

REPUBLIC OF THE PHILIPPINES  
COURT OF TAX APPEALS  
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, CTA **EB NO. 2416**  
(CTA Case No. 9771)  
*Petitioner,*

Present:

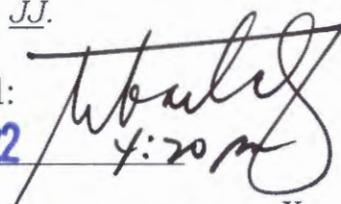
*-versus-*

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

SONOMA SERVICES, INC.,  
*Respondent.*

Promulgated:

**JUN 16 2022**



A handwritten signature in black ink is written over a blue date stamp that reads 'JUN 16 2022'. Below the signature, the time '4:20 PM' is handwritten in black ink.

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**DECISION**

**MANAHAN, J.:**

Before the Court of Tax Appeals *En Banc* is the instant Petition for Review<sup>1</sup> filed on January 28, 2021, seeking the reversal of the Decision dated July 21, 2020 and the Resolution dated December 16, 2020, promulgated by the Third Division of this Court (Court in Division) in CTA Case No. 9771 entitled, *Sonoma Services, Inc. vs. Commissioner of Internal Revenue* the dispositive portions of which read as follows:

**Decision dated July 21, 2020**

**“WHEREFORE,** in light of the foregoing considerations, the instant Petition for Review is **GRANTED**. Accordingly, respondent is hereby **ORDERED TO REFUND OR TO ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the amount of **FIVE MILLION THREE HUNDRED SIXTY SIX**

<sup>1</sup> EB Docket, pp. 1-9. 

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**THOUSAND THREE HUNDRED THREE PESOS AND FIFTY SEVEN CENTAVOS (P5,366,303.57)** representing its excess and unutilized CWT for CY 2016.

**SO ORDERED.”**

**Resolution dated December 16, 2020**

“**WHEREFORE**, premises considered, the instant Motion for Reconsideration is hereby **DENIED** for lack of merit.

**SO ORDERED.”**

**THE FACTS**

Petitioner is the duly appointed Commissioner of Internal Revenue empowered to perform the duties of his office, including, among others, to act on and approve claims for refund or tax credit as provided by law. He holds office at the 5<sup>th</sup> Floor, BIR National Office Building, Agham Road, Diliman, Quezon City.

Respondent is a domestic corporation duly organized and existing under the laws of the Republic of the Philippines, with principal office at the 3rd Floor, Makati Stock Exchange Building, Ayala Triangle, Ayala Avenue, Makati City.<sup>2</sup>

On April 15, 2017, respondent filed with the Bureau of Internal Revenue (BIR) through the Electronic Filing and Payment System (eFPS), an original/tentative Annual Income Tax Return (AITR) for calendar year (CY) 2016.<sup>3</sup>

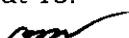
On April 18, 2017, respondent filed with the BIR through the eFPS, an Amended AITR for CY 2016.<sup>4</sup>

On September 8, 2017, respondent filed with the BIR Revenue District Office (RDO) No. 50, an administrative claim for refund of excess and unutilized creditable

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<sup>2</sup> EB Docket, Decision dated July 21, 2020, page 15.

<sup>3</sup> Id at 16.

<sup>4</sup> Id. 

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withholding tax (CWT) for CY 2016 in the amount of P5,366,303.57.<sup>5</sup>

On January 24, 2018, respondent received a letter from the BIR, RDO No. 50, denying its administrative claim for refund in the amount of P5,366,303.57. On February 13, 2018, respondent filed with the BIR, RDO No. 50, a request for reconsideration of the denial of its administrative claim for refund of excess and unutilized CWT for CY 2016.<sup>6</sup>

Petitioner did not act on respondent's request for reconsideration, hence the latter filed a Petition for Review with the Court on February 22, 2018.<sup>7</sup>

After trial, the Court rendered the assailed Decision dated July 21, 2020, granting the claim for refund of excess/unutilized CWT of respondent for CY 2016.

Records show that petitioner received a copy of the Decision of the Court in Division on August 26, 2020.

On September 11, 2020, petitioner posted a Manifestation with Motion to Admit Motion for Reconsideration<sup>8</sup> which was granted by the Court in a Resolution dated September 29, 2020.<sup>9</sup>

On November 9, 2020, respondent filed a Motion for Reconsideration (Re: Resolution Dated September 29, 2020) with Comment *Ad Cautelam* to Respondent's MR.

