Republic of the Philippines
Supreme Court
Manila

**FIRST DIVISION**

# NOTICE

Sirs/Mesdames:

*Please take notice that the Court, First Division, issued a Resolution dated* **December 10, 2019** *which reads as follows:*

**"G.R. No. 233375 - *Commissioner of Internal Revenue v. Mckinsey & Co. [Phils.]***

Before us is the Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court, of the Commissioner of Internal Revenue (CIR) seeking the reversal of the Decision[2] dated February 27, 2017 and the Resolution[3] dated July 24, 2017 rendered by the Court of Tax Appeals (CTA) *En Banc* in CTA-E.B. No. 1368.

The facts follow.

McKinsey & Co. Phils. (respondent) is a corporation organized and existing under the laws of the State of Delaware, United States of America, with principal place of business at 1209 Orange Street, Wilmington, Delaware 19801 U.S.A. It is authorized to transact business in the Philippines as a branch office, to engage primarily in management consultancy services. Its branch office, located at 29F Equitable Bank Tower, 8754 Paseo de Roxas, Makati City, is registered with the Bureau of Internal Revenue (BIR) District Office No. 50-South Makati.[4]

Respondent filed its annual Income Tax Return (ITR) for calendar year (CY) 2009 on April 15, 2010, reporting an annual

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1 *Rollo*, pp. 12-44.

2 Penned by Associate Justice Caesar A. Casanova, with Presiding Justice Juanito C. Castañeda, Jr., and Associate Justices Roman G. Del Rosario, Lovell R. Bautista, Erlinda P. Uy, Esperanza R. Fabon-Victorino, Cielito N. Mindaro-Grulla, Ma. Belen M. Ringpis-Liban, and Catherine T. Manahan, concurring; id. at 45-58.

3 Id. at 59-61.

4 Id. at 45-46.

income tax due of ₱926,359.00, representing its Minimum Corporate Income Tax (MCIT). This was paid using a portion of respondent's Prior Year's Excess Credits other than MCIT. On April 14, 2011, respondent filed its annual ITR for CY 2010, reporting an annual income tax due of ₱1,952,092.00. This was also paid using respondent's Prior Year's Excess Credits other than MCIT. At the end of CY 2009 and 2010, respondent had an unutilized creditable withholding tax (CWT) in the amounts of ₱24,104,577.00 and ₱38,382,260.00, respectively. In both years, respondent opted for a refund of its CWT.[5] Hence, on March 29, 2012, respondent filed an administrative claim for refund with the BIR District Office No. 50-South Makati of its excess CWT for CY 2009 and 2010, in the amount of ₱62,476,710.65.[6]

On April 13, 2012, respondent filed a Petition for Review[7] with the CTA, alleging inaction on the part of the CIR. As special and affirmative defenses, the CIR interposed that: respondent's claim for refund is still subject to investigation by the BIR; respondent has no basis for refund, either in fact or in law, due to its failure to show any evidence that the tax was erroneously or illegally collected; and, respondent did not fully substantiate its claim for refund by proper documents, such as sales invoices, official receipts and others.[8]

On April 17, 2015, the CTA-Third Division promulgated a Decision[9] granting respondent's Petition for Review. It found that: respondent timely filed its administrative and judicial claims for refund;[10] respondent presented Certificates of Creditable Tax Withheld at Source (BIR Form No. 2307) duly issued by its various clients to establish the fact of withholding;[11] and, respondent declared in its annual ITRs for CY 2009 and 2010 the gross income related to the substantiated CWT for the years 2009 and 2010.[12] Thus, the dispositive portion reads:

> **WHEREFORE**, premises considered, the instant Petition for Review is hereby **GRANTED.** Accordingly, respondent is hereby **ORDERED TO REFUND** in favor of petitioner the amount of ₱62,476,710.65 representing its unutilized excess tax credits for calendar years 2009 and 2010.

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5 Id. at 46-47.
6 Id. at 51; total amount is ₱62,486,837.00, but respondent claimed the refund of the lower amount of ₱62,476,710.65.
7 Id. at 69-84.
8 Id. at 92-93.
9 Id. at 111-129.
10 Id. at 121.
11 Id. at 122.
12 Id. at 128.

