**REPUBLIC OF THE PHILIPPINES**
**COURT OF TAX APPEALS**
**QUEZON CITY**

***EN BANC***

| | |
|---|---|
| **COMMISSIONER OF INTERNAL REVENUE,**<br>*Petitioner,* | **CTA EB NO. 2540**<br>(CTA Case No. 9807) |
| -versus- | **Present:**<br>**Del Rosario,** *P.J.,*<br>**Uy,**<br>**Ringpis-Liban,**<br>**Manahan,**<br>**Bacorro-Villena,**<br>**Modesto-San Pedro,**<br>**Reyes-Fajardo,**<br>**Cui-David,** *and*<br>**Ferrer-Flores,** *JJ.* |
| **MCKINSEY & CO. (PHILS.)**<br>*Respondent.* | **Promulgated:**<br>FEB 07 2023 5:08 pm |

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

# DECISION

**RINGPIS-LIBAN, J.**

Before the Court *En Banc* is a Petition for Review[1] appealing the Decision of the First Division of this Court (Court in Division), promulgated on January 8, 2021 in CTA Case No. 9807 entitled, *"McKinsey & Co. (Phils.) vs. Commissioner of Internal Revenue,"* the dispositive portion thereof reads:

> "**WHEREFORE,** in light of the foregoing considerations, the instant Petition for Review is **GRANTED**. Accordingly, respondent is **ORDERED TO REFUND, or TO ISSUE A TCC** in favor of petitioner in the amounts of **₱79,043,655.00** and **₱34,691,058.00**, representing its excess and unutilized CWTs for CYs 2015 and 2016, respectively.

[1] Rollo, CTA EB No. 2540, pp. 1-21, with annexes.

**SO ORDERED."**

and the Resolution dated July 29, 2021, the dispositive portion thereof reads:

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

**SO ORDERED."**

## THE PARTIES

Petitioner Commissioner of Internal Revenue (CIR),[2] is the duly appointed Commissioner of Internal Revenue vested with authority to carry out all the functions, duties and responsibilities of said office, including, *inter alia*, the power to decide, approve, and grant refunds and/or tax credits of overpaid and erroneously paid or collected internal revenue taxes.

Respondent McKinsey & Co. (Phils.)[3] is a corporation duly 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 primarily to engage in management consultancy services pursuant to SEC Registration No. A1998-675. The branch office is located at 7th Floor Zuellig Building, Makati Ave. cor. Paseo de Roxas, Makati City, 1226.

## THE FACTS

On April 6, 2018, respondent filed with the BIR-RDO No. 50 an administrative claim for refund or issuance of tax credit certificate (TCC) for excess and unutilized creditable withholding taxes (CWTs) in the amounts of Php79,043,655.00 and Php34,691,058.00 for calendar years (CYs) 2015 and 2016, respectively.

On April 11, 2018, respondent filed a Petition for Review before the Court in Division, praying that the Court refund or issue in its favor a TCC in the amounts of Php79,043,655.00 and Php34,691,058.00 for CYs 2015 and 2016, respectively.

On May 22, 2018, petitioner filed his Answer[4] arguing that the Petition for Review should be dismissed for failure to exhaust administrative remedy; that respondent should have allowed petitioner to proceed with the resolution

[2] Respondent Commissioner of Internal Revenue in CTA Case No. 9807.
[3] Petitioner McKinsey & Co. (Phils.) in CTA Case No. 9807.
[4] Docket, CTA Case No. 9807, pp. 143-149.

of the administrative claim for refund considering that respondent has already filed its Letter dated April 6, 2018 requesting that the Administrative Claim for refund be forwarded to the Regional Revenue Office; that due to the filing of the Petition for Review on April 11, 2018, respondent violated the rule on exhaustion of administrative remedies; that the taxes paid and collected are presumed to be made in accordance with the laws and regulations, hence, not refundable; that it is incumbent upon respondent to show that it has complied with the provisions of Sections 58 (D) and 76, 204, and 229 of the Tax Code, as amended, in relation to Revenue Regulations No. 2-98; that respondent's claim for refund or issuance of tax credit certificate in the amount of Php79,043,655 and Php34,691,058 representing excess and unutilized CWTs for CYs 2015 and 2016 were not fully substantiated by proper documents; and that in a claim for refund or tax credit, the taxpayer must prove not only entitlement to the grant of the claim under substantive law, it must show satisfaction of all the documentary and evidentiary requirements for an administrative claim for refund or tax credit.