On December 16, 2020, the Court in Division issued a Resolution denying petitioner's Motion for Reconsideration.<sup>10</sup>

A copy of the Resolution dated December 16, 2020 was received by petitioner on January 13, 2021.<sup>11</sup>

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<sup>5</sup> Id.

<sup>6</sup> Id.

<sup>7</sup> Id at 17

<sup>8</sup> Division Docket, Volume II, pp. 690-693.

<sup>9</sup> Division Docket, Volume II, page 703.

<sup>10</sup> Division Docket, Volume II, pp. 727-729.

<sup>11</sup> Division Docket, Volume II, page 726. 

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The instant Petition for Review was filed by petitioner with the Court *En Banc* on January 28, 2021.<sup>12</sup>

On February 24, 2021, respondent was ordered to file its Comment to the Petition for Review within ten (10) days from notice.

On March 12, 2021, respondent posted its *Comment (Re: Petition for Review Dated January 21, 2021)* which was received by the Court on May 20, 2021.<sup>13</sup>

In a Resolution dated June 16, 2021, the instant case was submitted for decision.

**THE ISSUE**

The principal issue in this case is whether or not the Court in Division erred in granting the claim for refund of herein respondent consisting of alleged excess and unutilized CWT for CY 2016.

**Petitioner's Arguments:**

Petitioner submits the following grounds for the reversal of the assailed Decision, to wit:

“1. Respondent evidently failed to comply with the requirements under Revenue Regulations No. 2-98, as amended by Revenue Regulations No. 2-2006, on the claim for refund of its excess/unutilized creditable income taxes withheld for taxable year 2016.

2. Proof of actual remittance to the BIR of the withheld taxes and testimonial evidence of the payors and withholding agents is required.”<sup>14</sup>

On the first ground, petitioner contends that respondent failed to present the Summary Alphalist of Withholding Agents of Income Payments Subjected to Withholding Tax (SAWT) and Monthly Alphalist of Payees (MAP) pursuant to Revenue

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<sup>12</sup> EB Docket, pp. 1-9.

<sup>13</sup> EB Docket, pp. 51-65.

<sup>14</sup> EB Docket, p. 4. *am*

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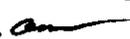
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Regulations (RR) No. 2-98 and RR No. 2-2006 in support of its claim for refund for CY 2016.

On the second ground, petitioner insists that respondent's failure to submit proof of actual remittance to the BIR of the withheld taxes is fatal to its claim for refund. Petitioner posits that the act of withholding is one thing while the act of remittance is another thing and that the best evidence of actual remittance is the certification issued by the BIR's Revenue Accounting Division (RAD) which respondent did not offer as evidence during trial. Petitioner also points out the alleged failure of respondent to present the various payors and withholding agents during trial to establish the fact of withholding and remittances made which all the more emphasizes the erroneous conclusion of the Court to grant respondent's claim for refund.

**Respondent's Counter-Arguments:**

In its Comment to the Petition for Review, respondent primarily contends that the assailed Decision has already become final and executory in view of petitioner's failure to file his motion for reconsideration within the fifteen (15) day period provided under Section 1, Rule 15 of the Revised Rules of the Court of Tax Appeals (RRCTA). Respondent elaborates that petitioner received a copy of the assailed Decision dated July 21, 2020 on August 26, 2020 and had fifteen (15) days from said date or until September 10, 2020 within which to file a Motion for Reconsideration. Respondent goes on to narrate that petitioner only filed his motion for reconsideration on September 11, 2020 which is one day late from the last day of filing thus depriving this Court of the requisite jurisdiction.

In response to the main arguments of petitioner, respondent asserts that the Certificates of Creditable Tax Withheld at Source issued by the withholding agents constitute sufficient proof of the existence and validity of a taxpayer's CWT and alleges that in a long line of cases, the Supreme Court has ruled that proof of actual remittance of CWT to the BIR is not a requirement for proving entitlement to a claim for refund of excess and unutilized CWTs. It also points out the untenability of petitioner's contention that it is required to present a certification from the BIR's RAD as well as the testimonial evidence of each of its various payors/withholding agents, to prove the fact of withholding and actual remittance to the BIR of the taxes withheld. 

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**RULING OF THE COURT EN BANC**

The Court will first rule on the issue of jurisdiction raised by respondent in view of petitioner's failure to comply with the fifteen (15) day period to file a timely motion for reconsideration.

