

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

COMMISSIONER OF INTERNAL
REVENUE,

Petitioner,

CTA EB No. 2467
(CTA Case No. 9808)

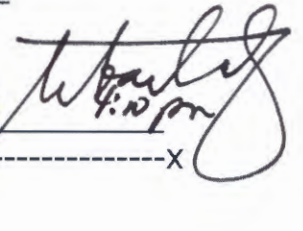
Present:

-versus-

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

SONOMA SERVICES, INC.,
Respondent.

Promulgated:
MAY 24 2022



X -----X

DECISION

DEL ROSARIO, PJ:

Before this Court is a Petition for Review posted on May 21, 2021 *via* registered mail by the Commissioner of Internal Revenue (CIR), praying that the Court *En Banc* reverse and set aside the Decision dated October 1, 2020 and the Resolution dated March 2, 2021 promulgated by the Court of Tax Appeals (CTA) Third Division¹ in CTA Case No. 9808, entitled *Sonoma Services, Inc. vs. Commissioner of Internal Revenue*, which granted Sonoma Services, Inc.'s (Sonoma) Petition for Review, and ordered the CIR to refund or issue a tax credit certificate to Sonoma in the amount of ₱4,993,000.00, representing its excess and unutilized Creditable Withholding Tax (CWT) for Calendar Year (CY) 2015.

¹ Composed of Associate Justice Erlinda P. Uy, Associate Justice Ma. Belen M. Ringpis-Liban, and Associate Justice Maria Rowena Modesto-San Pedro.

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The dispositive portions of the assailed Decision and assailed Resolution of the Court in Division are as follows:

October 1, 2020 Decision:

"WHEREFORE, in view of the foregoing, the present Petition for Review is hereby **GRANTED**. Accordingly, respondent is hereby **ORDERED TO REFUND OR TO ISSUE A TAX CREDIT CERTIFICATE** in the amount of **Php4,993,000.00** in favor of petitioner, representing its excess and unutilized CWT for CY 2015.

SO ORDERED."

March 2, 2021 Resolution:

"WHEREFORE, the Motion for Reconsideration is hereby **DENIED** for lack of merit.

SO ORDERED."

THE PARTIES²

Petitioner is the duly appointed CIR vested under appropriate laws with the authority to carry out 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.³

Respondent Sonoma is a corporation duly organized and existing under the laws of the Republic of the Philippines, with principal office at 3rd Floor, Makati Stock Exchange Building, Ayala Triangle, Ayala Avenue, Makati City.⁴ It is registered with the Bureau of Internal Revenue (BIR), Revenue Region No. 8 (RR 8), Revenue District Office No. 50 (RDO 50) with Tax Identification No. 220-868-954-000.⁵

² Commissioner of Internal Revenue is the respondent; while Sonoma Services, Inc. is the petitioner in the case docket CTA Case No. 9808 entitled *Sonoma Services, Inc. vs. Commissioner of Internal Revenue*.

³ Par. 3, Admitted Facts, Pre-Trial Order, *CTA Division Docket*, Vol. I, p. 348.

⁴ Par. 1, Admitted Facts, Pre-Trial Order, *CTA Division Docket*, Vol. I, p. 347.

⁵ Par. 2, Admitted Facts, Pre-Trial Order, *CTA Division Docket*, Vol. I, p. 348.



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THE FACTS

The facts of the case as found by the Court in Division are as follows:

“On 13 April 2016, petitioner filed, through the BIR's Electronic Filing and Payment System ('eFPS'), its original Annual Income Tax Return ('ITR') for CY 2015. On 25 April 2016, petitioner filed, through the eFPS, an Amended Annual ITR. Following its filing of said ITRs, petitioner filed before BIR RDO 50 an administrative claim for refund of its excess and unutilized CWT for CY 2015 in the amount of Php4,993,000.00.

On 25 September 2017, the BIR RR 8's Regional Director, Mr. Glen A. Geraldino, issued Letter of Authority ('LOA') No. eLA201500084361 authorizing revenue officers from RDO 50, namely, Mr. Roland Dela Torre and Ms. Marilou Cortez, to examine petitioner's books of accounts and other accounting records for CWT refund for CY 2015.

In view of respondent's inaction on its claim for refund, petitioner filed the instant Petition before this Court on 11 April 2018.

