REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

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TULLETT PREBON (PHILIPPINES), INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB No. 2143
(CTA Case No. 9320)

Present:

DEL ROSARIO, *P.J.*,
CASTAÑEDA, JR.,
UY,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA, and
MODESTO-SAN PEDRO, *JJ.*

Promulgated:

NOV 18 2020
11:38 a.m.

x - x

DECISION

UY, *J.*:

Before the Court *En Banc* is a *Petition for Review* filed on October 11, 2019[1] by Tullett Prebon (Philippines) Inc., against the Commissioner of Internal Revenue, praying to reverse and set aside the Decision dated April 12, 2019 and Resolution dated September 4, 2019[2], both rendered by the Special Third Division of this Court (Court in Division) in CTA Case No. 9320, entitled *"Tullett Prebon (Philippines), Inc., Petitioner, vs. Commissioner of Internal Revenue, Respondent"*. The dispositive portions thereof respectively read:

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[1] EB Docket, pp. 6 to 30.
[2] Decision dated April 12, 2019 and Resolution dated September 4, 2019, penned by Associate Justice Ma. Belen M. Ringpis-Liban, and concurred by Associate Justice Esperanza R. Fabon-Victorino (retired), EB Docket, pp. 35 to 57; and pp. 58 to 64, respectively.

Decision dated April 12, 2019:

> "**WHEREFORE,** premises considered, the Petition for Review is hereby **DENIED**.
>
> **SO ORDERED.**"

Resolution dated September 4, 2019:

> "**WHEREFORE**, finding no compelling reasons to allow the presentation of additional evidence and to reverse or modify the ruling of this Court in the assailed Decision, petitioner's **Motion for Reconsideration with Motion for Leave of Court to Present Additional Evidence** is **DENIED** for lack of merit.
>
> **SO ORDERED.**"

THE FACTS

Petitioner Tullett Prebon (Philippines) Inc. is a domestic corporation duly organized and existing under the Philippine laws, with principal address at 25th Floor, Rufino Pacific Tower, 6784 Ayala Avenue, Makati City. It is registered with the Bureau of Internal Revenue (BIR) Large Taxpayers District Office (LTDO), Revenue District Office (RDO) No. 122, with Taxpayer Identification No. 004-653-622-000.

Petitioner is engaged in the business of operating as a broker market participant in transactions involving, but not limited to, foreign exchange, deposits, interest rates instruments, fixed income securities, bonds/bills, repurchase agreements of fixed income securities, certificates of deposit, bankers acceptances, bills of exchange, over-the-counter options of the aforementioned instruments, lesser developed country (L.D.C.) debt, energy, and stock indexes, and all related, similar or derivative products other than acting as a broker for the trading of securities.

On the other hand, respondent Commissioner of Internal Revenue (CIR) is sued in his official capacity, having been duly appointed and empowered to perform the duties of his office, including among others, the duty to act on and approve claims for refund as provided by law. He may be served with summons, notices and other court processes at his office at the BIR National Office Building, BIR Road, Diliman, Quezon City.

On April 14, 2014, petitioner filed with the BIR, through electronic filing and payment system (eFPS), its Annual Income Tax Return (ITR) for CY 2013. Petitioner reported a Regular Corporate Income Tax (RCIT) liability of ₱7,676,632.00. After deducting its RCIT liability against its income tax credits for Calendar Year (CY) 2013, petitioner purportedly had tax overpayment of ₱42,428,486.00 as of December 31, 2013.

Petitioner indicated on the face of its Annual ITR for CY 2013 its option to be issued a Tax Credit Certificate (TCC) for its alleged excess and unutilized Creditable Withholding Tax (CWT) for CY 2013.

On April 30, 2015, petitioner filed with the BIR LTDO-Makati an administrative claim for refund or issuance of TCC for its alleged excess and unutilized CWT for CY 2013 in the amount of ₱15,226,718.45.

In view of respondent's inaction on petitioner's administrative claim for refund, petitioner filed on March 31, 2016 a *Petition for Review* before the Court in Division entitled *"Tullett Prebon (Philippines), Inc., Petitioner, vs. Commissioner of Internal Revenue, Respondent",* docketed as CTA Case No. 9320.

