as it disallowed certain amount from the total claim for refund of petitioner, on the ground that the CWT did not bear the TIN of petitioner; that she is likewise adopting the legal and factual arguments contained in her Motion for Partial Reconsideration posted on March 2, 2016, as part of her Comment/Opposition to petitioner's Motion for Partial Reconsideration; and that petitioner's Motion for Partial Reconsideration is clearly a *pro forma* motion which is a mere repetition and reiteration of the arguments already passed upon by the Court.

Respondent's Motion for Partial Reconsideration

Respondent alleges that the absence of any entry in the "Creditable Tax Withheld" column in petitioner's 2009 Annual Income Tax Return would mean that no part of the gross income reported therein were ever subjected by petitioner to CWT; that it failed to comply with the requirements under *Revenue Regulations ("RR") No. 2-98*, as amended by *RR No. 2-2006*; that the act of withholding is different from the act of remitting and the best evidence or proof of remittance of the tax withheld is the certification from the BIR's Revenue Accounting Division; that petitioner's documentary evidence consisting of CWT marked as *Exhibits* "L-1" to "L-66" are inadmissible in evidence for being hearsay; and that tax refunds are in the nature of tax exemptions that should be construed *strictissimi juris* against the person or entity claiming the exemption.

On the other hand, petitioner counter-argues that it declared the amount of Php42,511,959.00 as gross income for the taxable year 2009, as this amount was reflected in its Annual Income Tax Return and its 2009 Audited Financial Statements; that it is not required to prove remittance of the creditable taxes withheld by its withholding agent; and that respondent failed to raise her objections to *Exhibits* "L-1" to "L-66", thus, she admitted the authenticity and due execution of said exhibits.

The Court will now proceed to resolve the parties' respective Motions for Partial Reconsideration.

Pursuant to *Section 1, Rule 15 of the Revised Rules of the Court of Tax Appeals*[3], a motion for reconsideration may be filed within fifteen (15) days from receipt of the assailed decision. Here, respondent

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[3] "Sec. 1. *Who may and when to file motion.* - Any aggrieved party may seek a reconsideration or new trial of any decision, resolution or order of the Court by filing a motion for reconsideration or new trial for fifteen days from the date of receipt of notice of the decision, resolution or order of the Court in question."

received a copy of the assailed Decision on February 12, 2016[4], hence, she had only until February 29, 2016[5], within which to file her Motion for Reconsideration. Having filed her Motion for Partial Reconsideration by registered mail on March 2, 2016, the same was clearly filed out of time.

Even assuming that respondent's Motion for Partial Reconsideration was timely filed, the same will fail.

There is no merit in respondent's allegation that petitioner's documentary exhibits, specifically *Exhibits* "L-1" to "L-66" are inadmissible in evidence for petitioner's failure to present the individual signatories. It is not necessary for the person who executed and prepared the Certificates of Creditable Tax Withheld at Source to be presented and to testify personally as to the authenticity of the certificates.[6]

The Court will now proceed to discuss petitioner's Motion for Partial Reconsideration.

In the assailed Decision, the Court disallowed the amount of Php271,237.10, due to the fact that, while it was supported by CWT or BIR Form No. 2307, the same do not bear petitioner's TIN.

Petitioner submits that it was an error for the Court to do so, and cited *Republic vs. TeaM Philippines Energy Corporation*[7]. In that case, the Supreme Court held that the requirements for entitlement of a corporate taxpayer for a refund or the issuance of Tax Credit Certificates ("TCC") involving excess withholding taxes are as follows:

1. That the claim for refund was filed within the two (2) year reglementary period pursuant to *Section 229 of the 1997 NIRC*, as amended;

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[4] *Records, Notice of Decision*, p. 4723.
[5] February 27, 2016 fell on a Saturday and February 28, 2016 fell on a Sunday.
[6] *Commissioner of Internal Revenue v. Philippine National Bank*, G.R. No. 180290, September 29, 2014, 736 SCRA 609.
[7] G.R. No. 188016, January 14, 2015.

