Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**G.R. No. 180290** Present:
-versus-	CARPIO, *J., Chairperson,* BRION, DEL CASTILLO, MENDOZA, and LEONEN, *JJ.*
PHILIPPINE NATIONAL BANK, Respondent.	**Promulgated:** SEP 29 2014

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DECISION

LEONEN, *J.*:

Before this court is a petition for review[1] under Rule 45 of the Rules of Court, seeking to annul the October 1, 2007 decision[2] and October 30, 2007 resolution[3] of the Court of Tax Appeals En Banc in C.T.A. E.B. No. 285.

The assailed decision denied petitioner's appeal and affirmed the January 30, 2007 decision[4] and May 30, 2007 resolution[5] of the First

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1 *Rollo,* pp. 12–23.

2 Id. at 29–38. The decision was penned by Associate Justice Juanito C. Castañeda, Jr., concurred in by Presiding Justice Ernesto D. Acosta and Associate Justices Lovell R. Bautista, Erlinda P. Uy, Caesar A. Casanova, and Olga Palanca-Enriquez.

3 Id. at 50–51. The resolution was penned by Associate Justice Juanito C. Castañeda, Jr., concurred in by Presiding Justice Ernesto D. Acosta and Associate Justices Lovell R. Bautista, Erlinda P. Uy, Caesar A. Casanova, and Olga Palanca-Enriquez.

4 Id. at 175–190. The decision was penned by Associate Justice Caesar A. Casanova; concurred in by Presiding Justice Ernesto D. Acosta (Chair) and Associate Justice Lovell R. Bautista.

5 Id. at 204–207. The resolution was penned by Associate Justice Caesar A. Casanova, concurred in by Presiding Justice Ernesto D. Acosta (Chair) and Associate Justice Lovell R. Bautista.

Division of the Court of Tax Appeals, granting respondent a tax refund or credit in the amount of □23,762,347.83, representing unutilized excess creditable withholding taxes for taxable year 2000. The assailed resolution denied petitioner's motion for reconsideration.

The pertinent facts are summarized in the assailed decision as follows:

> In several transactions including but not limited to the sale of real properties, lease and commissions, [respondent] allegedly earned income and paid the corresponding income taxes due which were collected and remitted by various payors as withholding agents to the Bureau of Internal Revenue ("BIR") during the taxable year 2000.
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> On April 18, 2001, [respondent] filed its tentative income tax return for taxable year 2000 which [it] subsequently amended on July 25, 2001.
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> . . . [Respondent] filed again an amended income tax return for taxable year 2000 on June 20, 2002, declaring no income tax liability . . . as it incurred a net loss in the amount of P11,318,957,602.00 and a gross loss of P745,713,454.00 from its Regular Banking Unit ("RBU") transactions. However, [respondent] had a 10% final income tax liability of P210,364,280.00 on taxable income of P1,959,931,182.00 earned from its Foreign Currency Deposit Unit ("FCDU") transactions for the same year. Likewise, in the [same] return, [respondent] reported a total amount of P245,888,507.00 final and creditable withholding taxes which was applied against the final income tax due of P210,364,280.00 leaving an overpayment of P35,524,227.00. . . .
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> . . . .
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> In its second amended return, [respondent's] income tax overpayment of P35,524,227.00 consisted of the balance of the prior year's (1999) excess credits of P9,057,492.00 to be carried-over as tax credit to the succeeding quarter/year and excess creditable withholding taxes for taxable year 2000 in the amount of P26,466,735.00 which [respondent] opted to be refunded.
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> On November 11, 2002, [respondent] . . . filed a claim for refund or the issuance of a tax credit certificate in the amount of P26,466,735.40 for the taxable year 2000 with the [BIR].
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> Due to [BIR's] inaction on its administrative claim, [respondent] appealed before [the Court of Tax Appeals] by way of a Petition for Review on April 11, 2003.[6] (Citation omitted)

On January 30, 2007, the Court of Tax Appeals First Division rendered a decision in favor of respondent as follows:

> **WHEREFORE**, premises considered, the petition is hereby

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6 Id. at 30–31.