On 25 April 2018, Summons was issued to respondent, and on 22 May 2018, respondent filed a Manifestation with Motion to Admit Answer with the Answer attached therein, which was granted in a Resolution, dated 5 June 2018.

On 8 June 2018, this Court issued a Notice of Pre-Trial Conference, setting the Pre-Trial Conference on 9 August 2018, at 9:00 a.m.

On 3 July 2018, petitioner filed its Pre-Trial Brief and submitted the Judicial Affidavits of Ms. Krystal E. Gamit, which was noted in a Resolution, dated 5 July 2018. Respondent filed his Pre-Trial Brief on 1 August 2018, which was noted in a Resolution, dated 2 August 2018.

On 9 August 2018, the Pre-Trial Conference ensued.

On 29 August 2018, petitioner filed a Motion to Commission Independent Certified Public Accountant ('ICPA'), attaching therein the Judicial Affidavit of Ms. Ma. Milagros F. Padernal, which was granted by this Court. On the same date, the parties filed their Joint Stipulation of Facts and Issues, which was approved by this Court.

In an Order, dated 19 September 2018, the Petition was transferred from this Court's First Division to this Court's Third Division.



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On 5 October 2018, a Pre-Trial Order was issued.

Trial began on 16 October 2018 when petitioner presented its first witness, Kristal E. Gamit.

Meanwhile, on 18 October 2018, petitioner submitted its ICPA Report. The USB containing the soft copies of the summaries, schedules, and exhibits supporting the ICPA Report was submitted on the same date. These were admitted in a Resolution, dated 22 October 2018.

On 20 November 2018, petitioner presented its second witness, ICPA Ma. Milagros F. Padernal who identified the ICPA Report.

On 20 December 2018, on an allowed extension of time, petitioner filed its Formal Offer of Evidence, to which respondent filed a Comment/Opposition (Petitioner's Formal Offer of Evidence). In a Resolution, dated 21 February 2019, this Court admitted petitioner's Exhibits xxx but denied admission of Exhibits 'P-28' and 'P-29'.

On 14 March 2019, petitioner filed a Motion for Reconsideration (Re: Resolution dated February 21, 2019) xxx. In a Resolution, dated 17 June 2019, this Court granted the Motion for Reconsideration (Re: Resolution dated February 21, 2019), and admitted Exhibits 'P-28' and 'P-29'.

During the hearing on 6 August 2019, respondent manifested that he would no longer be presenting any evidence in view of the fact that there is no BIR Report of Investigation. Further, the parties agreed to submit their respective Memoranda no later than 5 September 2019.

xxx

xxx

xxx

On 20 September 2019, respondent filed a Manifestation & Motion informing this Court that he is adopting his Answer as his Memorandum.

Xxx. Petitioner then filed its Memorandum on 15 October 2019.

On 17 October 2019, this Court issued a Resolution submitting the instant Petition for decision."⁶ (*Citations omitted*)

On October 1, 2020, the Court in Division rendered the assailed Decision⁷ granting Sonoma's Petition for Review.

⁶ Annex "B", CTA *En Banc* Docket, pp. 22-45.

⁷ *Id.*



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On October 21, 2020, the CIR filed a "Motion for Reconsideration".⁸

On March 2, 2021, the Court in Division issued the assailed Resolution⁹ denying the CIR's "Motion for Reconsideration" for lack of merit.

Undeterred, the CIR posted the present "Petition for Review"¹⁰ before the Court *En Banc* on May 21, 2021.

With the filing of Sonoma's "Comment (Re: Petition for Review dated May 19, 2021)",¹¹ the "Petition for Review" filed by the CIR was submitted for decision on October 7, 2021.¹²

THE ISSUES

The CIR raises the following issues¹³ for the Court *En Banc*'s resolution:

- I. Sonoma evidently failed to comply with the requirements under Revenue Regulations (RR) No. 2-98, as amended by RR No. 2-2006, on the claim for refund of its excess/unutilized CWT for CY 2015; and,
- II. Sonoma's documentary exhibits consisting of Certificates of Creditable Withholding Tax at Source (CCWTS) (*i.e.* BIR Form 2307) marked as Exhibits "P-27-1" to "P-27-30" are inadmissible in evidence for being hearsay.

PARTIES' ARGUMENTS

Petitioner's arguments

The CIR argues that:

⁸ Annex "C", CTA *En Banc* Docket, pp. 46-54; CTA *Division* Docket, Vol. II, pp. 847-855.

