

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

AECOM PHILIPPINES, INC.,

Petitioner,

CTA EB NO. 2653

(CTA Case No. 10007)

Present:

Del Rosario, P.J.,
Ringpis-Liban,
Manahan,
Bacorro-Villena,
Modesto-San Pedro,
Reyes-Fajardo,
Cui-David, and
Ferrer-Flores, JJ.

- versus -

COMMISSIONER OF INTERNAL
REVENUE,

Respondent.

Promulgated:

JUN 07 2023

3:20 pm

X-----X

DECISION

RINGPIS-LIBAN, J.:

Before the Court *En Banc* is a Petition for Review¹ filed via registered mail by Aecom Philippines, Inc. on July 27, 2022. The Petition for Review seeks the reversal of the Decision dated October 25, 2021,² (Assailed Decision) as well as the Resolution dated June 20, 2022³ (Assailed Resolution) of the First Division (Court in Division)⁴ of this Court in CTA Case No. 10007.

¹ Court *En Banc*'s Docket, pp. 8-43.

² *Id.*, pp. 58-71.

³ *Id.*, pp. 50-55.

⁴ Composed of Presiding Justice Roman G. Del Rosario (*ponente*), Associate Justice Catherine T. Manahan and Associate Justice Marian Ivy F. Reyes-Fajardo.

The respective dispositive portions of the Assailed Decision and Resolution are quoted hereunder:

Assailed Decision:

‘**WHEREFORE**, premises considered, the present Petition for Review is **DENIED** for lack of merit.

SO ORDERED.’

Assailed Resolution:

‘**WHEREFORE**, premises considered, petitioner’s Motion for Reconsideration (**Re: Decision Rendered on October 25, 2021**) is hereby **DENIED** for lack of merit.

SO ORDERED.’

THE FACTS

The facts of the present case were laid down by the Court in Division in the Assailed Decision as follows:⁵

“On January 16, 2017, petitioner filed with the BIR, through the electronic Filing and Payment System (eFPS), its Original Annual Income Tax Return (ITR) for the fiscal year ended September 30, 2016 (FY 2016).

On February 2, 2017, petitioner filed with the BIR, through the eFPS its Amended Annual ITR for FY 2016.

In both its Original and Amended Annual ITRs for FY 2016, petitioner indicated therein its option to be refunded for its excess and unutilized CWTs for FY 2016.

On January 15, 2019, petitioner filed an administrative claim refund with BIR RDO No. 44 in Taguig City for its unutilized CWTs for FY 2016 in the amount of ₱11,968,655.00.

Due to the inaction of respondent and considering that the period within which petitioner may file a judicial claim for refund

⁵ Court *En Banc*’s Docket, pp. 59-61 (Citations omitted).

was about to expire on January 16, 2019, petitioner filed the present Petition for Review before this Court on January 16, 2019.

On March 18, 2019, within the extended period, respondent filed his Answer, with the following Special and Administrative Defenses: (i) petitioner's claim for refund is still subject to investigation by the BIR; (ii) petitioner's claim for refund in the amount of ₱11,968,655.00 is not fully substantiated by proper documentary evidence; (iii) petitioner failed to prove that the income upon which the alleged excess and unutilized CWTs were withheld were included as part of its gross income for FY 2016, and that the alleged excess and unutilized CWTs were not carried over to the succeeding taxable quarter, and, were not utilized in payment of its income tax liability for the succeeding taxable quarter/year; (iv) the filing of the Petition for Review was premature since respondent was not given ample opportunity to examine petitioner's claim for refund; and, (iv) claims for refund are construed strictly against the claimant as they partake the nature of exemption from taxation.

Petitioner's Pre-Trial Brief was filed on May 31, 2019, while Respondent's Pre-Trial Brief was filed on June 13, 2019. The Pre-Trial Conference was held on July 11, 2019.

On July 30, 2019, the parties filed their Joint Stipulation of Facts and Issues which was approved by the Court in the Resolution dated August 7, 2019 thereby terminating the Pre-Trial. On October 1, 2019, the Court issued the Pre-Trial Order.

Upon motion of petitioner, the Court commissioned Atty. Clifford E. Chua as Independent Certified Public Accountant (ICPA) on October 24, 2019.

During trial, petitioner presented testimonial and documentary evidence. It presented the following witnesses: Ms. Janis Myrtle P. Delos Reyes, petitioner's Senior Accountant, Tax; and Atty. Clifford E. Chua, the Court-commissioned ICPA.

On February 12, 2020, petitioner filed a Motion to Recall Atty. Clifford E. Chua with Motion to Defer Filing of Formal Offer of Evidence. This was denied in the Resolution dated July 7, 2020.