In the Joint Stipulation of Facts and Issues[5], the parties agreed that the main issue to be resolved by the Court in Division was "Whether or not [respondent] is entitled to its claim for refund of or issuance of TCC for excess and unutilized CWT in the amounts of Php79,043,655 and Php34,691,058 for CY 2015 and 2016, are duly substantiated by documentary evidence." The parties also agreed on the following sub-issues:

1. Whether [respondent's] excess and unutilized CWT in the amounts of Php79,043,655 and Php34,691,058 for CYs 2015 and 2016, are duly substantiated by documentary evidence.
2. Whether the income from which the CWTs being claimed for refund were withheld was reported as part of the revenues declared in [respondent's] Annual ITR.
3. Whether [respondent] carried over its excess and unutilized CWT for CY 2015 to the succeeding taxable periods.
4. Whether [respondent] carried over its excess and unutilized CWT for CY 2016 to the succeeding taxable periods.
5. Whether [respondent] filed its administrative and judicial claims for refund of excess and unutilized CWT for CYs 2015 & 2016 within the two-year prescriptive period provided under Sections 2014(C) and 229, Tax Code.

After trial on the merits and upon submission of parties' respective memoranda[6], the case was submitted for decision on February 11, 2020.[7]

[5] Filed by the parties on September 19, 2018.
[6] Docket, pp. 848-853 and 860-881.
[7] Ibid., p. 883.

On January 8, 2021, the Court in Division rendered the questioned Decision.[8] On July 29, 2011, the Court in Division issued the assailed Resolution.[9]

Aggrieved, petitioner filed before the Court *En Banc* the instant Petition for Review.[10]

On January 5, 2022, the Court *En Banc* issued a Resolution[11] ordering respondent to file its Comment on the Petition for Review, within ten (10) days from notice.

On February 2, 2022, respondent filed its Comment/Opposition to Petition for Review.[12]

On March 10, 2022, the Court *En Banc* issued a Resolution[13] submitting this case for decision.

## THE ISSUE

The Court *En Banc* is confronted with this main issue: Whether or not the Court in Division erred in ordering petitioner to refund or issue a TCC in favor of respondent in the amounts of ₱79,043,655.00 and ₱34,691,058.00, representing its excess and unutilized CWTs for CYs 2015 and 2016 respectively.

## RULING OF THE COURT *EN BANC*

### THE FILING OF ADMINISTRATIVE AND JUDICIAL CLAIMS FOR REFUND WERE AUTHORIZED BY RESPONDENT

Petitioner argues that the instant case does not fall under any of the instances where the Court may exercise its jurisdiction because there is no valid administrative claim for refund. Petitioner insists that the authority of Atty. Ronald V. Bernas and Atty. Alexander O. Ner of Quisumbing Torres Law Firm to act on behalf of the corporation was not properly established.

After consideration, the Court *En Banc* resolves that there were valid administrative and judicial claims for refund. Records show that Atty. Ronald V. Bernas and Atty. Alexander O. Ner were authorized to institute appropriate

[8] Ibid., pp. 888-907.
[9] Ibid., pp. 939-944.
[10] Rollo, CTA CASE NO. 2540, pp. 1-21, with Annexes.
[11] Ibid. pp. 81-82.
[12] Ibid. pp. 83-92.
[13] Ibid. pp. 94-95.

action in connection with the claim for refund of unutilized creditable withholding tax for the years 2015 and 2016.

The Officer's Certificate[14] dated April 3, 2018 signed by Jonathan Slonim, Assistant Secretary, attached to the Petition for Review reads in part:

> "RESOLVED, that the Corporation be, and hereby is, authorized to institute the appropriate action in connection with its claim for a refund of unutilized creditable withholding tax for the year 2015 and 2016 (the "Claim"), including the filing of an administrative claim for refund with the Bureau of Internal Revenue ("BIR"), the filing of a Petition for Review with the Court of Tax Appeals ("CTA") and the CTA En Banc, and subsequently, the filing of an appeal with the Supreme Court and/or in any appellate tribunal, as may be necessary.
>
> FURTHER RESOLVED, that the power of attorney in connection with the Claim, substantially in the form attached hereto and made a part hereof, be, and hereby is, granted to the law firm of Quisumbing Torres or any of its attorneys, including but not limited to Attorneys Ronald V. Bernas, and Alexander O. Ner;"