> **GRANTED**. Accordingly, respondent is hereby **ORDERED TO REFUND** or **ISSUE A TAX CREDIT CERTIFICATE** to petitioner in the reduced amount of **Twenty Three Million Seven Hundred Sixty Two Thousand Three Hundred Forty Seven Pesos and 83/100 (P23,762,347.83)** representing unutilized excess creditable withholding taxes for taxable year 2000.[7] (Emphasis in the original)

Petitioner's motion for reconsideration was subsequently denied for lack of merit in the First Division's resolution dated May 30, 2007.

On appeal, the Court of Tax Appeals En Banc sustained the First Division's ruling. It held that the fact of withholding and the amount of taxes withheld from the income payments received by respondent were sufficiently established by the creditable withholding tax certificates, and there was no need to present the testimonies of the various payors or withholding agents who issued the certificates and made the entries therein. It also held that respondent need not prove actual remittance of the withheld taxes to the Bureau of Internal Revenue because the functions of withholding and remittance of income taxes are vested in the payors who are considered the agents of petitioner.[8]

The Court of Tax Appeals En Banc also denied petitioner's motion for reconsideration[9] in its October 30, 2007 resolution.

Hence, this instant petition was filed.

Petitioner claims that the Court of Tax Appeals "erred on a question of law in ordering the refund to respondent of alleged excess creditable withholding taxes because(:)

> A. Respondent failed to prove that the creditable withholding taxes amounting to P23,762,347.83 are duly supported by valid certificates of creditable tax withheld at source;
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> B. Respondent failed to prove actual remittance of the alleged withheld taxes to the Bureau of Internal Revenue (BIR); and
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> C. Respondent failed to discharge its burden of proving its entitlement to a refund."[10]

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7 Id. at 189–190.
8 Id. at 34 and 37.
9 Id. at 39–47.
10 Id. at. 17.

Petitioner questions the validity of respondent's certificates of creditable tax withheld at source (withholding tax certificates) and contends that even if the original certificates were offered in evidence, respondent failed to present the various withholding agents to: (1) identify and testify on their contents; and (2) prove the subsequent remittance of the withheld taxes to the Bureau of Internal Revenue. Moreover, petitioner faults respondent for presenting the withholding tax certificates only before the Court of Tax Appeals, and not at the first instance when it filed its claim for refund administratively before the Bureau of Internal Revenue.[11]

In its comment,[12] respondent counters that:

1) The petition should be dismissed for being pro forma because it does not specify the reversible errors of either fact or law that the lower courts committed, and the arguments raised are all rehash and purely factual;

2) It complied with all the requirements for judicial claim for refund of unutilized creditable withholding taxes;

3) The fact of withholding was sufficiently established by the 622 creditable withholding tax certificates, primarily attesting the amount of taxes withheld from the income payments received by respondent. Furthermore, to present to the court all the withholding agents or payors to identify and authenticate each and every one of the 622 withholding tax certificates would be too burdensome and would unnecessarily prolong the trial of the case; and

4) Respondent need not prove the actual remittance of withheld taxes to the Bureau of Internal Revenue because the remittance is the responsibility of the payor or withholding agent and not the payee.

In its reply,[13] petitioner maintains that claims for refund are strictly construed against the claimant, and "it is incumbent upon respondent to discharge the burden of proving . . . the fact of withholding of taxes and their subsequent remittance to the Bureau of Internal Revenue."[14]

In the resolution dated February 2, 2009,[15] the court resolved to give

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11 Id. at 19–21.
12 Id. at 215–256.
13 Id. at 309–313.
14 Id. at 310.
15 Id. at 315.

due course to the petition and decide the case according to the pleadings already filed.

The petition, however, should be denied.

The petition is but a reiteration of reasons and arguments previously set forth in petitioner's pleadings before the Court of Tax Appeals En Banc, and which the latter had already considered, weighed, and resolved before it rendered its decision and resolution now sought to be set aside.

