

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL
REVENUE,

Petitioner,

CTA EB NO. 2809
(CTA Case No. 10281)

Present:

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

- *versus* -

MCKINSEY & CO. (PHILS.),
Respondent.

Promulgated:

MAY 28 2024

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DECISION

RINGPIS-LIBAN, J.:

This is a Petition for Review¹ filed on November 16, 2023 under Section 18 of Republic Act (RA) No. 1125, as amended, in relation to Sections 3(b), Rule 8 of the Revised Rules of the Court of Tax Appeals (RRCTA), challenging the Decision² dated May 30, 2023 (“Assailed Decision”) and the Resolution³ dated October 3, 2023 (“Assailed Resolution”) both promulgated by the Court of Tax Appeals – Special First Division (Court in Division) in CTA Case No. 10281.

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

¹ Court *En Banc* Docket, pp. 6-18.

² *Id.*, pp. 19-41.

³ *Id.*, pp. 42-46.

Assailed Decision:

“WHEREFORE, premises considered, the present Petition for Review is **PARTIALLY GRANTED**. Accordingly, respondent Commissioner of Internal Revenue is ordered to **REFUND or ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner McKinsey & Co. (Phils.) in the total amount of ₱66,027,287.10, representing its excess and unutilized Creditable Withholding Taxes for calendar years 2017 and 2018, respectively.

SO ORDERED.”

Assailed Resolution:

“WHEREFORE, premises considered, respondent’s **Motion for Partial Reconsideration** is **DENIED** for lack of merit.

SO ORDERED.”

THE FACTS

As narrated by the Court in Division in the Assailed Decision, the undisputed facts of the case are as follows:⁴

“On April 15, 2018, petitioner filed its Annual Income Tax Return (ITR) for CY 2017.

On April 14, 2019, petitioner filed its Annual ITR for CY 2018.

On April 13, 2020, petitioner filed before the Bureau of Internal Revenue (BIR) its letter — claim for refund of excess CWT for CY 2017 and 2018, with attached BIR Forms No. 1914 or the Applications for Tax Credits/Refunds for its claimed excess and unutilized CWTs in the amounts of ₱39,613,320.00 and ₱62,813,748.00 for CYs 2017 and 2018, respectively.

Alleging inaction on its claims for refund, petitioner filed the present Petition for Review on June 17, 2020, invoking Section 229 of the National Internal Revenue Code (NIRC) of 1997, as amended, and Supreme Court Administrative Circular No. 39-2020 to preserve its right to claim for refund of its excess and unutilized CWT for CYs 2017 and 2018. ✓

⁴ *Id.*, pp. 20-21.

In the Resolution dated July 7, 2020, petitioner was directed to make the necessary amendments to its Petition for Review to conform to the provisions of the 2019 Amendments to the Revised Rules of Procedure which took effect on May 1, 2020, within five (5) days from notice.

On July 21, 2020, petitioner filed its Compliance/Submission (Re: Amended Petition for Review), with attached Amended Petition for Review. In the Resolution dated August 3, 2020, the aforesaid Compliance/Submission (Re: Amended Petition for Review) and the Amended Petition for Review were noted.

Summons was issued to respondent on August 25, 2020.

On September 26, 2020, respondent filed a Motion for Extension of Time to File Answer. In the Resolution dated October 16, 2020, the said motion was granted and respondent was given until October 25, 2020 to file his Answer.

Respondent timely filed his Answer To Petitioner's "Amended Petition for Review" on October 26, 2020. In his Answer, respondent raised the following Special and Affirmative Defenses, *viz.*:

1. The judicial claim for refund of CWT for CY 2017 was filed out of time;
2. Petitioner failed to show that the income covered by Certificates of Creditable Tax Withheld at Source were declared as part of petitioner's income for CYs 2017 and 2018;
3. Petitioner's claims should be dismissed for manifest insufficiency of evidence even in the administrative level; and,
4. A claim for tax refund is strictly construed against the taxpayer for the same partakes the nature of tax exemption."

