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THIRD DIVISION

[G.R. No. 257219. July 15, 2024]
(Formerly UDK No. 16941)

TULLETT PREBON (PHILIPPINES), INC., *Petitioner*, *v.* **COMMISSIONER OF INTERNAL REVENUE,** *Respondent*.

D E C I S I O N

DIMAAMPAO, *J.*:

This Petition for Review on *Certiorari*[1] challenges the Decision[2] and the Resolution[3] of the Court of Tax Appeals (CTA) *En Banc*, which affirmed the denial of the claim for refund of Tullett Prebon (Philippines), Inc. (Tullett Prebon) for its excess and unutilized creditable withholding tax (CWT) for calendar year (CY) 2013, and which denied its motion for reconsideration thereof,[4] respectively, in CTA EB No. 2143.

Tullett Prebon operates as a broker market participant "in transactions involving, but not limited to, foreign exchange, deposits, interest rates instruments, fixed income securities, bonds/bills, repurchase agreements of fixed income securities, certificates of deposit, . . . and all related, similar or derivative products other than acting as a broker for the trading of securities."[5]

On April 14, 2014, Tullett Prebon electronically filed its annual income tax return (ITR) for CY 2013 with the Bureau of Internal

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1 *Rollo*, pp. 3–37.

2 *Id.* at 42–54. The November 18, 2020 Decision was penned by Associate Justice Erlinda P. Uy, with the concurrence of Presiding Justice Roman G. del Rosario and Associate Justices Juanito C. Castañeda, Jr., Ma. Belen M. Ringpis-Liban, Catherine T. Manahan, and Jean Marie A. Bacorro-Villena. Associate Justice Maria Rowena Modesto-San Pedro was on leave.

3 *Id.* at 55–58. Dated March 22, 2021.

4 CTA *En Banc rollo*, pp. 87–100.

5 *Rollo*, p. 129, CTA Special Third Division Decision.

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Revenue (BIR), reporting a regular corporate income tax liability of PHP 7,676,632.00. After deducting its tax liability from its income tax credits for the year, Tullett Prebon purportedly had tax overpayment of PHP 42,428,486.00 as of December 31, 2013. Notably, Tullett Prebon indicated in its 2013 ITR that it wished to be issued a tax credit certificate for its excess and unutilized CWT in the aggregate amount of PHP 15,226,718.45.[6]

On April 30, 2015, Tullett Prebon filed its administrative claim for refund for the excess before the BIR-Large Taxpayers District Office. Given the inaction of Commission of Internal Revenue (CIR), Tullett Prebon filed its judicial claim for refund before the CTA on March 31, 2016.[7]

CIR retorted, *inter alia*, that: (1) Tullett Prebon's claim was still subject to administrative investigation/examination; (2) claims for refund are construed strictly against the taxpayer who bears the burden of proof to justify their claim; (3) Tullett Prebon must prove that it filed both its administrative and judicial claim within the two-year period under Sections 204 and 229 of the National Internal Revenue Code, as amended; and (4) Tullett Prebon's alleged excess and unutilized CWT was not properly documented.[8]

In its Decision,[9] the CTA Special Third Division denied Tullett Prebon's claim. It held that: (1) Tullett Prebon's claim was timely filed;[10] (2) out of the PHP 15,226,718.45 CWT claimed, only PHP 12,601,680.48 was properly supported with the corresponding BIR Forms No. 2307;[11] and (3) out of the PHP 158,301,281.84 declared revenue relating to the CWT claimed, only PHP 5,600,533.49 was traceable to the PHP 169,032,655.28 total gross income

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6 *Id.*

7 *Id.*

8 *Id.* at 130.

9 *Id.* at 128–150. The April 12, 2019 Decision in CTA Case No. 9320 was penned by Associate Justice Ma. Belen M. Ringpis-Liban, with the concurrence of Associate Justice Esperanza R. Fabon-Victorino.

10 *Id.* at 137.

11 *Id.* at 138–139.

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reported by Tullett Prebon. This translated to a refundable CWT amounting to PHP 1,952,059.85.[12] Despite this, the CTA Special Third Division concluded that the refund could not be granted as the prior year's excess credit, from which Tullett Prebon paid the total sum of its 2013 regular corporate income tax liability, was actually insufficient.[13]

Tullett Prebon moved for reconsideration,[14] but the same was rebuffed by the CTA Special Third Division in its Resolution.[15] Ensuingly, Tullett Prebon filed its petition for review[16] before the CTA *En Banc*.