Furthermore, the questions on whether respondent's claim for refund of unutilized excess creditable withholding taxes amounting to □23,762,347.83 were duly supported by valid certificates of creditable tax withheld at source and whether it had sufficiently proven its claim are questions of fact. These issues require a review, examination, evaluation, or weighing of the probative value of evidence presented, especially the withholding tax certificates, which this court does not have the jurisdiction to do, barring the presence of any exceptional circumstance, as it is not a trier of facts.[16]

Besides, as pointed out by respondent, petitioner did not object to the admissibility of the 622 withholding tax certificates when these were formally offered by respondent before the tax court.[17] Hence, petitioner is deemed to have admitted the validity of these documents.[18] Petitioner's "failure to object to the offered evidence renders it admissible, and the court cannot, on its own, disregard such evidence."[19]

At any rate, the Court of Tax Appeals First Division and En Banc uniformly found that respondent has established its claim for refund or issuance of a tax credit certificate for unutilized excess creditable withholding taxes for the taxable year 2000 in the amount of □23,762,347.83. The Court of Tax Appeals First Division thoroughly passed upon the evidence presented by respondent and the report of the court-commissioned auditing firm, SGV & Co., and found:

> [O]ut of the total claimed creditable withholding taxes of P26,466,735.40, [respondent] was able to substantiate only the amount of P25,666,064.80 [sic], computed as follows:
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> Amount of Claimed Creditable Taxes Withheld P26,466,735.40
> Less: 1.) Certificates which do not bear any

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16 *Far East Bank and Trust Company v. Court of Appeals*, 513 Phil. 148, 157 (2005) [Per J. Azcuna, First Division].

17 *Rollo*, pp. 229 and 236.

18 Id.

19 *Asian Construction and Development Corporation v. COMFAC Corporation*, 535 Phil. 513, 517–518 (2006) [Per J. Quisumbing, Third Division].

	date or period when the indicated creditable taxes were withheld	48,600.00
2.)	Certificates dated outside the period of claim	730,151.10
3.)	Certificate without indicated amount of tax withheld	8,794.50
4.)	Certificates taken-up twice	9,000.00
Substantiated Creditable Taxes Withheld		**P25,670,189.80**

. . . .

[O]ut of the claimed amount of P25,670,189.80 supported by valid certificates, only the creditable withholding taxes of P23,762,347.83, the related income of which were verified to have been recorded in [respondent's] general ledger and reported in [respondent's] income tax return either in the year 1999, 2000 or 2001, satisfied the third requisite, computed as follows:

Creditable Taxes Withheld With Valid Certificates		P25,670,189.80
Less:	Creditable Taxes Withheld, the related income of which was not verified against the general ledger	1,907,841.97
Refundable Excess Creditable Taxes Withheld		**P23,762,347.83**[20]

(Emphasis supplied)

This court accords respect to the conclusion reached by the Court of Tax Appeals and will not presumptuously set it aside absent any showing of gross error or abuse on its part.[21]

The certificate of creditable tax withheld at source[22] is the competent proof to establish the fact that taxes are withheld.[23] It is not necessary for the person who executed and prepared the certificate of creditable tax withheld at source to be presented and to testify personally to prove the authenticity of the certificates.[24]

In *Banco Filipino Savings and Mortgage Bank v. Court of Appeals*,[25]

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20 *Rollo*, pp. 187–189.

21 *Far East Bank and Trust Company v. Court of Appeals*, 513 Phil. 148, 154 (2005) [Per J. Azcuna, First Division]; *Philippine Refining Company v. Court of Appeals*, 326 Phil. 680, 689 (1996) [Per J. Regalado, Second Division].

22 Now BIR Form No. 2307.

23 Sec. 10 of Revenue Regulation No. 6-85, as amended by Revenue Regulation No. 12-94 provides:
Sec. 10. Claim for Tax Credit or Refund. – (a) Claims for Tax Credit or Refund of income tax deducted and withheld on income payments shall be given due course only when it is shown on the return that the income payment received 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***. (Emphasis supplied)
Far East Bank and Trust Company v. Court of Appeals, 513 Phil. 148, 155 (2005) [Per J. Azcuna, First Division].

24 *CIR v. Team (Philippines) Operations Corporation*, G.R. No. 179260, April 2, 2014, <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2014/april2014/179260.pdf> [Per J. Perez, Second Division]; *CIR v. TeaM (Philippines) Operations Corporation*, G.R. No. 185728, October 16, 2013, 707 SCRA 467, 479 [Per J. Villarama, Jr., First Division]; *CIR v. Mirant (Philippines) Operations, Corporation*, G.R. No. 171742, June 15, 2011, 652 SCRA 80, 98 [Per J. Mendoza, Second Division].

