REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

SERVICE RESOURCES, INC.,
Petitioner,

CTA EB NO. 2484
(CTA Case No. 9978)

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

x---------------------------------------x

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

CTA EB NO. 2508
(CTA Case No. 9978)

-versus-

SERVICE RESOURCES, INC.,
Respondent.

Present:

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

Promulgated:

MAR 0 8 2023 1:23pm

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DECISION

RINGPIS-LIBAN, *J.*:

The Case

Before the Court *En Banc* are consolidated Petitions for Review[1] filed by the parties under Rule 8 Section 3(b) of the Revised Rules of the Court of Tax Appeals (RRCTA) assailing the January 4, 2021 Decision[2] and the June 1, 2021 Resolution of the Second Division.[3]

The dispositive portion of the assailed decision reads:

> "To recapitulate, out of the total claim of ₱16,683,795.71, petitioner has sufficiently proven its entitlement to the refund or issuance of a TCC representing unutilized excess CWT for TY 2016 in the reduced amount of ₱16,115,719.39, computed as follows:

CWT per claim		₱16,683,795.71
Less: Disallowances		
Per this Court's independent verification:		
Income reported in TY 2015	₱360,828.39	
Disallowed BIR Form No. 2307	207,247.93	568,076.32
Total Amount of Refundable CWT		**₱16,115,719.39**

> **WHEREFORE**, premises considered, the present Petition for Review is **PARTIALLY GRANTED**. Accordingly, respondent Commissioner of Internal Revenue is hereby **ORDERED TO REFUND OR ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner Service Resources, Inc. in the reduced amount of ₱16,115,719.39, representing unutilized creditable withholding taxes for the taxable year 2016.
>
> **SO ORDERED**.

The dispositive portion of the assailed resolution reads:

> "**WHEREFORE**, with the foregoing, petitioner Service Resources, Inc.'s Motion for Partial Reconsideration filed on 20 January 2021 and respondent Commissioner of Internal Revenue's Motion for Reconsideration filed on 21 January 2021 are both **DENIED** for lack of merit.
>
> **SO ORDERED**."

The Parties

Services Resources, Inc. (SRI) is a domestic corporation duly organized and existing under the laws of the Republic of the Philippines, with office address

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[1] *Rollo* (EB 2484), pp. 6-15 and *Rollo* (EB 2508), pp. 5-9.
[2] *Rollo* (EB 2484), pp. 23-45.
[3] *Id.*, pp. 46-51.

located at Ground Floor, First Capitol Place, 1st St.., corner Philam St., Bo. Kapitolyo, Pasig City, Metro Manila, Philippines. It is duly registered with the Securities and Exchange Commission (SEC) with Company Registration No. 87995 dated August 22, 1979. It is also registered with the Bureau of Internal Revenue (BIR) on June 30, 1996, as shown in its Certificate of Registration OCN 3RC0000466898, with Tax Identification Number (TIN) 000-144-056-000.[4]

Based on its Amended Articles of Incorporation, SRI was formed to primarily establish and operate a manpower service which will undertake, conduct and supply services for individuals, offices, stores, domestic, commercial and industrial concerns of all kinds.[5]

The Commissioner of Internal Revenue (CIR) is the chief of the Bureau of Internal Revenue (BIR), the government agency vested with the authority to administer and enforce national internal revenue taxes, including, among others, the power to credit or refund internal revenue taxes erroneously or excessively or illegally paid, assessed or collected.[6]

The Facts

On April 12, 2017, SRI filed its Annual Income Tax Return (ITR) for taxable year (TY) 2016, which reflected an overpayment of ₱47,543,794.00, computed as follows:

Total income tax due		₱10,702,739.00
Less: Total tax credits/payments		
Prior year's excess credits other than MCIT	₱41,562,737.00	
Creditable tax withheld from previous quarter/s per BIR Form No. 2307	12,359,451.00	
Creditable tax withheld per BIR Form No. 2307 for the fourth (4th) quarter	4,324,345.00	58,246,533.00
Total amount payable		**(₱47,543,794.00)**

SRI manifested its option to refund the same by checking the appropriate box in the Annual ITR for TY 2016.[7]

Out of the ₱10,702,739.00 income tax (IT) due for TY 2016, SRI applied the portion of the prior year's excess credits of ₱41,562,737.00 against it, leaving an unutilized prior year's excess credits of ₱30,859,998.00. This remaining amount of unutilized prior year's excess credits was carried over to the following year as shown in SRI's Quarterly ITRs and Annual ITR for TY 2017.[8]

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[4] Decision, *Rollo* (EB 2484), p. 23.
[5] *Id.*
[6] *Id.*
[7] *Id.*, p. 24.
[8] *Id.*

For SRI's excess tax payments for TY 2016, which resulted from the taxes withheld by its payors in the total amount of ₱16,683,795.71, it opted to refund the same.[9]

On August 3, 2017, SRI filed with Revenue District Office (RDO) No. 43 its claim for refund or issuance of tax credit certificate (TCC) of the unutilized creditable withholding taxes (CWTs) for TY 2016 in the same amount of ₱16,683,795.71.[10]

Proceedings Before the Court of Tax Appeals (CTA) Second Division

With no decision from the CIR on its claim for refund, SRI filed a Petition for Review with Court *a quo* on November 22, 2018.[11]