In the impugned Decision, the CTA *En Banc* denied the petition for lack of merit. The tax court emphasized that it was not bound by the findings of the court-appointed independent certified public accountant (ICPA) and was free to make its own verification and evaluation of the evidence on record. Based on its own determination, it found that the evidence adduced by Tullett Prebon was insufficient to prove its entitlement to a refund of its supposed excess and unutilized CWT.[17]

With its bid for reconsideration[18] having been denied in the oppugned Resolution, Tullett Prebon now comes before the Court via the present Petition.[19]

The Court is called upon to determine whether the CTA *En Banc* erred in denying Tullett Prebon's claim for refund.

The Court's Ruling

The Petition is partly meritorious.

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[12] *Id.* at 139–143.

[13] *Id.* at 144–148.

[14] CTA Division records, pp. 1112–1134. Motion for Reconsideration with Motion for Leave of Court to Present Additional Evidence.

[15] *Rollo*, pp. 152–158. Dated September 4, 2019.

[16] CTA *En Banc rollo*, pp. 6–31.

[17] *Id.* at 49–52.

[18] *Id.* at 87–100.

[19] *Id.* at 3–58.

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In order to prove entitlement to a claim for refund of excess and unutilized CWT, taxpayer-claimants must prove the following:

> (1) The claim must be filed with the CIR within the two-year period from the date of payment of the tax, as prescribed under Section 229 of the NIRC of 1997; (2) The fact of withholding is established by a copy of a statement duly issued by the payor to the payee showing the amount paid and the amount of tax withheld; and (3) It must be shown on the return of the recipient that the income received was declared as part of the gross income.[20]

Tullett Prebon's supplication before the Court to reverse the rulings of the CTA *En Banc* rests on two main arguments: *first*, the CTA erred in concluding that it was unable to prove full compliance with the above-quoted third requisite, i.e., the income from which the CWT being claimed was not reported as part of its gross income for CY 2013;[21] and *second*, the substantiated prior years' excess credits were more than sufficient to cover its liability for CY 2013.[22] Simply put, the first argument goes into the requisite to establish the refundability of the excess or unutilized CWT claimed by Tullett Prebon, whereas the second argument pertains to the actual refundable amount.

To recall, the CTA Special Third Division conceded that Tullett Prebon was able to prove full compliance with the abovementioned first and second requisites, but only partial compliance with the third requisite, which resulted in a reduced refundable amount of PHP 1,952,059.85. The reason for the substantial reduction of the refund claim stems from Tullett Prebon's supposed failure to prove that the income payments relating to the total claimed CWT was included in the total gross income reported by Tullett Prebon for CY 2013; specifically, that the general ledger presented by Tullett Prebon did not show the specific billing invoice number corresponding to the revenue amounts recorded therein.[23] Tullett

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[20] *Commissioner of Internal Revenue v. Univation Motor Phils., Inc.*, 851 Phil. 1078, 1091 (2019) [Per J. J. Reyes, Jr., Second Division]. (Citation omitted)

[21] *Rollo*, p. 13.

[22] *Id.* at 21.

[23] *Id.* at 139–143.

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Prebon vehemently rejects this conclusion as the voluminous accounting records it submitted, taken together with the ICPA's report, constituted preponderant evidence that its claimed CWT was reported as part of its gross revenues.[24] Additionally, "no law, rule, regulation, or financial reporting standard which requires reporting entities to indicate the corresponding 'invoice numbers' in its general ledger."[25] Moreover, Tullett Prebon argues that the very fact that its reported revenue in its ITR of PHP 169,032,655.00 exceeds the total amount of income payments subjected to CWT of PHP 158,301,281.84 is proof of the third requisite; verily, this was the CTA's ruling in a previous case before it.[26]

Tullett Prebon's first argument is meritorious.

At the outset, it should be borne in mind that "*the sufficiency of a claimant's evidence* and the *determination of the amount of refund*"[27] are questions of fact, which are generally beyond the purview of a petition for review on *certiorari* under Rule 45.[28] Oft-repeated is the principle that it is not the function of the Court to again analyze or weigh evidence that has already been duly considered by the courts *a quo*.[29] Moreover, "the findings of facts of the CTA, when supported by substantial evidence, will not be disturbed on appeal."[30] Unless there was abuse of discretion on its

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[24] *Id.* at 14–15.