The Power of Attorney[15] dated April 3, 2018 signed by Jonathan Slonim, Assistant Secretary, attached to the Petition for Review reads in part:

> "Know all men by these presents, that I, Jonathan Slonim, the duly constituted Assistant Secretary of McKinsey & Co., (Phils.), a corporation organized and existing under the laws of the State of Delaware ("the Corporation'), xxx do hereby nominate, appoint and constitute on behalf of the Corporation the law firm of **Quisumbing Torres** or any of its attorneys, including but not limited to Attorneys Ronald V. Bernas, and Alexander O. Ner (individually the "Attorney" and collectively the "Attorneys"). As the Corporation's true and lawful attorneys-in-fact to do the following acts, deeds and things, for and on behalf, and in the name of the Corporation in the Republic of the Philippines:
>
> 1. Commence and/or prosecute the necessary legal actions or proceedings in connection with the assessment issued by the Bureau of Internal Revenue ("BIR") for the year 2015 and 2016 (the "Claim"), including the filing of petitions and/or appeals, as may be appropriate, in all courts, tribunal, agencies, offices or

[14] Docket, CTA Case No. 9807, p. 25.
[15] Ibid., pp. 27-29.

> bodies in the Philippines, including but not limited to the Court of Tax Appeals and the Supreme Court, and to execute, sign, subscribe to and deliver any and all documents, verifications, certifications against non-forum shopping, other certifications, affidavits and other documents, and to do such other things, as may be required to commence, prosecute and/or defend all legal actions and proceedings under the Rules of Court and/or any other laws or rules of procedure in all courts, tribunal, agencies, offices or bodies in the Republic of the Philippines solely in connection with the Claim, in accordance with Corporation's instructions."

Hence, the filing of administrative and judicial claims for refund were authorized by respondent.

## WHETHER RESPONDENT IS ENTITLED TO ITS CLAIM FOR REFUND

The Petition for Review before the Court in Division was anchored on respondent's claim for tax refund pursuant to Sections 58 (D), 76, 204 (c) and 229 of the NIRC of 1997, as amended.

> "***Section 58. Returns and Payment of Taxes Withheld at Source.-***
>
> ***XXX*** ***XXX*** ***XXX***
>
> ***(D) Income of Recipient*** – Income upon which any creditable tax is required to be withheld at source under Section 57 shall be included in the return of its recipient but the excess of the amount of tax so withheld over the tax due on his return shall be refunded to him subject to the provisions of Section 204; if the income tax collected at source is less than the tax due on his return, the difference shall be paid in accordance with the provisions of Section 56.
>
> All taxes withheld pursuant to the provisions of this Code and its implementing rules and regulations are hereby considered trust funds and shall be maintained in a separate account and not commingled with any other funds of the withholding agent."

> "***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 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 against 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 therefore."

"***Section 204. Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.*** - The Commissioner may-

xxx xxx xxx

(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."

"***Section 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 to 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.
>
> In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment: *Provided, however*, That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid."

Thus, a taxpayer must establish the following requirements before a claim for tax credit or refund of creditable withholding tax will be granted:

1) The claim must be filed within the two-year prescriptive period as provided under Sections 204 (C) and 229 of the NIRC of 1997, as amended;
2) The fact of withholding must be established by a copy of a statement duly issued by the payor (withholding agent) to the payee, showing the amount paid and the amount of tax withheld therefrom; and
3) The income upon which the taxes were withheld must be included in the return of the recipient.[16]

**Timeliness of the Petition**

The Court shall determine first whether petitioner's claim for refund was timely filed.

Petitioner argues that the Petition for refund for CY 2015 and 2016 were filed out of time because the filing of administrative and judicial claims for refund of taxes or penalties shall be filed within two (2) years from the date of payment of taxes or penalties and not from the date of filing of the annual income tax return.