Trial then ensued.

On May 30, 2023, the Court in Division rendered the Assailed Decision. ✓

On June 29, 2023, petitioner filed *via* registered mail his Motion for Partial Reconsideration which the Court in Division denied in the Assailed Resolution.

Aggrieved, petitioner filed the present Petition for Review on November 9, 2023 within the extended period granted by the Court *En Banc*.⁵

In a Minute Resolution dated December 12, 2023,⁶ the Court *En Banc* directed the respondent to file its Comment within ten (10) days from notice.

On January 4, 2024, respondent filed its Comment (Re: Petition for Review dated 8 November 2023).⁷

In a Minute Resolution dated January 16, 2024,⁸ the Court *En Banc* submitted the present Petition for Review for decision.

THE ISSUES

In its Petition for Review, petitioner has raised the following assignment of errors:⁹

“IV. ASSIGNMENT OF ERRORS:

THE FIRST DIVISION OF THIS HONORABLE COURT ERRED IN PARTIALLY GRANTING RESPONDENT’S CLAIM FOR TAX REFUND BY ORDERING THE PETITIONER TO REFUND OR ISSUE A TAX CREDIT CERTIFICATE IN THE AMOUNT OF SIXTY-SIX MILLION TWENTY-SEVEN THOUSAND TWO HUNDRED TO MCKINSEY & CO. (PHILS), REPRESENTING ITS EXCESS AND UNUTILIZED INPUT CREDITABLE WITHHOLDING TAX FOR YEARS 2017 AND 2018.

THE HONORABLE COURT’S FIRST DIVISION ERRED IN GIVING CREDENCE ON THE TESTIMONY OF MS. ELENA CABAUG, RESPONDENT’S ACCOUNTANT FOR BEING SELF-SERVING.

THE HONORABLE COURT’S FIRST DIVISION ERRED THAT INCOME TAX RETURN AND CERTIFICATE OF WITHHOLDING TAXES HELD AT SOURCE WERE SIGNED BY RESPONDENT UNDER THE PAINS OF PERJURY[.]”

⁵ *Id.*, p. 6.

⁶ *Id.*, p. 54.

⁷ *Id.*, pp. 55-65.

⁸ *Id.*, p. 66.

⁹ *Id.* p. 10.

PETITIONER'S ARGUMENTS

In the present Petition for Review, the CIR challenges the Court in Division's ruling in CTA Case No. 10281 partially granting respondent's claim for refund of its unutilized creditable withholding tax (CWT) for taxable years (TY) 2017 and 2018 on the basis of the following arguments:

1. Respondent's CWT refund claim for TY 2017 and 2018 was filed out of time.
2. Respondent is not entitled to a CWT refund as it failed to show that the income it received was declared as part of its gross income.

THE COURT *EN BANC*'S RULING

After thorough evaluation of the factual antecedents of the present case, the arguments presented, as well as the relevant laws and jurisprudence on the matter, the Court *En Banc* finds that the present Petition for Review must be denied for lack of merit. The Court *En Banc* finds no compelling reason to disturb the Court in Division's findings in the Assailed Decision and Resolution.

On the issue of jurisdiction and/or timeliness of the filing of the administrative and judicial claims for refund, the Court *En Banc* fully concurs with the findings of the Court in Division that the administrative and judicial claims were both timely filed. The Court *En Banc* thus quotes with approval the meticulous discussion of the Court in Division on this matter, to wit:

*"The administrative and
judicial claims were timely
filed*

A refund of tax paid by the taxpayer, which was erroneously or illegally collected by the BIR is sanctioned by the NIRC of 1997, as amended. Sections 204 and 229 thereof provide:

'SEC. 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.'

XXX XXX XXX

'SEC. 229. Recovery of Tax Erroneously or Illegally Collected. — No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.

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.'

Section 204 of the NIRC of 1997, as amended, applies to administrative claims for refund, while Section 229 of the same Code pertains to judicial claims for refund.