On July 21, 2020, petitioner filed its Formal Offer of Evidence. Petitioner's exhibits were admitted in evidence in the Resolution dated October 6, 2020, save for Exhibits 'P-145', 'P-162', 'P-226' and 'P-244', for not being found in the records of the case.



Petitioner filed its Memorandum on November 19, 2020, while the Memorandum for Respondent was posted on November 27, 2020. Thereafter, the case was submitted for decision on December 18, 2020.”

On October 25, 2021, the Court in Division rendered the Assailed Decision denying the Petition for Review for lack of merit.

Aggrieved, petitioner filed a Motion for Reconsideration (Re: Decision Rendered on October 25, 2021) on December 1, 2021 which the Court in Division denied in the Assailed Resolution.

On July 27, 2022, petitioner filed the present Petition for Review via registered mail.

In a Resolution dated August 30, 2022, this Court directed the respondent to file his Comment to the Petition for Review.⁶

On October 4, 2022, this Court’s Judicial Records Division submitted a Records Verification Report stating that as of even date, respondent has yet to file its Comment to the Petition for Review.⁷

In a Minute Resolution dated October 24, 2022, this Court submitted the present case for decision.⁸

THE ISSUE

Petitioner filed the present Petition for Review on the basis of the lone assignment of error stated below:⁹

“The Honorable First Division erred in ruling that Petitioner failed to prove that its income payments were declared as part of the gross income reported in its Annual ITR.”

⁶ *Id.*, pp. 74-75

⁷ *Id.*, p. 76.

⁸ *Id.*, p. 77.

⁹ *Id.*, p. 13.

THE COURT *EN BANC*'S RULING

Timeliness of the Petition

The Court *En Banc* shall first determine whether the present Petition for Review was timely filed. Section 3(b), Rule 8 of the RRCTA provides:

“Rule 8 Procedure in Civil Cases

xxx xxx xxx

SEC. 3. *Who may appeal; period to file petition.* –

xxx xxx xxx

(b) A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court by filing before it a petition for review **within fifteen days from receipt of a copy of the questioned decision or resolution.** xxx” (Emphasis supplied)

The records show that petitioner received the Assailed Resolution on June 27, 2022. Counting fifteen (15) days therefrom, petitioner had until July 12, 2022 within which to file its Petition for Review before the Court *En Banc*.

On July 11, 2022, however, petitioner filed a Motion for Extension of Time to File Petition for Review,¹⁰ which was granted in the Minute Resolution dated July 12, 2022.¹¹ The Court *En Banc* granted petitioner an additional period of fifteen (15) days from July 12, 2022 or until July 27, 2022 within which to file its Petition for Review before the Court *En Banc*. Thus, petitioner timely filed the present Petition for Review via registered mail on July 27, 2022, or well within the extended period.

Merit of Petitioner’s Claim for CWT Refund

In the recent case of *Commissioner of Internal Revenue v. Philippine Bank of Communications*,¹² the Supreme Court enumerated the requisites for claiming a tax credit or a refund of creditable withholding tax (CWT) as follows:

¹⁰ *Id.*, pp. 1-6.

¹¹ *Id.*, p. 7.

¹² G.R. No. 211348, February 23, 2022.

1. The claim must be filed with the CIR within the two (2)-year period from the date of payment of the tax;
2. It must be shown on the return that the income received was declared as part of the gross income; and
3. The fact of withholding must be established by a copy of a statement duly issued by the payor to the payee showing the amount paid and the amount of the tax withheld.

In applying the foregoing requisites to the present case, it is important to bear in mind the well-settled doctrine that actions for tax refund or credit, as in the present case, are in the nature of a claim for exemption and the law is not only construed in *strictissimi juris* against the taxpayer, but also the pieces of evidence presented entitling a taxpayer to an exemption are strictly scrutinized as the factual basis of the claim must be duly proven.¹³ The burden is on the taxpayer to show that he has strictly complied with the conditions for the grant of the tax refund or credit.¹⁴

In the Assailed Decision, the Court in Division denied the Petition for Review based on its finding that petitioner failed to prove that the income payments subjected to CWT were declared as part of its gross income. The Court in Division held:

“A perusal of petitioner’s Amended Annual ITR for FY 2016 shows that its gross income amounted to ₱190,088,152.00, computed as follows:

Net Sales/Revenues/Receipts/Fees	₱ 172,615,367.00
Add: Other Taxable Income Not Subjected to Final Tax	17,472,785.00
Total Income	₱190,088,152.00

On the other hand, the withholding tax certificates reveal that the CWTs in the amount of ₱12,355,134.07 (against which the claimed amount of ₱11,968,655.00 was compared) was withheld on gross income payments of ₱94,143,379.31.