Based on the records of the case, on April 13, 2016, respondent filed its Annual Income Tax Return (ITR) for CY 2015.[17] On April 13, 2017, respondent filed its Annual ITR for CY 2016.[18] On April 6, 2018, respondent filed its administrative claim for refund before the BIR for its excess and unutilized CWT for CYs 2015 and 2016.[19] The CIR failed to act on the administrative claim, hence on April 11, 2018, respondent filed a Petition for

---

[16] Section 2.58, Revenue Regulations No. 2-98, as amended; *Citibank N.A. vs. Court of Appeals, et al.*, G.R. No. 107434, October 10, 1997; *ACCRA Investments Corporation vs. The Honorable Court of Appeals*, et al., G.R. No. 96322, December 20, 1991.
[17] Exhibit "P-7."
[18] Exhibit "P-11."
[19] Exhibit "P-66."

Review before the Court in Division.[20] Thus, the filing of the administrative claim for refund before the BIR and the Petition for Review before the Court in Division both fell within the prescriptive period allowed by law.

The Court *En Banc* agrees with the findings of the Court in Division that the two-year prescriptive period to claim a refund commences to run at the earliest date of the filing of the adjusted final return. The Assailed Decision ruled as follows:

> "Indeed, the two-year period in filing a claim for tax refund is crucial. While the law provides that the two-year period is counted from the date of payment of the tax, jurisprudence, however, clarified that the two-year prescriptive period to claim a refund actually commences to run, at the earliest on the date of the filing of the adjusted final return because this is where the figures of the gross receipts and deductions have been audited and adjusted, reflective of the results of the operations of a business enterprise. Thus, it is only when the Adjustment Return covering the whole year is filed that the taxpayer would know whether a tax is still due or a refund can be claimed based on the adjusted and audited figures." [21]

Now, is the present Petition for Review before the Court *En Banc*, timely filed?

On January 22, 2021, petitioner received a copy of the Decision dated January 8, 2021. Then, within the period to file an appeal, petitioner filed a Motion for Reconsideration,[22] which was eventually denied by the Court in Division in its Resolution dated July 29, 2021.[23] The said Resolution was received by the CIR on September 14, 2021. Thus, petitioner has until September 29, 2021 within which to file the instant Petition for Review. However, on September 15, 2021, the Supreme Court issued Administrative Circular No. 72-2021 suspending the time for filing and service of pleadings and motions until further notice due to Covid-19 Pandemic. On October 18, 2021, the Supreme Court issued Administrative Circular No. 83-2021 stating that the period for filing and service shall resume seven (7) days from October 20, 2021. Hence, petitioner has until October 27, 2021 within which to file the Petition for Review.

On October 26, 2021, petitioner filed by registered mail the instant Petition for Review. Hence, this Petition for Review was timely filed.

[20] Docket, CTA Case No. 9807, pp.10-22, with Annexes.
[21] Decision dated January 8, 2021, p. 14.
[22] Docket, pp. 908-921.
[23] Ibid., pp. 939-946.

**Respondent's claim for refund is meritorious**

The Court *En Banc* agrees with the finding of the Court in Division that respondent's claim for refund is meritorious. After consideration of the arguments of both parties, the Court *En Banc* finds that the instant Petition for Review raises no new arguments that have not yet been thoroughly considered and extensively passed upon by the Court in Division. Respondent was able to prove that it is entitled to its claim for refund.

As correctly ruled by the Court in Division in the assailed Decision:

> "A perusal of petitioner's Annual Income Tax Returns (ITRs) for CYs 2015 and 2016 shows that petitioner had Minimum Corporate Income Tax (MCIT) due in the amount of ₱4,051,258.00 and ₱0.00, respectively. Petitioner alleges that the MCIT liability for CY 2015 was paid using a portion of its reported prior year's excess credits of ₱79,177,577.00, thus, its creditable taxes withheld incurred in 2015 and 2016 in the respective amounts of ₱79,043,655.00 and ₱34,691,058.00 were still unutilized as of December 31, 2016, xxx
>
> xxx In the instant case, since petitioner has opted to claim a refund of its excess CWTs for CYs 2015 and 2016, it becomes incumbent upon petitioner to prove that it has sufficient prior year's excess CWTs to cover its MCIT liability for CY 2015.
>
> To prove the existence of its prior year's excess credits of ₱79,177,577.00, petitioner presented Certificates of Creditable Withholding Tax at Source (BIR Forms No. 2307) for CYs 2004, 2005 and 2006. The sum, however, of the CWTs reflected in the certificates amounted only to ₱39,142, 231.28, xxx
>
> Moreover, the Court cannot give credence to petitioner's CWT for CY 2004 since it cannot be ascertained whether the same remained unutilized as of the end of CY 2004 and whether petitioner, indeed, had excess tax credits as of the end of CY 2004, since it failed to submit its Annual ITR for the said CY 2004.
>
> Consequently, petitioner's prior years' tax credits amounted to ₱10,594,772.53 only, xxx

Nevertheless, the substantiated prior year's excess tax credit of ₱10,594,772.53 is sufficient to cover petitioner's tax liability of CY 2015 in the amount of ₱4,051,258.00.

