REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-*versus*-

SM INVESTMENTS CORPORATION,
Respondent.

CTA *EB* NO. 2707
(CTA Case No. 9569)

Present:

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

Promulgated:
JAN 16 2024 4:20pm

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D E C I S I O N

MANAHAN, *J.*:

This involves a Petition for Review[1] filed by the Commissioner of Internal Revenue (CIR) assailing the partial grant of the claim for refund or issuance of tax credit certificate (TCC) of excess and unutilized creditable withholding tax (CWT) claimed by SM Investments Corporation (SMIC) for calendar year ending on December 31, 2014, in the amount of Two Hundred Ninety Six Million One Hundred Fifty Two Thousand One Hundred Seventy Nine and 59/100 Pesos (Php296,152,179.59).

FACTS

The CTA 3rd Division recounts the facts, as follows:

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[1] EB Docket, pp. 6-14.

Petitioner SM Investments Corporation [now, respondent SMIC] is a domestic corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with principal address at 10th Floor One E-com Center, Harbor Drive, Mall of Asia Complex, CBP-IA, Pasay City and herein represented by its Senior Vice President for Corporate Tax, Cecilia R. Patricio. It is registered with the Bureau of Internal Revenue (BIR) under Taxpayer Identification Number (TIN) 000-169-020-00000.

On the other hand, respondent [now, petitioner] is the duly appointed CIR, empowered to perform the duties of the said office including, among others, the power to decide, approve and grant refunds or tax credits as provided by law. He may be served summons, pleadings and other processes at his office at the Bureau of Internal Revenue (BIR) National Office Building, BIR Road, Diliman, Quezon City.

On the following dates, petitioner [SMIC] filed its Quarterly Income Tax Return (ITR) for CY 2014:

Period	Date of Filing	Exhibit
First Quarter ITR	May 23, 2014	"P-9"
Second Quarter ITR	August 28, 2014	"P-10"
Third Quarterly ITR	Nov 26, 2014	"P-11"

On April 8, 2015, petitioner [SMIC] filed its AITR for CY2014 through eFPS with reference no. 121500010942132, indicating total income tax credits in the amount of P548,765,509.00 and an overpayment of income tax in the amount of P470,169,461.00, as follows:

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Petitioner [SMIC] indicated in its AITR for CY 2014 its option to be issued a TCC for its excess and unutilized CWT for CY 2014.

On September 21, 2015 petitioner [SMIC] filed with the BIR Regular LT-Audit Division 2, a *Letter* dated September 14, 2015 for the refund of or issuance of TCC for its excess and unutilized CWT for CY 2014 in the amount of P330,559,574.00.[2]

There being no action on the part of the CIR, SMIC filed its Petition for Review, docketed as CTA Case No. 9569, on April 7, 2017.[3]

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[2] *Decision* dated June 29, 2020, Division Docket, CTA Case No. 9569, Vol. II, pp. 863-865.

[3] Division Docket, CTA Case No. 9569, Vol. I, pp. 10-19.

After trial, the CTA 3rd Division rendered its Decision, dated June 29, 2020, which partially granted SMIC's claim for refund/issuance of TCC, as follows:

> **WHEREFORE**, the instant *Petition for Review* is **PARTIALLY GRANTED**. Accordingly, let a tax refund or a tax credit certificate be issued in favor of petitioner [SMIC] in the total amount of **P289,755,163.16**, representing petitioner [SMIC]'s excess and unutilized Creditable Withholding Tax for the calendar year ended December 31, 2014.
>
> **SO ORDERED.**[4]

On March 11, 2022, after consideration of supplemental evidence submitted by SMIC, the assailed Amended Decision was promulgated, resolving the parties' respective motions for reconsideration, as follows:

> **WHEREFORE**, in light of the foregoing considerations, petitioner [SMIC]'s *Motion for Reconsideration* is **PARTIALLY GRANTED**.
>
> Accordingly, the Court's Decision dated June 29, 2021, is hereby amended to read as follows:
>
> > "**WHEREFORE**, in light of the foregoing consideration, the instant *Petition for Review* is **PARTIALLY GRANTED**. Accordingly, respondent [CIR] is **ORDERED TO REFUND OR ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner [SMIC] the amount of **P296,152,179.59**, representing petitioner [SMIC]'s excess and unutilized Creditable Withholding Tax for calendar year ended December 31, 2014.
> >
> > **SO ORDERED.**"
>
> On the other hand, respondent [CIR]'s *Motion for Partial Reconsideration* is **DENIED** for lack of merit.
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> **SO ORDERED.**[5]

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[4] Division Docket, CTA Case No. 9569, Vol. II, p. 887.
[5] EB Docket, pp. 37-38.

The CIR's *Motion for Partial Reconsideration [re: Amended Decision dated 11 March 2022]* was denied in the assailed Resolution[6] dated September 27, 2022.

On November 2, 2022, the CIR filed the instant Petition for Review[7] seeking the reversal of the CTA 3rd Division's Amended Decision dated March 11, 2022 and Resolution dated September 27, 2022, and praying that SMIC's claim for refund/issuance of TCC for its alleged unutilized CWT be denied entirely.