On May 24, 2016[3], respondent filed his *Answer,* interposing the following special and affirmative defenses:

1) Taxes paid and collected are presumed to have been made in accordance with law, hence, not refundable;

2) Petitioner's alleged claim for refund is subject to administrative routinary investigation/examination by the BIR;

3) Tax refunds are regarded as tax exemptions therefore, these are to be construed *strictissimi juris* against the person or entity claiming the exemption;

4) In an action for refund, the burden of proof is on the taxpayer who claims the exemption and must justify the claim by the

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[33] Division Docket, (CTA Case No, 9320) – Vol. I, pp. 72-29

clearest grant under the Constitutional or statutory law and cannot be permitted by vague implications;

5) Petitioner must prove that it filed the corresponding administrative and judicial claim for refund within the two-year prescriptive period pursuant to Sections 204 and 229 of the National Internal Revenue Code (NIRC) of 1997, as amended;

6) The amount of ₱15,226,718.45 being claimed by petitioner as alleged excess and unutilized Creditable Withholding Taxes for the calendar year ended December 31, 2013 is not properly documented;

7) Petitioner must prove compliance with the prescribed checklist of requirements to be submitted involving claims for Creditable Withholding Tax pursuant to Revenue Memorandum Order (RMO) No. 53-98;

8) In its claim for refund, petitioner failed to submit the pertinent documents required pursuant to RMO No. 53-98 and R.R. No. 2-2006;

9) Petitioner must prove that it has fully complied with the requisites to sustain a claim for refund or tax credit of excess and unutilized Creditable Withholding Tax as ruled by the Supreme Court in *Citibank N.A. vs. Court of Appeals, et. al.*; and

10) Petitioner must also prove that it did not carry-over the excess Creditable Withholding Taxes against the Quarterly and Annual Income Tax Returns in the succeeding taxable years as provided under Section 76 of the NIRC of 1997, as amended.

After the Pre-Trial Conference held on September 27, 2016[4], the parties filed their *Joint Stipulation of Facts and Issues* on October 11, 2016[5]. Pursuant thereto, the Court in Division issued the Pre-Trial Order dated November 11, 2016.

During trial, petitioner presented as witnesses, Philip Arabia, petitioner's Finance Manager, and Katherine B. Constantino, the court-commissioned Independent Certified Public Accountant (ICPA).

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[4] Division Docket (CTA Case No, 9320) – Vol. I, p. 247
[5] Division Docket (CTA Case No, 9320) – Vol. I, pp. 251-257

Thereafter, petitioner formally offered its documentary evidence on April 17, 2017. Most of the formally offered exhibits were admitted as part of petitioner's documentary evidence pursuant to Resolutions dated September 28, 2017 and February 1, 2018, except for Exhibits "P-255", "P-256", "P-257", "P-258", "P-259", "P-260", "P-261", "P-262", "P-263", "P-269", "P-273", "P-274", "P-275", "P-276", "P-277", "P-278", "P-279", "P-280", "P-281", "P-282" and "P-283".

During the hearing held on February 5, 2018, respondent, through counsel, manifested that he will not present evidence in CTA Case No. 9320. Thus, upon motion of both counsels, the parties were granted thirty (30) days to file their respective memoranda.

Petitioner filed its *Memorandum* on April 6, 2018, while respondent failed to file his *Memorandum* as per Records Verification Report issued by the Court's Judicial Records Division dated March 8, 2018. Thereafter, the Court in Division considered CTA Case No. 9320 submitted for Decision on April 13, 2018.

In the assailed Decision dated April 12, 2019[6], the Court in Division denied the *Petition for Review* in CTA Case No. 9320.

On May 17, 2019, petitioner filed a *Motion for Reconsideration with Motion for Leave of Court to Present Additional Evidence*,[7] with respondent's *Opposition (Re: Motion for Reconsideration with Motion for Leave of Court to Present Additional Evidence)*[8] filed on June 7, 2019.