Petitioner marked the circle beside the words "**To be refunded**" which signified its intention to claim for refund the creditable taxes withheld for the CYs 2015 and 2016 in the total amount of ₱113,734,713.00. Furthermore, a perusal of petitioner's Annual ITRs for CYs 2016 and 2017 shows that for both years, the amount of prior year's excess credits is only ₱75,126,319.00 instead of the respective amounts of ₱154,169,974.00 and ₱109,817,377.00.

Evidently, the claimed CWTs for CYs 2015 and 2016 of ₱79,043,655.00 and ₱34,691,058.00, respectively, or in the total amount of ₱113,734,713.00 were not included therein. Consequently, the CWTs, being claimed by petitioner may be allowed for refund under Section 76 of the NIRC of 1997, since it is clearly shown that petitioner opted to refund the same, and not to carry-over the excess amount to the succeeding taxable quarters/years.

xxx xxx xxx

Moreover, as for the second and third requisites, the same are imposed by Section 2.58.3(B) of Revenue Regulations No. 2-98, as amended, which states:

"Sec. 2.58.3. Claim for tax credit or refund. –

xxx xxx xxx

(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.**

To prove the fact of withholding of the subject claim, petitioner submitted various Certificates of Creditable Tax Withheld at Source (BIR) Form No. 2307 duly issued by its various withholding agents covering CYs 2015 and 2016, reflecting CWTs in the amounts of ₱79,043,655.24 and

₱34,691,057.88, respectively, or in the aggregate amount of ₱113,734,713.12, xxx

The Court finds the foregoing in order. Parenthetically, the probative value of BIR Form 2307, which is basically a statement showing the amount paid for the subject transaction and the amount of tax withheld therefrom, is to establish only the fact of withholding of the claimed creditable withholding tax.

Thus, petitioner was able to satisfy the *second* requisite.

With regard to the third requisite, the certificates show that the claimed CWTs for CYs 2015 and 2016 were withheld on income payments of ₱526,967,701.59 and ₱231,273,719.18, respectively, as shown in the previous table. These amounts were declared in petitioner's Annual ITRs for the same years which disclosed higher gross "Sales/Revenue/Receipts/Fees" in the amounts of ₱822,267,453.00 and ₱785,116.255.00, respectively.

The Revenue section in the Statements of Comprehensive Income of petitioner's Audited Financial Statements (AFS) for the years 2015 and 2016 shows the breakdown of "Sales/Revenue/Receipts/Fees" reflected in petitioner's Annual ITRs, xxx

Petitioner's Accountant Ms. Elena D. Cabahug explained that the total amounts of sales/revenues which petitioner reported in its Annual ITRs for both CYs 2015 and 2016 are not equal to the amounts of income from which the CWTs were withheld for the following reasons:

1. The total sales/revenues reported in petitioner's income tax returns included not only the revenues from foreign affiliates which are non-residents and which are not required under the law to withhold CWT. The revenues derived from foreign affiliates are those which pertain to Shared Services Center and Loaned Services;

2. The discrepancy in the amount of revenue reflected in the Audited Financial Statements and the amount of income payments supported by certificates of tax withheld is that petitioner accrued income in previous year, the payment of which, together with the corresponding certificate of tax withheld, were received in the following year; and

3. Considering that petitioner billed its customers in U.S. Dollars, there is foreign currency translation difference arising from the use by petitioner of a Peso-U.S. Dollar exchange rate (in recording income in its books) that is different from the Peso-U.S. Dollar exchange rate used by customers (when they issued the certificates of tax withheld).

She further stated that petitioner's revenues from local customers which are subject to withholding tax were reflected in the AFS as Consultancy Services.