**SO ORDERED.**[13]

In a Resolution[14] dated September 24, 2015, the CTA-Third Division denied the CIR's Motion for Reconsideration.[15]

On appeal,[16] the CTA *En Banc* affirmed the ruling of the CTA-Third Division through the presently assailed Decision,[17] which in part reads:

> After a careful perusal and thorough evaluation of the arguments proffered by both parties, We find the Petition for Review unmeritorious.
>
> The arguments advanced by petitioner in his Petition for Review are mere rehash of the arguments in his Memorandum and Motion for Reconsideration, filed in CTA Case No. 8472 before the CTA-Third Division.
>
> We sustain the CTA-Third Division ruling in the Assailed Decision granting herein respondent's Petition for Review and ordering petitioner herein to refund in favor of respondent the amount of ₱62,476,710.65 representing its unutilized excess tax credits for calendar years 2009 and 2010.
>
> We, likewise, uphold the exhaustive discussion of the CTA-Third Division in the Assailed Resolution disposing the same issues/arguments proffered by petitioner in the instant Petition for Review.
>
> Finding no cogent reason to reverse or deviate from the Assailed Decision and Assailed Resolution, We deny petitioner's Petition for Review for lack of merit.
>
> **SO ORDERED.**[18]

Subsequently, the CTA *En Banc* rendered a Resolution[19] dated July 24, 2017 denying the CIR's Motion for Reconsideration[20] for lack of merit. Hence, the CIR's present recourse as petitioner before us.

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13 Id. at 129.
14 Id. at 138-143.
15 Id. at 138-143.
16 Id. at 144-151.
17 Supra note 2.
18 *Rollo*, pp. 51-52.
19 Supra note 3.
20 *Rollo*, pp. 62-67.

The CIR contends that the CTA-Third Division acted without jurisdiction in ordering it to refund respondent's claim for CWT for CY 2009 and 2010, despite respondent's failure to observe the waiting period of 120 days under Section 112 of the National Internal Revenue Code (NIRC) of 1997, as amended.[21] The CTA *En Banc* allegedly erred in affirming the CTA-Third Division's finding that respondent complied with the requirements for refund, as respondent allegedly failed to submit the official receipts pertinent to its claim.[22]

Respondent, in its Comment/Opposition to the Petition for Review,[23] counters that, contrary to the claim of petitioner, Section 112 of the NIRC only applies to claims for refund of excess input value-added tax (VAT) attributable to zero-rated sales, and does not apply to claims for refund of erroneously paid taxes covered by Section 229 of the NIRC.[24] Further, it insists that it has complied with all the required evidence to prove its claim for refund and all the requirements for the grant of its claim.[25]

The issues[26] raised concerning respondent's compliance with both the jurisdictional and documentary requirements for the refund of CWT sum up as whether or not the CTA *En Banc* erred in upholding the Decision of the CTA-Third Division granting respondent's claim for refund.

We deny the petition.

It is the CIR's erroneous reliance on the applicability of Section 112 of the NIRC that set off the entire case. The refund claimed by respondent is not an unutilized input VAT based on zero-rated sales, but a CWT governed by Sections 204 and 229 of the NIRC on the refund of erroneously or illegally collected taxes. *Commissioner of Internal Revenue v. Mirant Pagbilao Corporation*[27] explains that Section 112 of the NIRC is the applicable provision in determining the start of the two-year period for claiming a refund of unutilized input VAT, while Sections 204 and 229 of the NIRC applies to instances of erroneous payment or illegal collection of internal revenue taxes. As may be gleaned from *Commissioner of Internal*

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21 Id. at 30.
22 Id. at 33.
23 Id. at 162-166.
24 Id. at 162-164.
25 Id. at 164-165.
26 Id. at 29-30.
27 586 Phil. 712, 731-733 (2008).

*Revenue v. Ironcon Builders and Development Corp.*,[28] excessive income taxes withheld during the course of the taxable year take on the nature of erroneously collected taxes at the end of the taxable year.