A claimant must first file an administrative claim for refund before the CIR, prior to filing a judicial claim before the CTA. Notably, both the administrative and judicial claims for refund should be filed within the two (2)-year prescriptive period as provided in Sections 204 (C) and 229 of the NIRC of 1997, as amended, and that the claimant is allowed to file the latter even without waiting for the resolution of the former in order to prevent the forfeiture of its claim through prescription. The primary purpose of filing an administrative claim is to serve as a notice of warning to the CIR that court action would follow unless the tax or penalty alleged to have been collected erroneously or illegally is refunded.

While the law provides that the two (2)-year period is counted from the date of payment of the tax, the Supreme Court clarified in *ACCRA Investments Corporation vs. Court of Appeals, et al.*, that the two (2)-year prescriptive period for claiming a refund of overpaid income tax/CWT commences to run on the date of filing of the Final Adjustment Return. This was reiterated in *Commissioner of Internal Revenue vs. Univation Motor Philippines, Inc. (formerly Nissan Motor Philippines, Inc.)*, where it was held that the two (2)-year prescriptive period is reckoned from the filing of the final adjustment return. It is only when the Final 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.

In the present case, the following are the dates relative to the filing of petitioner’s Annual ITRs for CYs 2017 and 2018, the corresponding deadline for petitioner to file its administrative and judicial claims, and the dates of filing of petitioner’s administrative and judicial claims, viz.:

CY	Filing of Annual ITR	Deadline to File Administrative and Judicial Claims	Date of Filing of Administrative Claim	Date of Filing of Judicial Claim
2017	April 15, 2018	April 15, 2020	April 13, 2020	June 17, 2020
2018	April 14, 2019	April 14, 2021	April 13, 2020	June 17, 2020

Based on the foregoing, the filing of petitioner’s administrative claim on **April 13, 2020**, and petitioner’s judicial claim for CY 2018 on **June 17, 2020** were made within the two (2)-year prescriptive period provided under Sections 204 (C) and 229 of the NIRC of 1997, as amended.

Anent the timelines of petitioner’s judicial claim for CY 2017, as aforesaid, petitioner had until **April 15, 2020** to file the same.

In view, however, of the threat of COVID-19 infection and the correlated imposed quarantine restrictions, the Supreme Court issued the following Administrative Circulars in 2020, viz.:

Issuance	Contents
Administrative Circular No. 31-2020 dated March 16, 2020	The filing of petitions and appeals, complaints, motions, pleadings and other court submissions that fall due during the period from 15 March 2020 until 15 April 2020 is extended for thirty (30) calendar days counted from 16 April 2020 .
Administrative Circular No. 34-2020 dated April 8, 2020	The filing of petitions and appeals, complaints, motions, pleadings and other court submissions that fall due up to 30 April 2020 is extended for 30 calendar days, counted from 1 May 2020 .
Administrative Circular No. 35-2020 dated April 27, 2020	The filing of petitions, appeals, complaints, motions, pleadings and other court submissions that fall due up to 15 May 2020 in the ECQ areas is extended for 30 calendar days, counted from 16 May 2020 .
Administrative Circular No. 36-2020 dated April 27, 2020	The filing of petitions, appeals, complaints, motions, pleadings and other court submissions that fall due up to 15 May 2020 in the GCQ areas is extended for 30 calendar days, counted from 16 May 2020 .

Administrative Circular No. 39-2020 dated May 14, 2020	The filing of petitions, appeals, complaints, motions, pleadings and other court submissions that fall due up to 31 May 2020 in the MECQ areas is extended for 30 calendar days, counted from 1 June 2020.
Administrative Circular No. 40-2020 dated May 15, 2020	The filing of petitions, appeals, complaints, motions, pleadings and other court submissions that fall due up to 31 May 2020 in the GCQ areas is extended for 30 calendar days, counted from 1 June 2020.
Administrative Circular No. 41-2020 dated May 29, 2020	All courts nationwide were directed to be in full operation starting June 1, 2020. The same Administrative Circular declares that there shall no longer be extensions in the filing of petitions, appeals, complaints, motions, pleadings and other court submissions that will fall due beginning June 1, 2020.