In the assailed Resolution dated September 4, 2019, the Court in Division denied petitioner's Motion for Reconsideration with Motion for Leave of Court to Present Additional Evidence for lack of merit.[9]

On September 26, 2019, petitioner filed a *Motion for Extension of Time to File Petition for Review*[10] before the Court *En Banc* praying for additional period of fifteen (15) days from September 26, 2019, or until October 11, 2019, within which to file the Petition for Review. The same was granted and petitioner was given a final and non-extendible period of fifteen (15) days from September 26, 2019 or

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[6] Division Docket (CTA Case No. 9320) – Vol. 3, pp. 1089 to 1110.
[7] Division Docket (CTA Case No. 9320) – Vol. 3, pp. 1112 to 1133.
[8] Division Docket (CTA Case No. 9320) – Vol. 4, pp. 1670 to 1678.
[9] Division Docket (CTA Case No. 9320) – Vol. 4, pp. 1680 to 1686.
[10] EB Docket, pp. 1 to 4.

until October 11, 2019, within which to file the said *Petition for Review.*[11]

On October 11, 2019, petitioner filed the instant *Petition for Review*[12] before the Court *En Banc.*

Subsequently on November 5, 2019, the Court *En Banc* directed respondent to file his comment to the Petition for Review.[13] However, in the Records Verification Report dated January 14, 2020[14] issued by Records Officer Leocadia De Alday from the Judicial Records Division of this Court, it was stated that respondent failed to file his Comment to the Petition for Review.

Thus, the Court *En Banc* submitted the instant case for decision on January 29, 2020.[15] Hence, this Decision.

ISSUE

Culled from the allegations in the instant Petition for Review, petitioner raises the following issue for this Court's resolution:

> Whether or not the Court in Division erred in denying petitioner's claim for refund or issuance of TCC allegedly representing excess and unutilized CWT for CY 2013 in the amount of ₱15,226,718.45.

Petitioner's arguments:

Petitioner argues that the Court in Division erred in denying its claim because it was able to prove that the income from which the CWTs are subject of its refund claim were reported as part of petitioner's gross income.

Allegedly, its duly substantiated prior year's excess credits from CYs 2011 and 2012 amounting to ₱26,949,543.25 are more than sufficient to cover petitioner's income tax liability for CY 2013 in the amount of ₱7,676,632.00

[11] Minute Resolution dated September 27, 2019, EB Docket, p. 5.
[12] EB Docket, pp. 6 to 30.
[13] Resolution dated November 5, 2019, EB Docket, pp. 67 to 68.
[14] EB Docket, p. 69.
[15] Resolution dated January 29, 2020, EB Docket, pp. 71 to 72. *nb*

Contrary to the findings of the Court in Division, petitioner contends that the evidence it submitted, specifically Annex 3 of the Amended ICPA Report, Exhibit "P-2499", clearly shows that the income payments related to the claimed CWTs, particularly the billing invoice and official receipt numbers, were traced to petitioner's general ledger.

Petitioner further argues that the Court in Division erred in applying the duly-substantiated CWTs for CY 2011 and 2012 in the total amount of ₱26,949,543.50 as a credit against petitioner's income tax liabilities for the same CYs on the basis that petitioner is only required to keep its records including the CWT certificates, for only a period of three (3) years from the date of its filing. Consequently, petitioner assails the denial of the claim for refund on the basis of the non-presentation of CWT certificates pertaining to prior year's credits per 2011 Income Tax Return (ITR).

Lastly, according to petitioner, claims for refund of erroneously paid taxes are civil in nature. As such, petitioner, as claimant, though having a burden of showing entitlement, need only prove preponderance of evidence in order to recover its excess tax credits.

THE COURT *EN BANC*'S RULING

The instant *Petition for Review* lacks merit.

Petitioner failed to rebut the factual findings of the Court in Division

After a careful consideration of petitioner's contentions in the instant Petition for Review, the Court *En Banc* finds that petitioner raises no new arguments, and merely reiterates those raised in petitioner's Motion for Reconsideration[16] filed before the Court in Division. Apparently, these matters have been sufficiently discussed and passed upon in the assailed Decision and Resolution.