The foregoing statements of Ms. Cabahug were corroborated by petitioner's documentary evidence, such as its General Ledgers Transaction Detail (GLTD) for 2014, 2015 and 2016, which show that the income payments from which the creditable taxes were withheld are sourced from the same amount of revenues from Consultancy Services reflected in its AFS; and the reconciliation Schedules of Revenues, which show the reconciliation of the revenue per General Ledger and revenue per CWT certificates both for the years 2015 and 2016. Hence, petitioner duly established that it declared in its Annual ITRs for the CYs 2015 and 2016 from which the total amount of ₱113,734,713.00 CWTs were deducted.

Verily, petitioner is considered to have complied with the *third requisite.*" [24]

**The taxpayer does not have to prove actual remittance of the taxes to the BIR**

Petitioner insists that the certificates of creditable tax withheld do not constitute conclusive evidence of payment and remittance to the BIR and that the testimonies of the various payors and withholding agents are required to prove remittance.

The Court *En Banc* does not agree with the petitioner.

Sections 2.58 and 2.58.3 of Revenue Regulations No. 2-98 which implemented Section 76 of the 1997 NIRC provide for the ways and means to establish the fact of withholding, thus:

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

[24] Decision, pp. 10-16.

(A) xxx

(B) Withholding tax assessment 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 assessment, using the prescribed form (BIR Form 1307) 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.

xxx xxx 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."

A perusal of the above-cited provisions shows that the taxpayer does not need to prove actual remittance of the taxes to the BIR. It is sufficient that the certificate of creditable tax withheld at source is presented in evidence to prove that taxes were indeed withheld.

In *Commissioner of Internal Revenue vs. Philippine National Bank,*[25] the Supreme Court held that proof of actual remittance is not a condition to claim

[25] G.R. No. 180290, September 29, 2014.

for a refund of unutilized tax credits. Under Sections 57 and 58 of the Tax Code, it is the payor-withholding agent, and not the payee-refund claimant, who is vested with the responsibility of withholding and remitting income taxes.

The reason for such ruling was extensively discussed in *Commissioner of Internal Revenue vs. Asian Transmission Corporation*,[26] where the Supreme Court, quoting the Court *En Banc's* explanation, held that:

> "x x x 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 Sections 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, x x x has no control over the remittance of the taxes withheld from its 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.** We stress that the pertinent provisions of law and the established jurisprudence evidently demonstrate that **there is no need for the claimant, respondent in this case, to prove actual remittance by the withholding agent (payor) to the BIR.** xxx *(Emphases Supplied)*

Moreover, petitioner failed to convince the Court that the testimonies of the various payors and withholding agents are required to prove remittance. 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. The certificate of creditable tax withheld at source is the competent proof to establish that taxes are withheld.[27]

---

[26] G.R. No. 179617, January 19, 2011.
[27] *Commissioner of Internal Revenue vs. Philippine National Bank*, G.R. No. 180290, September 29, 2014.

In *Commissioner of Internal Revenue vs. Team [Philippines] Operations Corporation [formerly Mirant (Phils.) Operations Corporation]*,[28] the Supreme Court, held that the certificate of creditable tax withheld at source were duly signed and prepared under penalties of perjury, the figures appearing therein are presumed to be true and correct. Thus, the testimony of the various agents/payors need not be presented to validate the authenticity of the certificates."

Well-settled in this jurisdiction is the fact that actions for tax refund, as in this case, are in the nature of a claim for exemption and the law is construed in *strictissimi juris* against the taxpayer. The pieces of evidence presented entitling a taxpayer to an exemption are also *strictissimi* scrutinized and must be duly proven.[29] In this case, respondent was able to prove that it is entitled to a refund or issuance of a TCC for its unutilized and excess creditable withholding taxes for CYs 2015 and 2016.

There being no new matters or issues raised in the Petition for Review before the Court *En Banc* and there being no reversible error committed by the Court in Division, hence, the Court *En Banc* finds no cogent reason to reverse the assailed Decision and Resolution.

**WHEREFORE,** premises considered, the Petition for Review is **DENIED** for lack of merit. The assailed Decision dated January 8, 2021 and the assailed Resolution dated July 29, 2021 are **AFFIRMED**.

**SO ORDERED.**

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

**WE CONCUR:**

**ROMAN G. DEL ROSARIO**
Presiding Justice

**ERLINDA P. UY**
Associate Justice

[28] G.R. No. 179260, April 2, 2014.
[29] *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue*, G.R. No. 159490, February 18, 2008.

**CATHERINE T. MANAHAN**
Associate Justice

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

**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 Section 13 of 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**