⁹ Annex "A", CTA *En Banc* Docket, pp. 18-21.

¹⁰ CTA *En Banc* Docket, pp. 1-12.

¹¹ CTA *En Banc* Docket, pp. 65-82.

¹² CTA *En Banc* Docket, pp. 84-85.

¹³ Petition for Review, CTA *En Banc* Docket, pp. 5 and 3.



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1. Sonoma failed to present the documentary requirements [*i.e.* Summary Alphalist of Withholding Agents of Income Payments Subjected to Withholding Tax (SAWT) and Monthly Alphalist of Payees (MAP)], prescribed under RR No. 2-98, as amended by RR No. 2-2006 in support of its claim for refund of excess/unutilized CWT for CY 2015;
2. Sonoma failed to present various payors and withholding agents in order to establish and validate the fact of withholding and remittance of the full amount subject of the present claim for refund. The CIR claims that the CCWTS (*i.e.* BIR Form 2307) marked as Exhibits "P-27-1" to "P-27-30" are inadmissible in evidence for being hearsay as Sonoma's witness – Ms. Ma. Milagros F. Padernal, the Court-commissioned Independent Certified Public Accountant (ICPA), who testified and identified the CCWTS, was not the one who issued them; and,
3. Tax refunds are in the nature of tax exemptions and as such, they are regarded as in derogation of sovereign authority and to be construed *strictissimi juris* against the person or entity claiming the exemption. The burden of proof is upon Sonoma who claims the exemption in its favor. Sonoma must be able to justify its claim for tax refund by the clearest grant of organic or statute law and its alleged exemption cannot be permitted to exist upon vague implications. Thus, when tax exemption is claimed, it must be shown indubitably to exist, for every presumption is against it, and a well-founded doubt is fatal to the claim.

Respondent's arguments

Sonoma, in its Comment, counter-argues:

1. It is well-settled that the presentation of CCWTS (BIR Form 2307) issued by the withholding agents constitutes sufficient proof of the existence and validity of a taxpayer's CWT;
2. Sonoma's documentary evidence, particularly the CCWTS (BIR Form No. 2307), were properly admitted in evidence as the same do not constitute hearsay evidence;



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3. The rule that “claims for refund of overpaid taxes are construed *strictissimi juris* against the taxpayer” does not apply to claims for refund of overpaid or erroneously paid taxes, such as in the present case.

RULING OF THE COURT *EN BANC*

The Petition for Review was filed on time

As to whether the present Petition for Review was timely filed, Section 3 (b), Rule 8 of the Revised Rules of the Court of Tax Appeals states:

“**SEC. 3.** *Who may appeal; period to file petition.* – 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. (Rules of Court, Rule 42, sec. 1a)”

Records show that the CIR received the assailed Resolution on March 16, 2021. The CIR had fifteen (15) days from March 16, 2021 or until March 31, 2021 within which to file his Petition for Review before the Court *En Banc*.

Meanwhile, the Supreme Court, in addressing the rising cases of COVID-19, issued several administrative circulars,¹⁴ ordering the physical closure of courts in affected areas, and suspending the filing and service of motions, pleadings, and other court submissions beginning March 29, 2021, and declaring the resumption thereof seven (7) calendar days counted from the first day of the physical reopening of the relevant court. The CTA physically reopened on May 17, 2021, pursuant to Supreme Court Administrative Circular (AC)

¹⁴ Administrative Circular (AC) No. 14-2021 dated March 28, 2021, AC No. 15-2021 dated April 3, 2021, AC No. 21-2021 dated April 10, 2021, AC No. 22-2021 dated April 14, 2021, AC No. 29-2021 dated April 30, 2021, and AC No. 33-2021 dated May 14, 2021.



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No. 33-2021 dated May 14, 2021. Counting seven (7) calendar days from May 17, 2021, the period for filing and service of motions, pleadings, and other court submissions resumed on May 24, 2021.