Jurisprudence has consistently dealt with claims for refund of CWT following Sections 204 and 229 of the NIRC.[29] Clearly, CWT has been treated as a subject of a taxpayer's remedy of refund under the said sections and not Section 112 of the NIRC. As established by this Court in *Commissioner of Internal Revenue v. Far East Bank,*[30] the jurisdictional and documentary requirements of a claim for refund of CWT, following Section 229 of the NIRC, only require the following to be substantiated:

1) The claim must be filed with the CIR within the two-year period from the date of payment of the tax;
2) It must be shown on the return that the income received was declared as part of the gross income; and
3) The fact of withholding must be 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.

Considering that respondent filed its annual ITRs for CY 2009 and 2010 on April 15, 2010 and April 14, 2011, respectively, it had until April 15, 2012 and April 14, 2013 within which to file a claim for refund.[31] Here, the administrative claim that was filed with the BIR on March 29, 2012 and the judicial claim that was filed with the CTA on April 13, 2012 were well within the prescribed period.[32] As correctly appreciated by the CTA, respondent timely filed its administrative and judicial claims for refund.

Nothing prohibits respondent from filing a judicial claim before the investigation by the BIR could be finished. As early as *Collector of Internal Revenue v. Sweeney,*[33] we have pronounced that taxpayers need not wait for the action of the Collector of Internal Revenue on the request for refund before taking the matter to Court. In *Gibbs v. CIR,*[34] we pointed out that if the CIR takes time in deciding the claim,

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28 625 Phil. 644, 650 (2010), citing *Citibank N.A. v. Court of Appeals*, 345 Phil. 695, 708-709 (1997).
29 629 Phil. 405 (2010); *ACCRA Investments Corp. v. Court of Appeals*, 281 Phil. 1060 (1991).
30 *CIR v. Far East Bank*, 629 Phil. 405, 412 (2010), citing *Banco Filipino Savings Bank v. Court of Apppeals,* 548 Phil. 32, 36-37 (2007).
31 *Rollo*, p. 121.
32 Id. at 47.
33 106 Phil. 59, 63 (1959).
34 *Gibbs v. CIR*, 107 Phil. 232, 237 (1960), citing the doctrine that delay of the Collector in rendering decision does not extend the peremptory period fixed by the statute.

and the period of two years is about to end, the suit or proceeding must be started in the Court of Tax Appeals before the end of the two-year period without awaiting the decision of the CIR. Thus, a suit or proceeding in the CTA may be started without awaiting the decision of the CIR for claims falling under Section 204 and 229 of the NIRC. The CTA, through its Third Division, properly exercised jurisdiction on respondent's claim for refund.[35]

As to the issues on the documentary and evidentiary requirements, these require a review of the facts and an examination of the evidence presented, which were thoroughly reviewed and discussed exhaustively by the CTA. This Court accords the findings of fact by the CTA with the highest respect, and its conclusions will not be overturned unless there has been an abuse or improvident exercise of authority,[36] which we find absent here. Nevertheless, if only to address petitioner's claims, there appears no cogent reason to reverse the factual findings of the CTA.

*First*, the CTA did not solely rely on the judicial affidavit of respondent's accounting officer, Ms. Maria Cristina O. Alon, and the General Ledger Transaction Detail. Respondent's annual ITRs for CY 2009 and 2010 were presented, which petitioner does not deny.[37] As properly determined by the CTA, respondent had sufficiently shown on the returns that the income received was declared as part of the gross income.

*Second*, the application of the invoicing requirements is not proper here, as Section 113 of the NIRC is under the VAT provisions. To stress, the subject of this case does not involve VAT, but income tax withheld. This was found to be substantiated through the billing invoices and official receipts that respondent issued for the services it rendered.[38]

All told, we find no reversible error on the part of the Court of Tax Appeals *En Banc* when it upheld the April 17, 2015 Decision of its Third Division ordering the refund to respondent of its unutilized creditable withholding tax in the amount of ₱62,476,710.65.

**WHEREFORE**, the instant petition is hereby **DENIED.**

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35 *CIR v. Far East Bank*, 629 Phil. 405, 412 (2010), citing *Banco Filipino Savings v. Court of Appeals*, 548 Phil. 32, 36-37 (2007).
36 *Barcelon, Roxas Securities v. CIR*, 529 Phil. 785, 794-795 (2006).
37 *Rollo*, p. 122.
38 Id. at 142.

**SO ORDERED."**

Very truly yours,

**LIBRADA C. BUENA**
Division Clerk of Court
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