The Court, however, is unable to verify whether the gross income payments of ₱94,143,379.31 indeed formed part of the gross income of ₱190,088,152.00 reported by petitioner in its Amended Annual ITR for FY 2016. It is noted that petitioner presented a Tax Recovery General Ledger Account and Project ✓

¹³ *Kepeco Philippines Corp. v. Commissioner of Internal Revenue*, G.R. No. 179961, January 31, 2011;

¹⁴ *China Banking Corporation v. City Treasurer of Manila*, G.R. No. 204117, July 1, 2015.

Performance Report for FY 2016 in an attempt to show that the income payments were declared in the Amended Annual ITR. Perusal of the Tax Recovery General Ledger Account, however, shows that no amount of income payment was reflected therein but only the amounts of CWTs sourced from FY 2016. Moreover, the Project Performance Report for FY 2016 does not indicate the name of petitioner's income payors, the amounts of income payment and the CWTs. **These documents, taken together, were not sufficient to prove that the total income recorded per petitioner's books tallies with or were the same income that is reflected in its Amended Annual ITR for FY 2016.**

Petitioner's failure to prove its compliance with the third requisite is fatal to its claim. In view thereof, the Court need not belabor to determine whether the CWTs in the amount of ₱8,493,530.62 are properly substantiated." (*Emphasis supplied*)

In its Motion for Reconsideration of the Assailed Decision, petitioner admitted that it has no single record or document that is capable of proving that the income payments subjected to CWT were declared as part of its gross income. It agreed that the Tax Recovery General Ledger Account only reflects the amount of CWTs sourced from FY 2016 while the Project Performance Reports (PPRs) for FYs 2014 to 2016 it presented to prove that the income payments subjected to CWTs were reported in the Annual ITRs, do not indicate the name of petitioner's payors, the amount of income payment and the CWTs. Thus, it resorted to a tracing procedure which it described in its Motion for Reconsideration.

In the Assailed Resolution, the Court in Division stated that it reviewed the tracing procedure presented by petitioner and summarized the same as follows:

1. The income payment and withholding tax are determined from the individual BIR Forms No. 2307 or Certificates of Creditable Tax Withheld at Source (CWT Certificates).
2. The amount of income payment is traced to an official receipt (OR) that bears an "Invoice No."
3. The "Invoice No." is then traced to a billing invoice that states a certain project contract code (PCC).
4. The PCC is then presented as a line item in the PPR.

The Court then explained its reasons for the denial of petitioner's Motion for Reconsideration as follows:

✓

“It should be noted that the amount reflected as ITD GR is the gross revenue recognized for the entire duration of the project from its commencement to the date of the report. Taking petitioner’s example, this means that the amount of ₱19,145,756.00, of which petitioner claims that the income payment of ₱1,866,336.04 is part of, covers several years. As to how much of the ₱19,145,756.00 pertain to the income earned and reportable for FY 2016, the same was not shown.

First, the PPR does not indicate the Year-to-Date Gross Revenue (YTD GR) or the gross revenue recognized for the FY and the amount eventually reflected in the Audited Financial Statements (AFS) pertaining to the PCC ‘MNLD13109WC.’ Second, petitioner did not provide any breakdown of the ₱19,145,756.00 to show that indeed an income payment of ₱1,866,336.04 for FY 2016 was part of the former.

A perusal of the PPR for FY 2016 shows that for PCC ‘MNLD13109WC’ a dash was reflected under the YTD GR column. This means that there is no gross revenue recognized for FY 2016 and such fact only leads to the reasonable conclusion that the ITD GR of ₱19,145,756.00 does not include any income earned in FY 2016. The income payment of ₱1,866,336.04 was not established to have formed part of the ITD GR of ₱19,145,756.00. Even assuming that the income payment of ₱1,866,336.04 was actually part of the ITD GR of ₱19,145,756.00, it does not negate the fact that no income for PCC ‘MNLD13190WC’ was reported for FY 2016.

More importantly, petitioner still failed to show the total breakdown of the total income of ₱190,088,152.00 as declared in petitioner’s Amended Annual ITR for FY 2016. Consequently, the Court cannot verify whether the gross income payments of ₱94,143,379.31 on which the subject withholding taxes were made certainly formed part of the gross income of ₱190,088,152.00. The PPR for FY 2016 dedicated a column for YTD GR which supposedly represents the gross revenues recognized for the FY and the amount eventually reflected in the AFS. The PPR for FY 2016 shows that the total YTD GR for FY 2016 is only ₱169,004,612.00 which still does not match the gross income for FY 2016 amounting to ₱190,088,152.00 or at least the Net Sales/Revenues/Receipts/Fees amounting to ₱172,615,367.00 as reported in the AFS for FY 2016.