On December 27, 2022, SMIC posted its Comment,[8] which the Court received on January 12, 2023. On February 9, 2023, the case was submitted for decision.[9]

ISSUES

The CIR assigns the following error:

> WHETHER OR NOT THE HONORABLE COURT ERRED IN RULING THAT RESPONDENT IS ENTITLED TO THE CLAIM FOR REFUND OF ALLEGED EXCESS AND UNUTILIZED CWT FOR CY 2014.[10]

CIR's arguments

The CIR states that the CTA 3rd Division should have dismissed SMIC's petition for failure to exhaust administrative remedies. The CIR states that SMIC's claim is subject to administrative investigation/examination; that SMIC failed to submit the required documents in support of its claim for refund or to comply with the requirements set forth in Revenue Memorandum Order (RMO) No. 53-98 and Revenue Regulations (RR) No. 2-2006; that SMIC's evidence failed to sufficiently establish direct linkage between the CWT and the income as reflected in the annual income tax return (AITR); and, that SMIC failed to prove actual remittance of the alleged withheld taxes to the Bureau of Internal Revenue (BIR).

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[6] EB Docket, pp. 41-44.
[7] EB Docket, pp. 6-14.
[8] EB Docket, pp. 48-54.
[9] EB Docket, pp. 57-58.
[10] EB Docket, p. 9.

The CIR emphasized that the claimants of tax refunds bear the burden of proving the factual basis of their claims.

SMIC's arguments

SMIC states that the CIR raises no new arguments that have not been exhaustively considered and discussed in the assailed Decision and Resolution.

SMIC counters that Section 229 of the 1997 National Internal Revenue Code (NIRC), as amended, only requires the filing of the administrative claim for refund as a condition for the filing of a judicial claim for refund. SMIC also states that the CIR failed to specifically identify a required document that was not submitted by SMIC nor to contradict the findings of the Independent Certified Public Accountant (ICPA) regarding the link between SMIC's gross income and the relevant CWT to be refunded. Further, SMIC states that it has been settled that a claimant of excess CWT refund need not prove the actual remittance of the taxes by the suppliers who made the withholding. Finally, SMIC adds that it is not required to comply with RMO No. 53-98 and RR No. 2-2006 since these issuances do not relate to a claim for refund.

RULING OF THE COURT

The Petition for Review is denied.

The Petition for Review is timely filed.

Pursuant to the Revised Rules of the Court of Tax Appeals (RRCTA), Rule 8, Section 3(b),[11] the CIR had fifteen (15) days from receipt of the assailed Resolution, within which to file his Petition for Review.

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[11] Rule 8 Procedure in Civil Cases
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. Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of the reglementary period herein fixed, the Court may grant an additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review.

The CIR received the Resolution dated September 27, 2022 on October 5, 2022, thus, the CIR had until October 20, 2022 within which to file a Petition for Review. On October 19, 2022, the CIR filed a Motion for Extension to File Petition for Review,[12] which was granted, thereby extending the period until November 4, 2022.[13] On November 2, 2022, the CIR timely filed the instant Petition for Review.

There is no compelling reason to reverse or modify the findings of the CTA 3rd Division.

At the outset, the arguments raised by the CIR have already been passed upon and resolved in the CTA 3rd Division's Decision dated June 29, 2020; assailed Amended Decision dated March 11, 2022; and, assailed Resolution dated September 27, 2022.

We adopt with approval the following discussion:

> Contrary to respondent [CIR]'s assertion, it would have been fatal for petitioner [SMIC] not to file its judicial claim within two (2) years from the date of payment of the tax as the same is required under Section 229 of the NIRC of 1997, as amended, *to wit:*
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> > "SEC. 229. *Recovery of Tax Erroneously or Illegally Collected.* – No suit or proceedings 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.
> >
> > 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

[12] EB Docket, pp. 1-4.
[13] EB Docket, p. 5.

> face of the return upon which payment was made, such payment appears clearly to have been erroneously paid."

Clearly, the judicial claim for tax refund must be made within two (2) years from the date of payment of the tax or penalty, regardless of any supervening cause that may arise after such payment. And when the two-year prescriptive period is about to end, a taxpayer-claimant need not wait for the decision of the CIR before filing a case with this Court.

Moreover, in no wise does Section 229 of the NIRC of 1997 imply that the CIR must first act upon the taxpayer's claim, and that the taxpayer shall not go to court before such taxpayer is notified of the CIR's action. It must be emphasized that the claim with the CIR was intended primarily as a notice of warning that unless the tax or penalty alleged to have been collected erroneously or illegally is refunded, court action will follow.

In this case, there is no showing that respondent [CIR] ever acted on petitioner [SMIC]'s administrative claim for refund from the time it was filed on September 21, 2015 up to the filing of its judicial claim on April 7, 2017, when the two-year prescriptive period is about to end. Thus, it was correct on the part of petitioner [SMIC] to have elevated its judicial claim before the expiration of the said two-year prescriptive period under Section 229 of the NIRC of 1997.