In view of the foregoing, the filing of petitioner’s judicial claim for refund was extended from April 15, 2020 to June 30, 2020. Thus, the filing of petitioner’s judicial claim for CY 2017 on June 17, 2020 was made within the extended period.

As the present Petition for Review covering petitioner’s judicial claims for CYs 2017 and 2018 have been seasonably filed on June 17, 2020, the Court has acquired jurisdiction to take cognizance of the same.” *(Citations omitted)*

In his Petition for Review, petitioner assails the Court in Division’s ruling allowing the refund of CWT in the amount of ₱9,921,287.10 from the income payment made to respondent amounting to ₱66,141,914.00. Petitioner specifically opposes the use of Ms. Elena Cabahug’s testimony as contained in her judicial affidavit in relation to respondent’s 2016 Reconciliation Schedule and 2016 General Ledger Transaction Detail (GLTD) as basis for allowing such refund. According to petitioner:

“x x x Other than the values discussed that were properly represented by documentary evidence, statement in said documents that purport reconciliation of values that were not substantiated by documentary evidence i.e. accrued revenue, forex adjustments **should be treated as mere statements made to establish self-serving facts fitting for the said claims.** Hence, it could not have shown that Php66,141,914.00 was declared to form part of the gross income of the respondent for the subject calendar years.

24. Thus, such declaration should not have been relied on since ‘a self-serving declaration’ is a statement favorable to the interest of the declarant. It is not admissible in evidence as proof of the facts asserted.” *(Boldfacing supplied)*

Petitioner's position is untenable.

Self-serving statements are those made by a party *out of court* advocating his own interest.¹⁰ In *People v. Omictin*,¹¹ the Supreme Court held that the common objection known as "self-serving" is not correct because all testimonies are self-serving and the proper objection for such statement is that it is "hearsay". In *Hernandez v. Court of Appeals*,¹² the Supreme Court aptly ruled:

"Self-serving statements are inadmissible because the adverse party is not given the opportunity for cross-examination, and their admission would encourage fabrication of testimony. This cannot be said of a party's testimony in court made under oath, with full opportunity on the part of the opposing party for cross-examination."

In light of the foregoing, Ms. Elena Cabahug's testimony as contained in her judicial affidavit in relation to respondent's 2016 Reconciliation Schedule and 2016 General Ledger Transaction Detail (GLTD) cannot be considered objectionable as self-serving or hearsay given that it was made in court under oath with the petitioner duly given the full opportunity for cross-examination.

In this regard, the Court *En Banc* likewise agrees with the Court in Division's ruling where it partially granted the Petition for Review as the Court *En Banc* finds no compelling reason to modify much less reverse the same. It is a settled rule that in the absence of proof of gross error, abuse or improvident exercise of authority, conclusions reached by this Court supported by substantial evidence shall not be disturbed on appeal.¹³

Finally, petitioner takes exception to the finding in the Assailed Resolution that the Annual Income Tax Returns (ITR) and the Certificates of Creditable Tax Withheld at Source (BIR Form 2307) were executed under pain of perjury, as follows:

"25. Further, the Honorable Court stated that the Income Tax Returns and the BIR Form 2307 were signed under the pains of perjury. Petitioner beg to disagree. Such signatures should have been made under oath before a person with a proper authority to administer oath.

✓

¹⁰ *National Development Company v. Workmen's Compensation Commission*, G.R. No. L-21724, April 27, 1967.

¹¹ G.R. No. 188130, July 26, 2010.

¹² G.R. No. 104874, December 14, 1993

¹³ *Fortune Tobacco Corporation v. Commissioner of Internal Revenue*, G.R. No. 192024, July 1, 2015; *Commissioner of Internal Revenue v. Philippine Daily Inquirer, Inc.*, G.R. No. 213943, March 22, 2017; *Commissioner of Internal Revenue v. T Shuttle Services, Inc.*, G.R. No. 240729, August 24, 2020.