2. That it is shown on the ITR that the income payment received is being declared part of the taxpayers gross income;

3. That 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 income tax withheld therefrom.

Section 2.58.3 (B) of Revenue Regulations ("RR") No. 02-98[8], as amended, states:[9]

> Sec. 2.58.3. Claim for tax credit or refund. –
>
> 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 payment has been declared as part of the gross income and the fact of withholding is established by a <u>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</u>.

Applying the foregoing to the instant case, as long as CWT clearly shows the information regarding the payor, the payee, the amount paid and the income tax withheld from that amount, there is sufficient compliance with the requirement of the law.

After a scrutiny of the documentary evidence that were disallowed for not bearing petitioner's TIN, the Court finds that the same shall be allowed considering that it contains the essential information. Moreover, respondent did not question the documentary exhibits submitted by petitioner.

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[8] Implementing Republic Act No. 8424, "*An Act Amending the NIRC, as Amended*" relative to the withholding on income subject to the expanded withholding tax and final withholding tax, withholding of income tax on compensation, withholding of creditable value-added tax and other percentage taxes, April 17, 1998.

[9] Underscoring ours.

In *Filinvest Development Corporation v. Commissioner of Internal Revenue and Court of Tax Appeals*[10], the Supreme Court held that:

> It is true that herein petitioner has the burden of proving that it is entitled to refund. However, we have already held that once the claimant has submitted all the required documents, it is the function of the BIR to assess these documents with purposeful dispatch.
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> In proving the inclusion of the income payments which formed the basis of the withholding taxes and the fact of withholding, this Court has held that:
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> > [D]etailed proof of the truthfulness of each and every item in the income tax return is not required. That function is lodged in the Commissioner of Internal Revenue by the NIRC which requires the Commissioner to assess internal revenue taxes within three years after the last day prescribed by law for the filing of the return. x x x The grant of a refund is founded on the assumption that the tax return is valid; that is, the facts stated therein are true and correct. In fact, even without petitioner's tax claim, the Commissioner can proceed to examine the books, records of the petitioner-bank, or any data which may be relevant or material in accordance with Section 16 of the present NIRC.

The State is not exempt from the application of the principle of unjust enrichment. In the field of taxation where the State exacts strict compliance upon its citizens, the State must likewise deal with taxpayers with fairness and honesty. The harsh power of taxation must be tempered with evenhandedness. Hence, under the principle of *solutio indebiti*, the Government has to restore to petitioner the sums representing erroneous payments of taxes.[11]

In sum, petitioner's substantiated CWT is adjusted as follows:

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[10] G.R. No. 146941, August 9, 2007, 529 SCRA 605, citing *Philex Mining Corporation v. Commissioner of Internal Revenue*, 356 Phil 189; and *Citibank N.A. v. Court of Appeals*, 345 Phil. 695.
[11] *Commissioner of Internal Revenue v. Perf Realty Corporation*, G.R. No. 163345, July 4, 2008, 557 SCRA 165, citing *Filinvest Development Corporation v. Commissioner of Internal Revenue and Court of Tax Appeals.*

Total Creditable Taxes Withheld		Php 3,059,404.23
Less:		
Income Tax Due	Php 1,323,820.99	
Substantiated Unutilized Creditable Withholding Taxes per Decision dated February 1, 2016		1,464,346.14
Substantiated Unutilized Creditable Withholding Taxes per this Motion		271,237.10
Adjusted Substantiated Unutilized Creditable Withholding Taxes		**Php 1,735,583.24**

WHEREFORE, based from the foregoing, respondent's "Motion for Partial Reconsideration" is hereby **DENIED,** for having been filed out of time. On the other hand, petitioner's "Motion for Partial Reconsideration" is hereby **GRANTED.** The Court's February 1, 2016 Decision is hereby **MODIFIED.** Accordingly, respondent is hereby **ORDERED TO REFUND or TO ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the amount of **ONE MILLION SEVEN HUNDRED THIRTY FIVE THOUSAND FIVE HUNDRED EIGHTY THREE AND 24/100 PESOS (Php1,735,583.24)**.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

ESPERANZA R. FABON-VICTORINO
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

ATTESTATION

I attest 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's Division.

LOVELL R. BAUTISTA
Associate Justice
Chairperson

CERTIFICATION

Pursuant to *Section 13 of Article VIII of the Constitution* and the Division Chairperson's Attestation, 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