25 548 Phil. 32 (2007) [Per J. Austria-Martinez, Third Division].

this court declared that a certificate is complete in the relevant details that would aid the courts in the evaluation of any claim for refund of excess creditable withholding taxes:

> In fine, the document which may be accepted as evidence of the third condition, that is, 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.
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> At the time material to this case, the requisite information regarding withholding taxes from the sale of acquired assets can be found in BIR Form No. 1743.1. As described in Section 6 of Revenue Regulations No. 6-85, BIR Form No. 1743.1 is a written statement issued by the payor as withholding agent showing the income or other payments made by the said withholding agent during a quarter or year and the amount of the tax deducted and withheld therefrom. It readily identifies the payor, the income payment and the tax withheld. **It is complete in the relevant details which would aid the courts in the evaluation of any claim for refund of creditable withholding taxes.**[26] (Emphasis supplied, citations omitted)

Moreover, as correctly held by the Court of Tax Appeals En Banc, the figures appearing in the withholding tax certificates can be taken at face value since these documents were executed under the penalties of perjury, pursuant to Section 267 of the 1997 National Internal Revenue Code, as amended, which reads:

> SEC. 267. Declaration under Penalties of Perjury. – Any declaration, return and other statements required under this Code, shall, in lieu of an oath, contain a written statement that they are made under the penalties of perjury. Any person who willfully files a declaration, return or statement containing information which is not true and correct as to every material matter shall, upon conviction, be subject to the penalties prescribed for perjury under the Revised Penal Code.

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.

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

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[26] Id. at 39–40.

not the payee-refund claimant such as respondent, who is vested with the responsibility of withholding and remitting income taxes.

This court's ruling in *Commissioner of Internal Revenue v. Asian Transmission Corporation*,[27] citing the Court of Tax Appeals' explanation, is instructive:

> . . . 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 . . . 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.[28]

Finally, petitioner's allegation that the submission of the certificates of withholding taxes before the Court of Tax Appeals was late is untenable. The samples of the withholding tax certificates attached to respondent's comment bore the receiving stamp of the Bureau of Internal Revenue's Large Taxpayers Document Processing and Quality Assurance Division.[29] As observed by the Court of Tax Appeals En Banc, "[t]he Commissioner is in no position to assail the authenticity of the CWT certificates due to PNB's alleged failure to submit the same before the administrative level since he could have easily directed the claimant to furnish copies of these documents, if the refund applied for casts him any doubt."[30] Indeed, petitioner's inaction prompted respondent to elevate its claim for refund to the tax court.

More importantly, the Court of Tax Appeals is not precluded from accepting respondent's evidence assuming these were not presented at the administrative level. Cases filed in the Court of Tax Appeals are litigated *de novo*.[31] Thus, respondent "should prove every minute aspect of its case by

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27 G.R. No. 179617, January 19, 2011, 640 SCRA 189 [Per J. Mendoza, Second Division].
28 Id. at 201.
29 *Rollo*, pp. 281–285.
30 Id. at 35.
31 *CIR v. Manila Mining Corporation*, 505 Phil. 650, 664 (2005) [Per J. Carpio Morales, Third Division]; *C.F. Sharp & Company, Inc. v. Commissioner of Customs*, 130 Phil. 777, 782 (1968) [Per J. J.P.

presenting, formally offering and submitting . . . to the Court of Tax Appeals [all evidence] . . . required for the successful prosecution of [its] administrative claim."[32]

WHEREFORE, the petition is **DENIED**.

MARVIC M.V.F. LEONEN
Associate Justice

WE CONCUR:

ANTONIO T. CARPIO
Associate Justice
Chairperson

ARTURO D. BRION
Associate Justice

MARIANO C. DEL CASTILLO
Associate Justice

JOSE C. MENDOZA
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ANTONIO T. CARPIO
Acting Chief Justice

Bengzon, En Banc].

32 *Atlas Consolidated Mining and Development Corporation v. CIR*, 547 Phil. 332 (2007) [Per J. Corona, First Division]. *See also Dizon v. Court of Tax Appeals*, 576 Phil. 110, 128 (2008) [Per J. Nachura, Third Division].