On February 12, 2019, the CIR filed his Answer and both parties filed their respective Pre-Trial Briefs. After the CIR's submission of the tax refund docket of this case (BIR Records), the pre-trial conference proceeded where the parties were given a period of fifteen (15) days within which to file their Joint Stipulation of Facts and Issues (JSFI). After the parties submitted their JSFI on April 26, 2019, the Court *a quo* then issued the Pre-Trial Order dated May 16, 2019.[12]

On May 22, 2019, SRI presented two (2) witnesses, namely: (1) Catherine A. Aquino (Aquino); and, (2) Madonna Mia S. Dayego (Dayego), for her commissioning as Independent Certified Public Accountant (ICPA).[13]

On the witness stand, Aquino testified through her Judicial Affidavit that: (1) she closely assisted in the preparation of the Petition for Review; (2) she is SRI's Finance Manager and is responsible for, among others, the preparation of its ITRs and financial statements as well as the computations, documents or attachments in support thereof; (3) she has access to SRI's registration documents and papers; (4) out of the ₱10,702,739.00 IT due for TY 2016, SRI applied the portion of the prior year's excess credits of ₱41,562,737.00 against it, leaving an unutilized prior year's excess credits of ₱30,859,998.00 and this remaining amount of unutilized prior year's excess credits was carried over to the following year; (5) for SRI's excess tax payments for TY 2016 resulting from the taxes withheld by its payors in the amount of ₱16,683,795.71, it opted to refund the same by checking the appropriate box in the Annual ITR; (6) the excess tax payments of ₱16,683,795.71 are shown in its Summary Alphalist of Withholding Tax Agents (SAWT) and were declared as part of its gross income; (7) SRI's payors issued Certificates of Creditable Tax Withheld at Source or BIR Form No. 2307 to prove the fact of their withholding; (8) the excess tax payments of ₱16,683,795.71 were declared as part of SRI's gross income, as reflected in the

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[9] *Id.*
[10] *Id.*
[11] *Id.*
[12] *Id.*, p. 25.
[13] *Id.*

Breakdown of Gross Income per Client Reflected in BIR Form No. 2307 showing that the aggregate amount of gross income upon which the tax was withheld in 2016 is ₱834,189,784.50 (which is less than the gross amount declared in the Annual ITR in the amount of ₱1,126,702,769.00); (9) the administrative claim for refund was filed on August 3, 2017; and, (10) the BIR did not decide on SRI's administrative claim for refund.[14]

On cross examination, Aquino testified that: (1) she received the document entitled Amended Notice for Informal Conference (NIC) on November 7, 2018; (2) SRI already replied to the first NIC before the Amended NIC was received; and, (3) prior to the receipt of the Letter of Authority (LOA), SRI already decided to file the claim with this Court before the prescriptive period set in.[15]

On re-direct examination, Aquino confirmed that the BIR did not decide on SRI's claim. No re-cross examination was conducted.[16]

Dayego was presented as SRI's second witness. She testified through her Judicial Affidavit that: (1) after her appointment as ICPA, she proceeded to secure from the company all relevant and available documents necessary for her examination and likewise interviewed its management and personnel to determine the relevant policies in reporting its transactions; (2) she completed her examination and submitted her Report on the results of the audit that she conducted; (3) she also submitted a Revised ICPA Report modifying some of the summaries of exhibits and to mark additional documents previously examined but were not marked; (4) to ascertain whether SRI was entitled to the refund, she determined if the amount of CWT claimed for refund was applied against its income tax liability or if the amount of the claim was carried over or applied against any IT liability for TY 2017; (5) she checked if the amount of the claim was properly supported by original CWTs (BIR Form No. 2307) and whether the related income payments were also declared as part of the company's gross income; (6) with respect to prior year's excess credits, she verified if these were properly supported by original CWTs; and, (7) based on her study and examination of SRI's documents, she recommended the refund of ₱16,563,946.56 and *not* ₱16,683,795.69 as claimed. The CIR did not conduct any cross examination.[17]

Thereafter, SRI filed its Formal Offer of Evidence (FOE) on July 17, 2019, offering in evidence Exhibits "P-1" to "P-56", inclusive of the sub-markings. Without the CIR's comment, the Court, through its Resolution dated September 3, 2019, admitted all of the documents except Exhibits "P-31-1444", for not being found in the records, and "P-33-123", "P-33-125", "P-33-126" and "P-33-503", for being blurred and unreadable. The Court further noted that, while Exhibit "P-12" was offered and identified as "Schedule of income payments made and taxes withheld on such income by SRI's payors," the duly

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[14] *Id.*, p. 26.
[15] *Id.*
[16] *Id.*
[17] *Id.*, pp. 26-27.

marked document submitted is entitled "Inventory of BIR Form 2307 (Based on Actual Certificate) for Taxable Period 2016."[18]

On September 9, 2019, before the CIR presented its lone witness, Revenue Officer Ronald B. Enciso (RO Enciso), SRI moved for the reconsideration of the denied exhibits, which the Court granted and, thus, allowed it to present the denied exhibits in a commissioner's hearing.[19]