In the instant Petition, petitioner insists that Annex 3 of the Amended ICPA Report or Exhibit "P-2499" clearly shows that the income payments related to the claimed CWTs particularly the billing

[16] Division Docket (CTA Case No. 9320) – Vol. 3, pp. 1112 to 1134.

invoice and official receipt numbers, were traced to petitioner's general ledger.

We disagree.

It is noteworthy to mention under Section 3 of Rule 13 of the Revised Rules of the Court of Tax Appeals (RRCTA), as amended, the findings of the ICPA is not conclusive upon this Court, to wit:

> **SEC. 3.** *Findings of independent CPA.* – The submission by the independent CPA of pre-marked documentary exhibits shall be subject to verification and comparison with the original documents, the availability of which shall be the primary responsibility of the party possessing such documents and, secondarily, by the independent CPA. **<u>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.</u>** (Emphasis and underscoring supplied).

Clearly from the foregoing, the Court is not bound by the findings of the ICPA. The Court is free to either completely or partially adopt or disregard, the findings of the ICPA, after making its own verification and evaluation of the evidence on record.

Thus, upon careful and thorough examination of Annex 3 of the Amended ICPA Report[17] relied upon by petitioner, the Court *En Banc* notes the following discrepancies: the invoice numbers listed under the "*Per Schedule of CWT*" do not match the invoice numbers or some were not even indicated in the *Per General Ledger Account 6005 "Gross Brokerage Name Give Up*".

In view thereof, the Court *En Banc* finds no sufficient justification to reverse or modify the findings of the Court in Division. To the mind of this Court, petitioner's supporting documents, such as general ledger, schedule of CWT, billing invoices and official receipts for CY 2013 were properly scrutinized, examined and evaluated by the Court in Division. Thus, *We* quote with approval its findings, to wit:

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[17] Division Docket (CTA Case No. 9320) – Vol. 2, pp. 682 to 753.

"The certificates show that the claimed CWT were withheld on income payments amounting to ₱158,301,281.84 representing gross commissions or service fees to customs, insurance, stock, real estate, immigration and commercial brokers.

On the other hand, petitioner's Audited Financial Statements (AFS) for CY 2013 disclosed that the principal activity of petitioner is to operate as a broker between market participants in foreign exchange, deposits and fixed income securities, among others. Brokerage fees derived from such activity in 2013 amounted to ₱169,032,655.00. This is the same amount reflected as "Net Sales/ Revenues/Receipts/Fees" from Sales of Services in petitioner's Annual ITR for CY 2013.

As ascertained by the ICPA, petitioner's revenue account subjected to withholding tax was lodged under "Account 6005 – Gross Brokerage Name Give Up" which shows a total amount of ₱169,032,655.28 per petitioner's general ledger, broken down as follows:

xxx xxx xxx

To verify that the ₱158,301,281.84 gross income per certificates was included in the ₱169,032,655.28 gross income reported in petitioner's Annual ITR, the ICPA traced in the revenue general ledger of "Account 60055 – Gross Brokerage Name Give Up" the corresponding income amount of creditable withholding tax claim based on petitioner's Schedule of Creditable Withholding Taxes, billing invoices, and official receipts for CY 2013. The ICPA's detailed analysis is presented as follows: xxx

xxx xxx xxx

However, the Court observed that petitioner's general ledger does not show the billing invoice number corresponding to the revenue/income amount recorded therein except for "AR 48127 Receivables 5949462". Thus, the Court was able to trace to the general ledger only the income payments related to the following claimed CWT of ₱1,952,059.85, detailed as follows:

xxx xxx xxx

In sum, petitioner complied with the three basic requisites for refund of excess CWT for CY 2013 to the extent of only ₱1,952,059.85.