Considering that the CIR had until March 31, 2021 within which to file his Petition for Review before the Court *En Banc* and that the period for filing and service of motions, pleadings, and other court submissions was suspended beginning March 29, 2021 and resumed on May 24, 2021, the CIR had two (2) days left from May 24, 2021 or until May 26, 2021 within which to file his petition. The Petition for Review was timely filed on **May 21, 2021**.¹⁵

The presentation of SAWT and MAP prescribed under RR No. 2-98, as amended by RR No. 2-2006, is not required to substantiate a claim for refund of excess/unutilized CWT

RR No. 2-2006 issued on January 5, 2006 prescribes the mandatory attachments of the SAWT to tax returns with claimed tax credits due to Creditable Tax Withheld at Source and of the MAP whose income received have been subjected to withholding tax to the withholding tax remittance return filed by the withholding agent/payor of income payments. Section 2 (A) of RR No. 2-2006 states:

"SECTION 2. Mandatory Submission of Summary Alphalist of Withholding Agents of Income Payments Subjected to Creditable Withholding Taxes (SAWT) by the Payee/Income Recipient and of Monthly Alphalist of Payees (MAP) Subjected to Withholding Tax by the Withholding Agent/Income Payor as Attachment to their Filed Returns. —

A. Summary Alphalist of Withholding Agents of Income Payments Subjected to Withholding Tax (SAWT) and Monthly Alphalist of Payees (MAP) defined — Summary Alphalist of Withholding Agents/Payors of Income Payments subjected to Creditable Withholding Tax at Source (SAWT) Annex "A" is a consolidated alphalist of withholding agents from whom income was earned or received and subjected to withholding tax to be submitted by the payee-recipient of income as attachment to its duly filed return for a given period which Summary List contains a summary of information showing, among others, total amounts of income/gross sales/gross receipts and claimed tax credits taken

¹⁵ Filed via registered mail.



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from all Certificates of Creditable Withholding Tax at Source (BIR Form No. 2307) issued by the payors of income payment.

Monthly Alphalist of Payees (MAP) Annex "B" is a consolidated alphalist of income earners from whom taxes have been withheld by the payor of income for a given return period and in whose behalf, the taxes were remitted. It contains a summary of information on taxes withheld and remitted through the monthly remittance returns (BIR Form Nos. 1601-E, 1601-F, 1600) showing, among others, total amounts of income/gross sales/gross receipts and taxes withheld and remitted."

There is nothing in RR No. 2-2006 which states that the non-submission of SAWT and MAP would *ipso facto* result to the denial of a claim for tax refund or credit of excess and unutilized CWT. Truth to tell, RR No. 2-2006 merely imposes, among others, a penalty of fine for non-submission of the information or statement required therein, but not the outright denial of a claim for tax refund or credit. Section 5 of RR No. 2-2006 provides:

"SECTION 5. Penalty Provision. — In accordance with the provisions of the NIRC of 1997, a person who fails to file, keep or supply a statement, list, or information required herein on the date prescribed therefor shall pay, upon notice and demand by the CIR, an administrative penalty of One Thousand Pesos (P1,000) for each such failure, unless it is satisfactorily shown that such failure is due to reasonable causes and not due to willful neglect. For this purpose, the failure to supply the required information shall constitute a single act or omission punishable thereof. However, the aggregate amount to be imposed for all such failures during the year shall not exceed Twenty Five Thousand Pesos (P25,000)."

There is, therefore, no legal basis for the CIR to insist that the alleged non-submission of SAWT and MAP should result in the denial of Sonoma's claim for tax refund or credit.

The CCWTS identified by the Court-commissioned ICPA are not hearsay evidence

The CIR maintains that in order to establish and validate the fact of withholding and remittance of the full amount subject of the present claim for refund, Sonoma must present the various payors and withholding agents that issued the CCWTS. The CIR further insists that due to Sonoma's failure to present the various payors and withholding agents as witnesses, the CCWTS presented during trial

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which was identified by Sonoma's witness – Ms. Ma. Milagros F. Padernal, the Court-commissioned ICPA, who is neither payor nor withholding agent, renders the same as mere hearsay; hence, inadmissible as evidence.

The CIR's argument is specious.

This Court has time and again ruled that the presentation of CCWTS is sufficient to prove the fact of withholding; and, that proof of remittance of the taxes withheld to the BIR as well as the testimony of various payors and withholding agents who issued the CCWTS are not needed to prove the taxpayer's entitlement to the claim for refund.