RO Enciso was presented where he testified via his Judicial Affidavit that: (1) as RO, he is tasked, among others, to investigate/audit the books of accounts and other accounting records of taxpayers to ascertain their tax compliance and determine their tax liabilities, if any; (2) he is the RO assigned to conduct an audit investigation on SRI's claim for refund; (3) he followed up and sent notices to SRI as to the submission of the required documents with which the company complied; (4) SRI was furnished with the NIC; (5) upon further evaluation, his audit resulted in the assessment of deficiency taxes and he prepared the Amended NIC, which was furnished to SRI; (6) he noted that the total net pay per payroll is higher than the net pay per voucher by the amount of ₱91,097,020.44 and the same is to be considered as unaccounted cost with corresponding undeclared income of ₱9,109,702.04; (7) there was a noted discrepancy between the amount of remittance of mandatory contribution (SSS, PhilHealth and HDMF contributions) as against the remittance per voucher as the same was higher than the one declared in the Audited Financial Statements (AFS) by the amount of ₱12,583,403.31; (8) there were employees with invalid/incorrect TINs; (9) the total actual collection, as supported by official receipts, amounted to ₱1,223,722,668.53, net of Value-Added Tax (VAT); (10) a re-computation of the actual gross revenue after considering the beginning and ending trade receivables disclosed that the SRI's actual revenues for TY 2016 is ₱1,219,107,365.85, which meant that it had undeclared revenues in the amount of ₱98,595,558.85; (11) SRI was found liable to pay deficiency IT in the amount of ₱23,070,369.22; and, (12) he forwarded SRI's case docket to the Assessment Division for consolidation with another LOA assigned to RO Troy Dela Cruz for the issuance of the Preliminary Assessment Notice (PAN).[20]

When asked during his cross examination if there were other decisions or notices which the BIR issued with respect to SRI's claim for refund, RO Enciso only referred to the Amended NIC.[21]

In the interim, SRI filed on September 20, 2019 its Supplemental FOE with respect to the *initially* denied exhibits.[22]

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[18] *Id.*, p. 27.
[19] *Id.*
[20] *Id.*, p. 28.
[21] *Id.*
[22] *Id.*

The CIR, likewise, filed his own FOE on September 23, 2019 offering in evidence Exhibits "R-1" to "R-9-A", inclusive of sub-markings. SRI filed its Comment thereto on October 2, 2019.[23]

Later, the Court *a quo* issued an October 17, 2019 Resolution, admitting into evidence Exhibits "P-31-1444", "P-33-123", "P-33-125" and "P-33-126" but still denied the admission of Exhibit "P-33-503", for failure of the exhibit formally offered to correspond to the duly marked document. On the other hand, the Court admitted all of the CIR's documentary evidence. The parties were then given the period of thirty (30) days within which to submit their respective memoranda.[24]

On November 27, 2019, SRI filed its Memorandum while respondent failed to file his own. Hence, the case was submitted for decision on December 27, 2019.[25]

On January 4, 2021, the Court *a quo* rendered a decision which *partially granted* the petition.[26]

On June 1, 2021, the motions for reconsideration of both parties were *denied* for lack of merit.[27]

Proceedings Before the CTA En Banc

On June 21, 2021, SRI filed a Motion for Extension of Time to File Petition for Review (EB 2484).[28]

On June 22, 2021, SRI filed its Petition for Review (EB 2484).[29]

On July 16, 2021, the CIR filed a Motion for Extension of Time to File Petition for Review.[30]

On July 23, 2021, the Court *En Banc* resolved to grant the CIR's motion and gave the counsels until August 1, 2021 to file the petition.[31]

On July 30, 2021, the CIR filed a Petition for Review.[32]

On September 13, 2021, the Court resolved to *consolidate* CTA EB No. 2508 with CTA EB No. 2484, the case bearing the lower docket number.[33]

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[23] *Id.*
[24] *Id.*, p. 29.
[25] *Id.*
[26] *Rollo* (EB 2484), pp. 23-45.
[27] *Id.*, pp. 46-51.
[28] *Id.*, pp. 1-5.
[29] *Id.*, pp. 6-20.
[30] Rollo (EB 2508), pp. 1-3.
[31] *Id.*, p. 4.
[32] *Id.*, pp. 5-9.
[33] Minute Resolution, *Rollo* (EB 2484), p. 55.

On December 9, 2021, SRI was ordered to file its comment on the petition filed by the CIR (EB 2508).[34]

On December 21, 2021, SRI filed its Comment (on Petition for Review dated July 29, 2021).[35]

In a March 8, 2022 Resolution, the Court noted SRI's Comment (on Petition for Review dated July 29, 2021) and the CIR's failure to file his Comment despite notice. It also submitted the consolidated cases for decision.[36]

The Issues

As a ground for its appeal before the Court *En Banc* in CTA EB NO. 2484, SRI raised the lone assignment of error that the Court *a quo* erred in granting, as an alternative, the issuance of a tax credit certificate when it only prayed for a *cash refund* of its unutilized creditable withholding taxes (CWT) for TY 2016.[37]

On the other hand, in CTA EB NO. 2508, the CIR asserts that SRI failed to sufficiently prove and demonstrate that there was erroneously and illegally collected tax which was the subject of the claim.[38]

The Arguments of the Parties

SRI's Arguments

SRI assails the decision and resolution of the Court *a quo* and states that it filed its judicial claim for refund due to the *inaction of the BIR*. It argues that the present case should have been essentially decided in the first instance and the Court *a quo* should have granted SRI what it only prayed for in its petition, which is to claim only a *cash refund* of its unutilized CWT for TY 2016.[39]

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[34] *Rollo* (EB 2484), pp. 57-59.
[35] *Id.*, pp. 60-65.
[36] *Id.*, pp. 70-72.
[37] *Id.*, p. 10.
[38] *Rollo* (EB 2508), pp. 7-8.
[39] *Rollo* (EB 2484), pp. 11-13.