The discrepancy between the total amount of ₱169,004,612.00 reported in the YTD GR found in the PPR of 2016 and the Net Sales/Revenues/Receipts/Fees reflected in the AFS for FY 2016

amounting to ₱172,615,367.00 leaves doubt as to the veracity of the total income payments declared by petitioner.

At this point, it is apparent that the application of the tracing procedure presented by petitioner to the other income payments would yield the same result. Remarkably, petitioner already admitted that 'the exact amount of income payment shown in BIR Forms No. 2307 cannot be matched to any single line item reported in the PPR.' Thus, even though the YTD GR amounted to ₱169,004,612.00, the admitted fact remains that the breakdown thereof does not match any of the income payments reflected in BIR Forms No. 2307 or CWTs.

Anent the timing difference allegedly caused by petitioner's use of the percentage of completion method of recognizing revenue, while Section 48 of the National Internal Revenue Code (NIRC) of 1997, as amended, sanctions the use of said method, petitioner failed to point out the exact years when the respective incomes were reported. Notably, petitioner did not offer in evidence the AFS and Annual ITR of FYs other than that for 2016 and 2017 to show that the gross income in such other periods contained the timing difference being alleged." (Emphasis supplied)

In the present Petition for Review, petitioner insists that the income payments subjected to CWT were reported as revenue in different fiscal years because of timing difference.¹⁵ It contends that the timing of withholding of CWT is upon every payment by the clients/payor in accordance with the withholding regulations while the timing of recognition of revenue is based on the percentage of completion using the cost-to-cost approach in accordance with the generally accepted accounting principles (GAAP) considering that its contracts usually take years to complete.¹⁶ In support of its contention, petitioner cited cases decided by this Court wherein the Court ruled that income to be included in the return of the recipient upon which the taxes were withheld need not be reported on the same year of the claim.¹⁷

Petitioner's contention is untenable.

As duly found by the Court in Division in the Assailed Resolution, petitioner failed to point out the exact years when the respective income payments were reported. Moreover, petitioner failed to present as evidence its AFS and Annual ITRs for years other than 2016 and 2017 in order for this

¹⁵ Court *En Banc's* Docket, pp. 28-39.

¹⁶ *Id.*

¹⁷ *Id.*

Court to at least verify whether the gross income in such other years contained the time difference being alleged.

Petitioner also maintains that the existence of discrepancy does not automatically entail a complete failure on the part of petitioner to report or declare the income payment it received as part of the gross income.¹⁸ It strongly avers the discrepancy does not conclusively mean that petitioner failed to comply with the requirement that the income upon which the taxes were withheld were included in the return of the recipient considering the presentation of other evidence to establish such fact of inclusion.¹⁹ Petitioner thus claims that a reduction or disallowance of the amount claimed in proportion to the discrepancy is proper instead of the full denial of the claim.²⁰

The Court *En Banc* is not persuaded.

An evaluation of evidence on record shows that this Court still cannot determine completely the amount of refund being claimed. Thus, a partial grant is still not warranted.

Needless to say, petitioner failed to discharge its burden of establishing the factual basis of its claim. Accordingly, the denial of petitioner's claim for refund is in order. In view of the foregoing, the Court *En Banc* finds no compelling reason to disturb the findings of the Court in Division in the Assailed Decision and Resolution.

WHEREFORE, the Petition for Review is **DENIED** for lack of merit. The Decision dated October 25, 2021 and Resolution dated June 20, 2022 of the First Division in the case docketed as CTA Case No. 10007 are **AFFIRMED**.

SO ORDERED.



MA. BELEN M. RINGPIS-LIBAN
Associate Justice

¹⁸ *Id.*

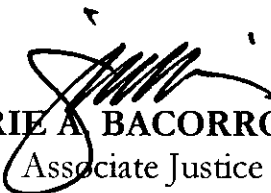
¹⁹ *Id.*

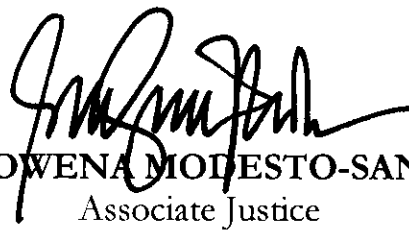
²⁰ *Id.*

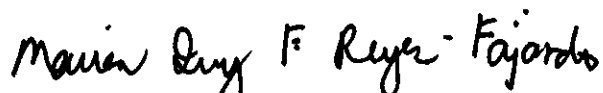
WE CONCUR:



ROMAN G. DEL ROSARIO
Presiding Justice



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 Article VIII, Section 13 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.

A handwritten signature in black ink, appearing to read 'Roman G. Del Rosario', written in a cursive style.

ROMAN G. DEL ROSARIO
Presiding Justice