In *Commissioner of Internal Revenue v. Philippine National Bank*¹⁶ (PNB case), the Supreme Court categorically held that the CCWTS are sufficient to prove the fact of withholding and that the claimant need not present the person who executed and prepared the CCWTS, to wit:

"The certificate of creditable tax withheld at source is the competent proof to establish the fact that taxes are withheld. It is not necessary for the person who executed and prepared the certificate of creditable tax withheld at source to be presented and to testify personally to prove the authenticity of the certificates." (*Boldfacing supplied*)

Even without the testimony of the payor or the withholding agent who issued the CCWTS, the same are admissible in evidence. On this point, the Court *En Banc* quotes with approval the disquisition of the Court in Division in the assailed Resolution, viz.:

"To reiterate, as long as the Certificates of Creditable Withholding Tax at Source (i.e., BIR Forms 2307) are complete in its relevant details and is with a written statement that it was made under the penalties of perjury, the same is admissible in evidence even without testimony on the part of its preparer attesting to its authenticity and considered as competent proof of the fact of withholding and the amount of tax withheld.

Following a detailed examination of the Certificates of Creditable Withholding Tax at Source (i.e., BIR Forms 2307) submitted and offered as proof by petitioner, this Court finds that the same were prepared by the income payor; are complete in its relevant details such as the name of the payor, the income

¹⁶ G.R. No. 180290, September 29, 2014.



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payment basis of the tax withheld, the amount of the tax withheld and the nature of the tax paid; and are with written statements that they were made under the penalties of perjury. Consequently, it cannot be denied that these documents are admissible in evidence and are competent proof of the fact of withholding of income taxes from the income payments made to petitioner and of the amount of tax withheld.”

In fine, the Court *En Banc* finds no cogent reason to reverse the assailed Decision and assailed Resolution of the Court in Division which granted Sonoma’s claim for refund and ordered the CIR to refund or issue a tax credit certificate to Sonoma in the amount of ₱4,993,000.00, representing Sonoma’s excess and unutilized CWT for CY 2015.

In closing, the Court calls the attention of CIR’s counsels, Atty. Avelino G. Alfelor, Jr. and Atty. Philip A. Mayo, to be mindful of their professional responsibility of keeping themselves abreast of the latest laws and jurisprudence. Parenthetically, it is disturbing to note that counsels proffer such basic arguments on the admissibility of CCWTS *sans* the testimony of the persons who executed them when such issue has long been settled in the *PNB case*¹⁷ (a 2014 jurisprudence). The pronouncement of the Supreme Court case in *Spouses Williams v. Atty. Enriquez*,¹⁸ should serve as a fitting reminder on what is expected of lawyers in their dealings with the Court and clients, *viz.*:

“As pointed out by the Investigating Commissioner, Canon 5 of the Code of Professional Responsibility requires that a **lawyer be updated in the latest laws and jurisprudence. Indeed, when the law is so elementary, not to know it or to act as if one does not know it constitutes gross ignorance of the law.** Xxx Implicit in a lawyer’s mandate to protect a client’s interest to the best of his/her ability and with utmost diligence is the **duty to keep abreast of the law and legal developments**, and participate in continuing legal education programs. Thus, in championing the interest of clients and defending cases, a lawyer must not only be guided by the strict standards imposed by the lawyer’s oath, but should likewise **espouse legally sound arguments for clients, lest the latter’s cause be dismissed on a technical ground. Ignorance encompasses both substantive and procedural laws.**” (*Citations omitted; Boldfacing supplied*)

¹⁷ *Id.*

¹⁸ A.C. No. 6353, February 27, 2006.



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WHEREFORE, in light of the foregoing, the Petition for Review filed by petitioner Commissioner of Internal Revenue is **DENIED** for lack of merit. The assailed Decision dated October 1, 2020 and the assailed Resolution dated March 2, 2021 promulgated by the Court in Division are hereby **AFFIRMED**.

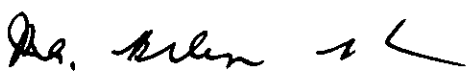
SO ORDERED.


ROMAN G. DEL ROSARIO
Presiding Justice

WE CONCUR:


JUANITO C. CASTAÑEDA, JR.
Associate Justice


ERLINDA P. UY
Associate Justice


MA. BELEN M. RINGPIS-LIBAN
Associate Justice


CATHERINE T. MANAHAN
Associate Justice


JEAN MARIE A. BACORRO-VILLENA
Associate Justice


MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

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MARIAN IVY F. REYES-FAJARDO
Associate Justice


LANEE S. CUI-DAVID
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