The CIR's Arguments

The CIR, in its own petition (EB 2508), asserts that SRI failed to sufficiently prove and demonstrate that there was erroneously and illegally collected tax which is subject of refund. Furthermore, he advances the argument that since the taxes paid and collected were presumed to have been made in accordance with law and its implementing regulations, they are *not* refundable. Finally, the CIR contends that SRI's failure to comply with the provisions of Section 204 in relation to Section 229 of the National Internal Revenue Code of 1997 (1997 NIRC), as amended, is fatal to its claim for refund.[40]

The Ruling of the Court En Banc

The arguments of *both* parties fail to persuade.

CIR failed to proffer convincing argument and evidence that would persuade the Court* En Banc *to disturb the factual findings of the CTA Second Division.

In *Republic of the Philippines, represented by the Commissioner of Internal Revenue v. Team (Phils.) Energy Corporation (formerly Mirant (Phils.) Energy Corporation)*,[41] the Supreme Court ruled that "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."

Petitioner CIR finds issue with the decision *partially granting* the taxpayer's claim and states that the taxpayer failed to comply with the provisions of Section 204 in relation to Section 229 of the 1997 NIRC, as amended.[42]

This general contention is *unsupported* by specifics.

What is clear, based on a reading of the decision, is that the Court *a quo* has, in fact, *methodically* considered each of the requisites of the judicial claim, the relevant case law, the pieces of evidence offered to prove each element such as the findings of the ICPA, the testimonies of the witnesses, the declared figures in the tax returns and other documents and, thereafter, made a careful determination of whether the taxpayer was able to meet each of them, thus:

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[40] *Rollo* (EB 2508), pp. 7-8.
[41] G.R. No. 188016, January 14, 2015, citing *Sea-Land Service, Inc. v. Court of Appeals*, G.R. No. 122605, April 30, 2001.
[42] *Rollo* (EB 2508), pp. 7-8.

"In *Republic of the Philippines, represented by the Commissioner of Internal Revenue v. Team (Phils.) Energy Corporation [formerly Mirant (Phils.) Energy Corporation]*, the Supreme Court laid down the following requirements for entitlement of a corporate taxpayer to a refund or issuance of TCC involving excess withholding taxes:

xxx xxx xxx

1. The claim for refund was filed within the two-year reglementary period pursuant to Section 229 of the NIRC;

2. It is shown on the ITR that the income payment received is being declared part of the taxpayer's gross income; and,

3. 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 from that amount.

xxx xxx xxx

Anent the first requisite, Sections 204 (C) and 229 of the NIRC of 1997, as amended, provide that claims for refund must be filed within two (2) years after the payment of the tax:

xxx xxx xxx

The present claim for refund pertains to TY 2016 for which petitioner filed its Annual ITR on 12 April 2017. Counting two (2) years from this date, petitioner had until 12 April 2019 within which to file a claim for refund of its excess CWT both in the administrative and judicial levels. Petitioner filed its administrative claim on 03 August 2017 and its judicial claim through the instant Petition for Review on 22 November 2018.

xxx xxx xxx

As the records show, respondent failed to decide on petitioner's claim for almost sixteen (16) months from the time the latter filed an administrative claim (on 03 August 2017) until it filed its judicial claim (on 22 November 2018). Surely, he had more than sufficient time to examine the latter's claim for refund yet it did not take action.

Thus, in *CBK Power Company Limited v. Commissioner of Internal Revenue*, the Supreme Court ruled that Section 229 of the NIRC of 1997, as amended, only requires that an administrative claim be priorly filed, viz.:

xxx xxx xxx

The same was reiterated in *Commissioner of Internal Revenue v. Goodyear Philippines, Inc.*, where it was argued that by filing the administrative and judicial claims only 13 days apart, in effect, what was pursued is an empty remedy before the BIR, and thereby deprived the latter of the opportunity to ascertain the validity of the claim. The Supreme Court found no merit in the said argument and ruled that:

xxx xxx xxx

It is evident from the testimonies of both parties' witnesses that respondent failed to render a decision on petitioner's administrative claim.

xxx xxx xxx

With regard to the second and third requisites, Section 2.58.3 (B) of Revenue Regulations (RR) No. 2-98, 72 as amended, is instructive, viz.:

xxx xxx xxx

Guided by the foregoing, the Court traced the income payments as provided in the summary of income payments with its corresponding billing statements to the general ledger for TY 2015. Correspondingly, it was found that there were transactions pertaining to TY 2015 which were earned and duly reported in petitioner's Annual ITR for TY 2015. Said income payments already formed part of the gross income subject to IT in TY 2015 and as a result, petitioner cannot belatedly claim in TY 2016 the tax credits related to the income properly recognized and declared in TY 2015. Hence, based on this Court's independent verification, the amount of ₱360,828.39 with the related income payments of ₱18,041,420.99 should be disallowed, as broken down below:

xxx xxx xxx

Anent the third requisite, the Supreme Court, in *Commissioner of Internal Revenue v. Philippine National Bank*, affirmed that a certificate of creditable tax withheld at source is the competent proof to establish the fact that taxes are withheld and that proof of actual remittance is not a condition to claim for a refund of unutilized tax credits, to wit:

xxx xxx xxx

To prove its compliance with the third requisite, petitioner submitted the Certificates of Creditable Tax Withheld at Source (BIR Form No. 2307) and the Summary of Creditable Taxes Withheld. It was examined by the ICPA and presented the results of verification in the Revised ICPA Report dated 27 June 2019, as follows:

xxx xxx xxx

As the ICPA found, the subject claim for refund of ₱16,683,795.71 is fully substantiated by valid and original CWT certificates issued in petitioner's name.