Records show that petitioner received a copy of the assailed Decision on August 26, 2020 and subsequently posted a Manifestation with Motion to Admit Motion for Reconsideration on September 11, 2020 which was received by the Court in Division on September 18, 2020. In his Manifestation with Motion, petitioner acknowledged that he had until September 10, 2020 to file a motion for reconsideration on the Decision of the Court in Division dated July 21, 2020 but was prevented from filing a timely motion for reconsideration due to a possible exposure to a personnel from their office who tested positive for the Covid-19 virus which required the close contacts of said personnel to undergo the mandatory quarantine and swab testing, including counsel. Petitioner further alleged that his counsel became aware of the date of receipt of the assailed Decision only on September 11, 2021 when she reported for work after undergoing the mandatory quarantine.

The Court in Division in its Resolution dated September 29, 2020 granted petitioner's Manifestation with Motion to Admit Motion for Reconsideration and admitted his Motion for Reconsideration. In another Resolution dated January 20, 2021, the Court in Division, in response to respondent's Motion for Reconsideration (Re: Resolution dated September 29, 2020) denied said motion and reiterated its admission of petitioner's Motion for Reconsideration in this manner and we quote:

**"It is settled that under exceptional circumstances, when stringent application of the rules will result in manifest injustice, the Court may set aside the technicalities and proceed with the appeal. Thus, the Supreme Court has had the occasion to recognize the broader interest of justice and give due course to the appeal, even if it was a wrong mode of appeal and was even filed beyond the reglementary period provided by the rules."**<sup>15</sup> (emphasis supplied)

The Court *En Banc* sees no reason to deviate from the afore-quoted ruling of the Court in Division and affirm the admission of petitioner's Motion for Reconsideration which

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<sup>15</sup> Court in Division Docket, Volume II, pp. 736-738. 

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forestalled the assailed Decision from becoming final and executory.

We now proceed with the determination of the merits of the case.

The grounds adduced by petitioner revolve around the alleged failure of respondent to comply with the evidentiary standards of claiming a refund of excess CWT, i.e., submission of documents prescribed under RR No. 2-98 as amended by RR No. 2-2006 and failure to submit proof of actual remittance to the BIR of the withheld taxes.

We find no merit in the Petition for Review.

Claims for refund of alleged excess and/or unutilized CWT finds legal basis in Section 76 of the 1997 National Internal Revenue Code (NIRC), as amended, quoted hereunder for reference:

Section 76. *Final Adjustment Return* . – Every corporation liable to tax under Section 27 shall file a final adjustment return covering the total taxable income for the preceding calendar or fiscal year. If the sum of the quarterly tax payments made during the said taxable year is not equal to the total tax due on the entire taxable income of that year, the corporation shall either:

- (A) Pay the balance of the tax still due; or
- (B) Carry over the excess credit; or
- (C) Be credited or refunded with the excess amount paid, as the case may be.

In case the corporation is entitled to a tax credit or refund of the excess estimated quarterly income taxes paid, the excess amount shown on its final adjustment return may be carried over and credited against the estimated quarterly income tax liabilities for the taxable quarters of the succeeding taxable years. Once the option to carry over and apply the excess quarterly income tax due for the taxable quarters of the succeeding taxable years has been made, such option shall be considered irrevocable for that taxable period and no application for cash refund or issuance of a tax credit certificate shall be allowed therefor.”

As implemented by Section 2.58.3 of RR No. 2-98, the requisites for claiming refund or a Tax Credit Certificate (TCC) for unutilized CWT are as follows: 

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1. The claim for refund must be filed with the Commissioner of Internal Revenue within the two (2) - year prescriptive period from the date of payment of the tax, as prescribed under Section 204 (C), in relation to Section 229 of the 1997 NIRC, as amended;
2. It must be shown in the return of the recipient that the income payment 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 therefrom.

The above requisites have been well established in jurisprudence<sup>16</sup> and have been applied, time and again, in determining a taxpayer's entitlement to a refund of excess CWT. Using the same evidentiary standards, the Court in Division studied the evidence adduced by respondent and found that it has complied with the legal requirements and jurisprudential pronouncements for the grant of the claim for refund or issuance of a TCC for its excess/unutilized CWT.