The Court shall now proceed to determine whether the aforesaid CWT of ₱1,952,059.85 are unutilized and may be the proper subject of a claim for refund or issuance of tax credit certificate pursuant to Section 76 of the NIRC of 1997, as amended, which reads:

xxx xxx xxx

A perusal of petitioner's Annual ITR for CY 2013 shows that petitioner had income tax credits in the total amount of ₱50,105,118.00 consisting of the (a) prior year's excess tax credits in the amount of ₱34,878,400.00, and (b) CWT accumulated during the four quarters of CY 2013 in the aggregate amount of ₱15,226,718.00 (the sum of ₱12,611,705.00 and ₱2,615,013.00.

Petitioner claims that its RCIT due for CY 2013 in the amount of ₱7,676,632.00 was paid using a portion of its prior year's excess credits of ₱34,878,400.00. This leaves the prior year's excess tax credits in the amount of ₱27,201,768.00 and creditable taxes withheld during CY 2013 in the amount of ₱15,226,718.00 totaling ₱42,428,486.00 unutilized as of December 31, 2013, as shown below:

xxx xxx xxx

Petitioner indicated on its Annual ITR for CY 2013 its option to be issued a TCC for its excess and unutilized CWT for CY 2013. Consequently, only the prior year's excess tax credits of ₱27,201,768.00 were carried over in petitioner's Quarterly ITRs and Annual ITR for CY 2014.

To prove the existence of its prior year's excess credits of ₱34,878,400.00, petitioner presented BIR Forms No. 2307 for the years 2011 and 2012, which were accounted for by the ICPA as follows:

xxx xxx xxx

Based on the preceding tables, only the CWT of ₱13,065,607.26 and ₱13,883,935.99 for CYs 2011 and 2012, respectively, totaling ₱26,949,543.25, were properly supported by BIR Forms No. 2307, to wit:

xxx xxx xxx

However, these CWTs do not represent petitioner's excess CWTs for CYs 2011 and 2012 since petitioner reflected in its Annual ITRs for the said years, income tax due in the respective amounts of ₱14,233,716.00 and ₱12,400,630.50 or in the sum of ₱26,634,346.50. Deducting this total income tax liabilities of ₱26,634,346.50 from the CWT of ₱26,949,543.25 yields an amount of only ₱315,196.75 excess tax credits as of the end of CY 2012, as shown below:

xxx xxx xxx

As stated earlier, petitioner's properly substantiated CWT for CY 2013 amounted only to ₱1,952,059.85, which when added to the prior year's excess credits of ₱315,196.75 yields an aggregate tax credits of ₱2,267,256.60. Considering that petitioner's income tax due for CY 2013 in the amount of ₱7,676,632.00 is a lot higher than the tax credits of ₱2,267,256.60, petitioner has no excess CWT available for refund, computed below: xxx"

As held in "*Republic of the Philippines, represented by the Commissioner of Internal Revenue vs. Team (Phils.) Energy Corporation (formerly Mirant (Phils.) Energy Corporation)*",[18] it is fundamental that the findings of fact by the CTA in Division are not to be disturbed without any showing of grave abuse of discretion considering that the members of the Division are in the best position to analyze the documents presented by the parties.

Furthermore, well-settled is the rule that actions for tax refund, as in this case, are in the nature of a claim for exemption and the law is construed *strictissimi juris* against the taxpayer. The pieces of

[18] G.R. No. 188016, January 14, 2015, citing *Sea-Land Service, Inc. vs. Court of Appeals*, G.R. No. 122605, April 30, 2001.

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evidence presented entitling a taxpayer to an exemption are also *strictissimi* scrutinized and must be duly proven.[19]

Here, petitioner was not able to prove that it is entitled to an issuance of a TCC for its excess and unutilized creditable withholding taxes for CY 2013.

In sum, finding no reversible error committed by the Court in Division in rendering the Decision dated April 12, 2019 and Resolution dated September 4, 2019, the Court *En Banc* shall not disturb the Court in Division's assailed findings therein.

WHEREFORE, in light of the foregoing considerations, the *Petition for Review* is **DENIED** for lack of merit. Accordingly, the assailed Decision dated April 12, 2019 and Resolution dated September 4, 2019, both rendered by the Court in Division in CTA Case No. 9320 are **AFFIRMED *in toto***.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

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[19] *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue,* G.R. No. 159490, February 18, 2008.

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

(On Leave)
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