In addition, the ICPA also ascertained that the total amount of CWT for the period claim per Schedule of CWT prepared by the petitioner essentially matches with the amount declared in petitioner's Annual ITR for TY 2016, as shown below:

xxx xxx xxx

To recapitulate, out of the total claim of ₱16,683,795.71, petitioner has sufficiently proven its entitlement to the refund or issuance of a TCC representing unutilized excess CWT for TY 2016 in the reduced amount of ₱16,115,719.39, computed as follows:

CWT per claim		₱16,683,795.71
Less: Disallowances		
Per this Court's independent verification:		
Income reported in TY 2015	₱360,828.39	
Disallowed BIR Form No. 2307	207,247.93	568,076.32
Total Amount of Refundable CWT		**₱16,115,719.39**"[43]

Other than stating a bare and unfounded contention, petitioner CIR failed to proffer convincing argument and evidence that would persuade the Court *En Banc* to disturb the factual findings of the CTA Second Division.

Court* a quo *did not err in granting the relief of tax credit.

Petitioner SRI, on the other hand, maintains that the Court *a quo* erred in granting, as an alternative, the issuance of tax credit certificate when it only prayed for a cash refund of its unutilized CWT. It cites *Leticia Diona v. Balangue, et al.*[44] to support this position.

A reading of the cited authority shows that it is *not* on all fours with this case under consideration. The cited case centered on a *procedural issue* where the Supreme Court declared that "the grant of a relief *neither sought by the party in whose favor it was given nor supported by the evidence presented* violates the opposing party's right to due process and may be declared void *ab initio* in a proper proceeding."[45]

First, the jurisprudence cited is inapplicable since the Court *a quo* decided a *substantive issue*, *i.e.*, on the sufficiency of SRI's claim for refund anchored on the requisites found in Sections 204(C) and 229 of the 1997 NIRC, as amended, and the relevant jurisprudence.[46] This was already discussed earlier, where the pertinent portions of the decision were extensively quoted, in order to resolve the issue raised by petitioner CIR.

Second, SRI anchors its judicial claim precisely on the provisions of Sections 204(C) and 229 of the 1997 NIRC, as amended,[47] which very plainly grants the CIR the power to *either* credit *or* refund taxes erroneously or illegally received:

> "**Sec. 204.** *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.* — **The Commissioner may** —
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> xxx xxx xxx

[43] Decision, *Rollo* (EB 2484), pp. 31-35, 37, 39-42 and 44; Underscoring supplied.
[44] G.R. No. 173559, January 7, 2013.
[45] Italics and underscoring supplied.
[46] Decision, *Rollo*, pp. 32-33.
[47] Petition for Review, Docket, Vol. I, pp. 15-16.

> (C) **Credit or refund taxes erroneously or illegally received** or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two (2) years after the payment of the tax or penalty: *Provided, however*, That a return filed showing an overpayment shall be considered as a written claim for credit or refund.
>
> A Tax Credit Certificate validly issued under the provisions of this Code may be applied against any internal revenue tax, excluding withholding taxes, for which the taxpayer is directly liable. Any request for conversion into refund of unutilized tax credits may be allowed, subject to the provisions of Section 230 of this Code: *Provided*, That the original copy of the Tax Credit Certificate showing a creditable balance is surrendered to the appropriate revenue officer for verification and cancellation: *Provided, further*, That in no case shall a tax refund be given resulting from availment of incentives granted pursuant to special laws for which no actual payment was made.
>
> The Commissioner shall submit to the Chairmen of the Committee on Ways and Means of both the Senate and House of Representatives, every six (6) months, a report on the exercise of his powers under this Section, stating therein the following facts and information, among others: names and addresses of taxpayers whose cases have been the subject of abatement or compromise; amount involved; amount compromised or abated; and reasons for the exercise of power: *Provided*, That the said report shall be presented to the Oversight Committee in Congress that shall be constituted to determine that said powers are reasonably exercised and that the Government is not unduly deprived of revenues.
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> xxx xxx xxx
>
> Sec. 229. *Recovery of Tax Erroneously or Illegally Collected.* — No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress." (*Emphasis and underscoring supplied*)

Based on the text of the quoted provision itself, the authority accorded to the CIR is both *permissive* and *alternative*.

Section 204, as worded, uses the permissive term "may" which, in statutory construction, denotes discretion and "*cannot be construed as having a mandatory effect.*"[48] It has been consistently held that the term "may" is indicative of a mere possibility, an opportunity or an option. The grantee of that opportunity is vested with a right or faculty which he has the option to exercise.[49]

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[48] *Republic v. Sereno*, G.R. No. 237428, May 11, 2018, Supreme Court *En Banc*.
[49] *Id.*

Thus, the CIR, as the grantee of the option, has the power to exercise the authority to *either* refund *or* credit SRI's unutilized CWT subject of the claim.

Section 204 also uses the term "or". "The use of the term 'or' is significant. In statutory construction, the term 'or' 'is a disjunctive [conjunction] indicating an alternative. It often connects a series of words or propositions *indicating a choice of either.*"[50] Undoubtedly therefore, Congress, by using the term "or" in Section 203, intended to give the CIR a choice to *either* credit *or* refund taxes erroneously or illegally received.