26. To be liable for perjury a statement must be made under oath and such statement was proved to be false. To sign without the presence of a competent authority to administer oath is not one made under the pains of perjury, thus not [in] compliance with the requirements of the law.”

Truth be told, the above argument is too preposterous as to properly merit any consideration by this Court. Nevertheless, it must be pointed out that even a cursory examination of the documents in question will readily belie petitioner’s contention. The forms, which the BIR itself had prepared, explicitly included a pre-printed statement to the effect that in executing the same, the signatory thereof declares **under pain of perjury** that the forms were made in good faith, verified, and the information supplied therein are true and correct to the best of the signatory’s knowledge and belief. For reference, the screenshots of the relevant portions of the subject BIR Form 2307 and Annual ITR as offered and admitted as evidence are indicated below:

BIR Form 2307:

Total			
We declare, under the penalties of perjury, that this certificate has been made in good faith, verified by me, and to the best of my knowledge and belief, is true and correct, pursuant to the provisions of the National Internal Revenue Code, as amended, and the regulations issued under authority thereof.			
<i>[Signature]</i> D. JOELA P. BANOPIO Payor/Payor's Authorized Representative/Accredited Tax Agent (Signature Over Printed Name)	230-169-471 TIN of Signatory	SENIOR MANAGER Title/Position of Signatory	
Tax Agent Accreditation No./Attorney's Roll No. (if applicable)	Date of Issuance	Date of Expiry	
Conforme.			
Payee/Payee's Authorized Representative/Accredited Tax Agent (Signature Over Printed Name)	TIN of Signatory	Title/Position of Signatory	Date Signed
Tax Agent Accreditation No./Attorney's Roll No. (if applicable)	Date of Issuance	Date of Expiry	

Annual ITR:

21 If Overpayment, mark "X" one box only (Once the choice is made, the same is irrevocable)			
To be refunded	To be issued a Tax Credit Certificate (TCC)	To be carried over as tax credit next year/quarter	
We declare under the penalties of perjury, that this annual return has been made in good faith, verified by us, and to the best of our knowledge and belief, is true and correct pursuant to the provisions of the National Internal Revenue Code, as amended, and the regulations issued under authority thereof. (If Authorized Representative, attach authorization letter and indicate TIN)			
<i>Cecille Marie R. Garcia</i> Signature over printed name of President/Principal Officer/Authorized Representative		Signature over printed name of Treasurer/Assistant Treasurer	
Title of Signatory	Director of operations - msc	Number of pages filed	
22 Community Tax Certificate (CTC) Number	SEC Reg No.	23 Date of Issue (MM/DD/YYYY)	02/09/1998
24 Place of Issue	MANDALUYONG CITY	25 Amount, if CTC	
Part III - Details of Payment			
Details of Payment	Drawee Bank/Agency	Number	Date (MM/DD/YYYY)
26 Cash/Bank Debit Memo			
27 Check			
28 Tax Debit Memo			
29 Others (Specify Below)			
Machine Validation/Revenue Official Receipts Details (if not filed with an Authorized Agent Bank)		Stamp of receiving Office/AAB and Date of Receipt (RO's Signature/Bank Teller's Initial)	

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

SO ORDERED.



MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:



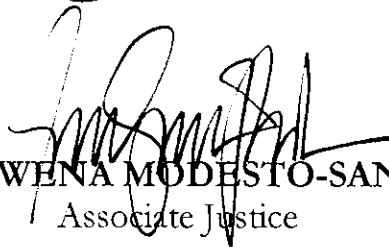
ROMAN G. DEL ROSARIO
Presiding Justice



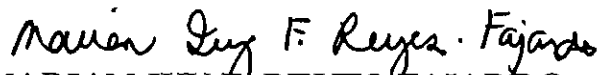
CATHERINE T. MANAHAN
Associate Justice



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


HENRY S. ANGELES
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in 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