Petitioner's contention that respondent should have submitted the SAWT and the MAPs finds no basis in law and jurisprudence as what is required is the submission of a copy of the withholding tax statement issued by the payor to the payee showing the amount paid and the amount of tax withheld therefrom which refers to the Certificate of Creditable Tax Withheld (BIR Form No. 2307).

Petitioner's additional contention that respondent should have submitted the certification from the BIR's RAD to prove the fact of remittance of the tax withheld is likewise untenable as it is well settled that the taxpayer does not have to prove actual remittance of the taxes to the BIR and that it is sufficient that the certificate of creditable tax withheld at source is presented in evidence to prove that taxes were indeed withheld.

Sections 2.58 (B) and 2.58.3 of RR No. 2-98 which implemented Section 76 of the 1997 NIRC, as amended, outline the ways and means to establish the fact of withholding, thus:

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<sup>16</sup> *Banco Filipino Savings and Mortgage Bank vs. CA*, G.R. No. 155682, March 27, 2007; *Calamba Steel Center, Inc. vs. CIR*, G.R. No. 151857, April 28, 2005; *Citibank, N.A. vs. CA*, G.R. No. 107434, October 10, 1997; *ACCRA Investments Corp. vs. CA, et al.*, G.R. No. 96322, December 20, 1991. *am*

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“Section 2.58. *Returns and Payment of Taxes Withheld at Source.* –

(A) xxx

(B) *Withholding tax statement for taxes withheld.* – Every payor required to deduct and withhold taxes under these regulations shall furnish each payee, whether individual or corporate, with a withholding tax statement, using the prescribed form (BIR For 2307) showing the income payments made and the amount of taxes withheld therefrom, for every month of the quarter within twenty (20) days, following the close of the taxable quarter employed by the payee in filing his/its quarterly income tax return. Upon request of the payee, however, the payor must furnish such statement to the payee simultaneously with the income payment. For final withholding taxes, the statement should be given to the payee on or before January 31 of the succeeding year.

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xxx

Section 2.58.3. *Claim for Tax Credit or Refund.* – (A) The amount of creditable tax withheld shall be allowed as a tax credit against the income tax liability of the payee in the quarter of the taxable year in which income was earned or received.

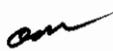
(B) Claims for tax credit or refund of any creditable income tax which was deducted and withheld on income payments shall be given due course only when it is shown that the income payment has been declared as part of the gross income and the fact of withholding is established by a copy of the withholding 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.”

The Supreme Court, in the case of *Commissioner of Internal Revenue vs. Philippine National Bank*,<sup>17</sup> ruled on the matter, in this wise, thus:

“The certificate of creditable tax withheld at source is the competent proof to establish the fact that taxes are withheld. **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 authenticity of the certificates.**

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<sup>17</sup> G.R. No. 180290, September 29, 2014. 

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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 not the payee-refund claimant such as respondent, who is vested with the responsibility of withholding and remitting income taxes.**" (emphases supplied)

**WHEREFORE**, in light of the foregoing considerations, the Petition for Review is **DENIED** for lack of merit. The assailed Decision dated July 21, 2020 and the Resolution dated December 16, 2020 are hereby **AFFIRMED**.

**SO ORDERED.**

  
**CATHERINE T. MANAHAN**  
Associate Justice

**WE CONCUR:**

  
**ROMAN G. DEL ROSARIO**  
Presiding Justice

  
**JUANITO C. CASTANEDA, JR.**  
Associate Justice

  
**ERLINDA P. UY**  
Associate Justice

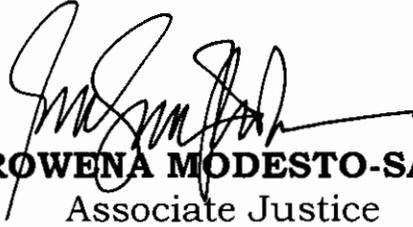
  
**MA. BELEN M. RINGPIS-LIBAN**  
Associate Justice

  
**JEAN MARIE A. BACORRO-VILLENA**  
Associate Justice

**DECISION**

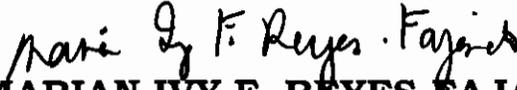
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**MARIA ROWENA MODESTO-SAN PEDRO**

Associate Justice



**MARIAN IVY F. REYES-FAJARDO**

Associate Justice



**LANEE S. CUI-DAVID**

Associate Justice

**CERTIFICATION**

Pursuant to Section 13, Article VIII 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