Accordingly, this means that the CIR is given the *discretion* to grant *or* deny, partially *or* in full, a refund *or* tax credit. *This is very clear from the law and the Court must apply the law as worded.* Where the law is clear and unambiguous, it must be taken to mean exactly what it says, and Courts have no choice but to see to it that the mandate is obeyed.[51]

Furthermore, in claims for tax refunds under the United States jurisdiction, where the Philippines patterned its system of taxation,[52] recovery of illegally collected taxes is solely a matter of governmental grace.[53] Thus, it is also well-established in Philippine jurisprudence that *tax refunds* partake the nature of exemption from taxation, and as such, must be looked upon with disfavor. It is regarded as in derogation of the sovereign authority, and should be construed in *strictissimi juris* against the person or entity claiming the exemption. The taxpayer who claims for exemption must justify his claim by the clearest grant of organic or statute law and should not be permitted to stand on vague implications.[54]

Apart from the foregoing considerations, the taxpayer's choice on what claim to pursue, whether refund or tax credit, *cannot* control, limit or restrict the latitude given to the CIR by Section 204 because of his role as the tax administrator under the 1997 NIRC.[55] As a tax administrator, the CIR is responsible for helping promote and ensure that there is *fiscal adequacy* in the country's tax system.[56] Fiscal adequacy, which is one of the canons of a sound

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[50] *First Philippine Holdings Corporation v. Securities and Exchange Commission*, G.R. No. 206673, July 28, 2020; Italics supplied.
[51] *Spouses Quisumbing v. Manila Electric Company*, G.R. No. 142943, April 3, 2002.
[52] *Commissioner of Internal Revenue v. Court of Appeals, et al.*, G.R. No. 123206, March 22, 2000 Resolution; *Madrigal v. Rafferty*, G.R. No. L-12287, August 7, 1918, Supreme Court *En Banc*.
[53] 51 AMJUR § 1179 citing *New Consumers Bread Co. v. Commissioner of Internal Revenue* (CCA 3d) 115 F2d 162, 131 ALR 1329.
[54] *Commissioner of Internal Revenue v. Filminera Resources Corp.*, G.R. No. 236325, September 16, 2020.
[55] Section 6, 1997 NIRC. Section 6 enumerates the power of the Commissioner of Internal Revenue to make assessments and prescribe additional requirements for *tax administration and enforcement*.
[56] Section 2 of R.A. No. 8424 provides:

"SECTION 2. *State Policy.* — It is hereby declared the policy of the State to promote sustainable economic growth through the rationalization of the Philippine internal revenue tax system, including tax administration; to provide, as much as possible, an equitable relief to a greater number of taxpayers in order to improve levels of disposable income and increase economic activity; and to create a robust environment for business to enable firms to compete better in the regional as well

tax system, means that the sources of revenue should be sufficient to meet the requirements of government expenditure.[57]

In this connection, it will be recalled that under Sections 20, 204(C) and 290 of the 1997 NIRC, as amended, the CIR is required to submit reports to Congress concerning the exercise of this authority as part of the oversight on the fiscal performance of the BIR:

> **"Sec. 20.** *Submission of Report and Pertinent Information by the Commissioner.* -
>
> (A) *Submission of Pertinent Information to Congress.* - The provision of Section 270 of this Code to the contrary notwithstanding, the Commissioner shall, upon request of Congress and in aid of legislation, furnish its appropriate Committee pertinent information including but not limited to: industry audits, collection performance data, status reports in criminal actions initiated against persons and taxpayer's returns: Provided, however, That any return or return information which can be associated with, or otherwise identify, directly or indirectly, a particular taxpayer shall be furnished the appropriate Committee of Congress only when sitting in Executive Session Unless such taxpayer otherwise consents in writing to such disclosure.
>
> (B) *Report to Oversight Committee.* - The Commissioner shall, with reference to Section 204 of this Code, submit to the Oversight Committee referred to in Section 290 hereof, through the Chairpersons of the Committee on Ways and Means of the Senate and House of Representatives, a report on the exercise of his powers pursuant to the said section, every six (6) months of each calendar year."[58] (*Underscoring supplied*)

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as the global market, at the same time that the State ensures that Government is able to provide for the needs of those under its jurisdiction and care." (*Underscoring supplied*)

[57] *Chavez v. Ongpin*, G.R. No. 76778, June 6, 1990.

[58] As amended by R.A. 11534 or the CREATE law, Section 20 now reads:

"**Sec. 20.** *Submission of Report and Pertinent Information by the Commissioner.* -

(A) *Submission of Pertinent Information to Congress.* - The provision of Section 270 of this Code to the contrary notwithstanding, the Commissioner shall, upon request of Congress and in aid of legislation, furnish its appropriate Committee pertinent information including but not limited to: industry audits, collection performance data, status reports in criminal actions initiated against persons and taxpayer's returns: *Provided, however,* That any return or return information which can be associated with, or otherwise identify, directly or indirectly, a particular taxpayer shall be furnished the appropriate Committee of Congress only when sitting in Executive Session Unless such taxpayer otherwise consents in writing to such disclosure.

(B) *Submission of Tax-Related Information to the Department of Finance.* - The Commissioner shall, upon the order of the Secretary of Finance specifically identifying the needed information and justification for such order in relation to the grant of incentives under Title XIII, furnish the Secretary pertinent information on the entities receiving incentives under this Code: *Provided, however,* That the Secretary and the relevant officers handling such specific information shall be covered by the provisions of Section 270 unless the taxpayer consents in writing to such disclosure.

(C) *Report to Oversight Committee.* - The Commissioner shall, with reference to Section 204 of this Code, submit to the Oversight Committee referred to in Section 290 hereof, through the Chairpersons of the Committee on Ways and Means of the Senate and House of Representatives, a report on the exercise of his powers pursuant to the said section, every six (6) months of each calendar year."