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Respondent [CIR]'s allegation that petitioner [SMIC] allegedly failed (1) to present evidence of actual remittance of the taxes claimed to have been withheld; and (2) to submit complete documents in support of its claim, deserves scant consideration.

Proof of actual remittance of taxes withheld is not a pre-requisite in claiming refund of unutilized creditable withholding tax. It must be emphasized that proof of remittance of withholding taxes is the responsibility of the payor-withholding agent and not of the payee.

Further, it bears emphasis that the payee-refund claimant, such as petitioner [SMIC] in this case, need only prove the **fact of withholding of taxes**, which is established by a copy of the withholding tax statement; and not its actual remittance to the BIR.

As regards respondent [CIR]'s claim that petitioner [SMIC] allegedly failed to submit complete documents in support of its claim pursuant to RMO No. 53-98 and RR No. 2-2006, the same is likewise without merit. We reiterate that nowhere is it stated in RMO No. 53-98 and RR No. 2-2006, that the non-submission of the documents enumerated

> therein would *ipso facto* result to the denial of the claim for tax refund or credit. Further, it bears noting that RR No. 2-2006 merely imposes a penalty of fine for non-submission of the information or statement required therein, but not the outright denial of the claim for tax refund or credit.
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> Thus, the failure of petitioner [SMIC] to present the proof of actual remittance and to submit complete documents enumerated under RMO No. 53-98 and RR No. 2-2006, is not fatal to its claim for refund.[14] (*emphasis in the original*)

Verily, these issues were already addressed and settled by the Supreme Court. In *Commissioner of Internal Revenue v. Philippine National Bank*,[15] the Supreme Court stated that proof of actual remittance is not a condition to claim for refund of unutilized tax credits. The relevant portions are quoted below:

> Petitioner's posture that respondent is required to establish actual remittance to the Bureau of Internal Revenue deserves scant consideration. **Proof of actual remittance is not a condition to claim for a refund of unutilized tax credits**. Under Sections 57 and 58 of the 1997 National Internal Revenue Code, as amended, it is the payor-withholding agent, and not the payee-refund claimant such as respondent, who is vested with the responsibility of withholding and remitting income taxes.
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> This court's ruling in *Commissioner of Internal Revenue v. Asian Transmission Corporation*, citing the Court of Tax Appeals' explanation, is instructive:
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> > ...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 Regulations 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

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[14] EB Docket, pp. 35-37.
[15] G.R. No. 180290, September 29, 2014.

> 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 . . . has no control over the remittance of the taxes withheld from its income by the withholding agent or payor who is the 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**. (*emphasis supplied*)

Anent the application of RMO No. 53-98, the Supreme Court stated in *Pilipinas Total Gas, Inc. v. Commissioner of Internal Revenue*[16] that:

> As can be gleaned from the above, RMO No. 53-98 is addressed to internal revenue officers and employees, for purposes of equity and uniformity, to guide them as to what documents they may require taxpayers to present **upon audit of their tax liabilities**. Nothing stated in the issuance would show that it was intended to be a benchmark in determining whether the documents submitted by a taxpayer are *actually* complete to support a claim for tax credit or refund of excess unutilized excess VAT. As expounded in *Commissioner of Internal Revenue v. Team Sual Corporation (formerly Mirant Sual Corporation)*:
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> > The CIR's reliance on RMO 53-98 is misplaced. There is nothing in Section 112 of the NIRC, RR 3-88 or RMO 53-98 itself that requires submission of the complete documents enumerated in RMO 53-98 for a grant of a refund or credit of input VAT. The subject of RMO 53-98 states that it is a "Checklist of Documents to be Submitted by a Taxpayer upon **Audit** of his Tax Liabilities..." In this case, TSC was applying for a grant of refund or credit of its input tax. There was no allegation of an audit being conducted by the CIR. Even assuming that RMO 53-98 applies, it specifically states that some documents are required to be submitted by the taxpayer "if applicable."
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> Indeed, a taxpayer's failure [to comply] with the requirements listed under RMO No. 53-98 is not fatal to its

[16] G.R. No. 207112, December 8, 2015.

> claim . . . After all, in the judicial level or when the case is elevated to the Court, the Rules of Court governs. Simply put, the question of whether the evidence submitted by a party is sufficient to warrant the granting of its prayer lies within the sound discretion and judgment of the Court. (*emphasis and underscoring in the original*)

All told, the CIR failed to convince this Court of any ground for reversal or modification of the assailed Amended Decision and Resolution.

WHEREFORE, the Petition for Review, filed by the Commissioner of Internal Revenue, is **DENIED** for lack of merit.

The Amended Decision and Resolution, dated March 11, 2022 and September 27, 2022, respectively, in CTA Case No. 9569, are **AFFIRMED**.

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

MA. BELEN M. RINGPIS-LIBAN
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

HENRY S. ANGELES
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.

ROMAN G. DEL ROSARIO
Presiding Justice