Third, the Court *a quo* actually found that, based on the administrative claim that it filed with the BIR, which was marked and offered as Exhibit "P-14",[59] SRI declared a claim for *either* refund *or* issuance of tax credit certificate.[60] This observation was discussed in the assailed resolution but was never explained or refuted by SRI on appeal before the Court *En Banc*, thus:

> "As to petitioner's argument that what it prayed for in its Petition for Review is for the grant of refund alone, it must be emphasized that petitioner itself claimed for either refund or issuance of TCC in its administrative claim for refund which pertinently reads as follows:
>
> ...
> On behalf of Service Resources, Inc., (the 'Company'), **we hereby (sic) are applying for the refund or issuance of tax credit certificate of the Company's unutilized creditable withholding tax for the taxable year 2016** in the amount of Sixteen Million Six Hundred Eighty Three Thousand Seven Hundred Ninety Five Pesos and 71/100 (₱16,683,795.71)...
>
> ...
> The Company, **in applying for the issuance of tax credit/refund** has complied with all the above-mentioned requirements.
>
> ...
> In view of the legal and factual bases for this claim as above laid down, **we hope that this claim for refund or the issuance of tax credit certificate** be given due course and promptly granted."

Finally, contrary to SRI's statement, the petition did *not* limit its prayer to the grant of refund as it also prayed for *other reliefs* from the Court *a quo*, thus:

> "WHEREFORE, premises considered, Petitioner respectfully prays that after proceedings duly held, this Honorable Court render judgment ordering Respondent to grant Petitioner's claim for tax refund in the total amount of Sixteen Million Six Hundred Eighty Three Thousand Seven Hundred Ninety Five Pesos and 71/100 (₱16,683,795.71), representing its unutilized creditable withholding taxes for taxable year 2016.
>
> Other reliefs, just and equitable under the premises, are likewise prayed for.
>
> Makati City for Quezon City, September 21, 2018."[61] (*Underscoring supplied*)

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[59] Formal Offer of Evidence, Docket, Vol. III, p. 848.
[60] Resolution, *Rollo*, p. 49; Docket, Vol. II, p. 710.
[61] Petition for Review, Docket, Vol. I, p. 20.

The principle of *estoppel* precludes SRI from asserting a position that is contrary to what was implied by its previous action or statement.[62] It also bars SRI from denying, by its own deed or representation, anything contrary to that established as the truth, in legal contemplation.[63]

All told, both petitioners SRI and CIR failed to raise any issue or point that has convinced the Court *En Banc* to modify or reverse the assailed Decision and Resolution of the Court *a quo*. The findings of fact of said Court are not to be disturbed unless clearly shown to be unsupported by substantial evidence.[64]

WHEREFORE, premises considered, the Petitions for Review filed by the parties are both **DENIED** for lack of merit. The assailed Decision and Resolution of the Court *a quo* are hereby **AFFIRMED**.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

(See Concurring and Dissenting Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

ERLINDA P. UY
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

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[62] *Pilipinas Shell Petroleum Corp. v. Gobonseng, Jr.*, G.R. No. 163562, July 21, 2006.
[63] *Bank of Philippine Islands v. Casa Montessori Internationale*, G.R. No. 149454 and 149507, May 28, 2004.
[64] *Commissioner of Internal Revenue v. Union Shipping Corporation and The Court of Tax Appeals*, G.R. No. L-66160, May 21, 1990.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

(With due respect, I join the
Presiding Justice's Concurring and Dissenting Opinion)
MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

CORAZON G. FERRER-FLORES
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 cases were assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

SERVICE RESOURCES, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

x- -x

CTA EB No. 2484
(CTA Case No. 9978)

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus -

SERVICE RESOURCES, INC.,
Respondent.

CTA EB No. 2508
(CTA Case No. 9978)

Present:

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

Promulgated:
MAR 0 8 2023 1:27pm

x- -x

CONCURRING AND DISSENTING OPINION

DEL ROSARIO, P.J.:

I concur with my esteemed colleague that the Commissioner of Internal Revenue's (CIR) Petition for Review in CTA EB No. 2508 must be denied for lack of merit as the CIR failed to proffer convincing

argument and evidence to persuade the Court *En Banc* to disturb the factual findings of the Court in Division.

Anent the Petition For Review filed by Service Resources, Inc. (SRI) in CTA EB No. 2484, the *ponencia* affirmed the Court in Division's Decision in finding that out of the total claim of ₱16,683,795.71, SRI has sufficiently proven its entitlement to the refund or issuance of a tax credit certificate (TCC) representing unutilized excess CWT for taxable year (TY) 2016 in the reduced amount of ₱16,115,719.39, computed as follows:

CWT per claim		₱ 16,683,795.71
Less: Disallowances		
Per this Court's independent verification		
Income reported in TY 2015	**₱ 360,828.39**	
Disallowed BIR Form No. 2307	207,247.93	568,076.32
Total Amount of Refundable CWT		₱ 16,115,719.39

The Court in Division held that SRI cannot belatedly claim in TY 2016 the tax credits withheld from income payments declared in TY 2015.

In *Commissioner of Internal Revenue vs. Univation Motor Philippines, Inc.*[1] *(Univation)*, the Supreme Court declared the following:

> **"It must be noted that while the income payments from which the CWTs which were declared in its return covered the years 2006, 2008, 2009 and 2010, there was nothing wrong with it as what is important is that the respondent complied with the third requisite, that is, the income which the taxes were withheld was included in the returns of the respondent**.
>
> The CTA *En Banc* correctly appreciated the explanation of the independent CPA (ICPA) why the income payments from which the CWT amounting to P12,729,617.90 were withheld, were declared in its returns covering the years 2006, 2008, 2009 and 2010. In gist, the ICPA suggests that there were delays in collection of certain income payments to respondent. For one, certain sales made by respondent to its dealers in 2008 and 2009 were only paid in 2010. In other words, there were certain income payments which, although respondent expected to receive in 2006, 2008 and 2009, were only remitted to it **in 2010. As concluded by the CTA *En Banc*, the delay in collection of certain income payments of respondent caused the timing difference between the actual reporting of the income by**

[1] G.R. 231581, April 10, 2019.

> **respondent and the actual withholding of the corresponding creditable income tax by respondent's customers**. What is important is that the creditable withholding taxes corresponding to the related income in the respondent's books for CY's 2006, 2008 and 2009 were **not yet claimed as income tax credits** in respondent's annual ITRs corresponding to the said years. Hence, it is just proper that these income payments should form part of respondent's tax credit for 2010." (*Emphases supplied*)

Otherwise stated, a refund of the unutilized CWTs is allowed even if the related income payments were reported in prior periods as long as the CWTs pertaining thereto were not yet claimed as income tax credits in the annual ITRs of the taxpayer-claimant corresponding to the said years.

In this case, the Court in Division found that the subject income earned in **TY 2015** already formed part of the gross income subject to income tax in TY 2015, *albeit* the same was **collected by SRI only in TY 2016**; and that the corresponding CWTs relating to the subject income earned in TY 2015 were not claimed by SRI as withholding tax credits in SRI's 2015 annual Income Tax Return.

Consistent with *Univation*, the Court in Division's computation of refundable CWT should have allowed and included the CWT amounting to ₱360,828.39, the related income thereof was reported by SRI in TY 2015. Hence, the total amount of refundable CWT should have been ₱16,476,547.78, computed below:

CWT per claim		₱ 16,683,795.71
Less: Disallowances		
Per this Court's independent verification		
Disallowed BIR Form No. 2307	207,247.93	207,247.93
Total Amount of Refundable CWT		₱ 16,476,547.78

Be that as it may, SRI did not question the total amount of refundable CWT in its appeal to the CTA *En Banc*. As such, the **amount** in the Court in Division's Decision has already attained finality and may no longer be disturbed.

Lastly, the *ponencia* affirms the Court in Division's ruling that the option to either refund or issue a TCC in favor of SRI belongs to the CIR. With utmost respect, I am constrained to withhold my assent thereon. In its Petition for Review before the Court in Division, SRI specifically prayed for the grant of a tax refund, *viz*:

> "WHEREFORE, premises considered, Petitioner respectfully prays that after proceedings duly held, this Honorable Court render judgment ordering Respondent to grant Petitioner's claim for **tax refund** in the total amount of Sixteen Million Six Hundred Eighty Three Thousand Seven Hundred Ninety Five Pesos and 71/100 (₱16,683,795.71), representing its unutilized creditable withholding taxes for taxable year 2016.
>
> Other reliefs, just and equitable under the premises, are likewise prayed for." *(Boldfacing and underscoring supplied)*

To be sure, the option to issue a TCC to SRI is a relief granted by the Court in Division that was not prayed for by SRI.

It is well-settled that courts cannot grant a relief not prayed for in the pleadings or in excess of what is being sought by a party to a case.[2] Both parties to a suit are entitled to due process against unforeseen and arbitrary judgments.[3] It is improper to enter an order which exceeds the scope of relief sought by the pleadings, absent notice which affords the opposing party an opportunity to be heard with respect to the proposed relief.[4]

In this case, SRI specifically and categorically prayed that it be granted only a **cash refund** as it expects no use of a TCC. Given its reduced operations, it anticipates to pay less, or not be liable at all to pay, any internal revenue taxes.

It may be that Revenue Regulation (RR) 14-2020[5] indeed provides that TCCs which remain unutilized after one (1) year may be converted to cash. Nonetheless, it is my humble view that to require SRI to wait for another year to be able to go through the process of requesting for the conversion of the TCC to cash is tedious and procedurally unjust. Since SRI has already proven its entitlement to refund, it is but fair that refund be granted, *sans* the alternate order to issue a TCC.

All told, I VOTE to: (i) DENY the Petition for Review of the Commissioner of Internal Revenue in CTA EB No. 2508; (ii) GRANT the Petition for Review of Service Resources, Inc. in CTA EB No. 2484; and, (iii) ORDER the Commissioner of Internal Revenue to REFUND

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[2] *Chinatrust (Phils.) Commercial Bank vs. Philip Turner*, G.R. No. 191458, July 3, 2017; *Cherith A. Bucal vs. Manny P. Bucal*, G.R. No. 206957, June 17, 2015.
[3] *Interorient Maritime Enterprises, Inc. and/or Interorient Maritime, DMCC for and in behalf of Wilby Marine Ltd., and/or Daisy S. Sumo vs. Ildefonso T. Hechanova*, G.R. No. 246960, July 28, 2020.
[4] *Development Bank of the Philippines vs. Romeo Treston*, G.R. No. 174966, February 14, 2008.
[5] AMENDING THE PERTINENT PROVISIONS ON CASH CONVERSION OF UNUTILIZED TAX CREDIT CERTIFICATE UNDER REVENUE REGULATION NO. 5-2000.

in favor of Service Resources, Inc. the amount of ₱16,115,719.39 representing the latter's unutilized excess Creditable Withholding Tax for taxable year 2016.

ROMAN G. DEL ROSARIO
Presiding Justice