[25] *Id.* at 16.

[26] *Id.* at 14–15.

[27] *Commissioner of Internal Revenue v. Philippine Bank of Communications*, G.R. No. 211348, February 23, 2022 [Per J. Hernando, Second Division] at 9. This pinpoint citation refers to the copy of the Decision uploaded to the Supreme Court website. (Emphasis supplied, citation omitted)

[28] *See Mannasoft Technology Corp. v. Commissioner of Internal Revenue*, G.R. No. 244202, July 10, 2023 [Per J. Dimaampao, Third Division] at 8. This pinpoint citation refers to the copy of the Decision uploaded to the Supreme Court website. (Citation omitted)

[29] *See id.* (Citation omitted)

[30] *Commissioner of Internal Revenue v. Vestas Services Phils., Inc.*, G.R. No. 255085, March 29, 2023 [Per J. Hernando, First Division] at 7. This pinpoint citation refers to the copy of the Decision uploaded to the Supreme Court website. (Citation omitted)

part, the CTA's factual findings are accorded the highest respect by this Court.[31]

Indeed, the Court has generally taken the stance that whether an issue is duly proved, including the sufficiency of the evidence required thereby, is best left to the sound judgment of the CTA which, owing to its dedicated function of studying tax problems, has developed the necessary expertise thereon.[32] In this instance, however, the CTA committed grave error which warrants a second look at the evidence presented.

The CTA declared that it could not trace the income payments corresponding to the claimed CWT given the evidence presented. In so doing, the CTA rejected the ICPA's analysis, which was based on tracing the revenues declared in general ledger *vis-à-vis* the schedules, billing invoices, and official receipts of Tullett Prebon for CY 2013. Instead, the CTA based its conclusion solely on the fact that the billing invoice number did not appear in the general ledger for all the receivable accounts save for one.[33]

Indisputably, there exists no hard and fast standards as to the kind of evidence needed to prove the third requisite.

An examination of the relevant provision under Revenue Regulation No. 2-98, which implements the withholding tax provisions of the Tax Code, yields the same conclusion:

> 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*.

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[31] *See id.* (Citation omitted)

[32] *See id.* (Citation omitted)

[33] *Rollo*, pp. 139–143.

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Proof of remittance is the responsibility of the withholding agent.

(C) Excess Credits — An individual or corporate taxpayer's excess expanded withholding tax credits for the taxable quarter/year shall automatically be allowed as a credit against his income tax due for the taxable quarters/years immediately succeeding the taxable quarters/years in which the excess credit arose, provided he submits with his income tax return, a copy of the first page of his income tax return for the previous taxable period showing the amount of his excess withholding tax credits, and on which return he has not opted for a cash refund or tax credit certificate.

(1) If in lieu of the automatic application of his excess credit, the taxpayer wants a cash refund or a tax credit certificate for use in payment of his other national internal revenue tax liabilities, he shall make a written request therefor, within two years after the payment of the tax (Ref. Secs. 204(c) and 229 of the Code), provided however, that if the taxpayer has indicated in his income tax return his option for either a cash refund or a tax credit certificate, such indication shall be considered sufficient for the purpose. Upon filing of his request, the taxpayer's income tax return showing the excess expanded withholding tax credits shall be examined. The excess expanded withholding tax so determined, shall be refunded/credited to the taxpayer.

(2) Sample computation of application of excess credits-ordinary

	Taxable Period			
	1997	1998-QTR1	1998-QTR2	1998-QTR3
Tax Due	1,000	200	200	500
Less: Tax Withheld	(1,500)	(500)	(300)	0
Net Tax Payable/ Creditable	(500)	(300)	(100)	500

In the above illustration, there is an excess credit in 1997 that can be applied to the subsequent quarter. And if the option to apply the excess credit is initiated in the first quarter of 1998, the taxpayer cannot avail of a refund/tax credit certificate of the excess credit of [PHP] 500 in 1997.

Evidently, unlike the second requisite, i.e., the fact of withholding—which is proved 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" — there is no prescribed evidence to prove that the income payment has been declared as part of the gross income.

Still, the standard of proof, even in tax refund claims, is merely preponderance of evidence.[34] To the Court's mind, Tullett Prebon's evidence, particularly the source documents sifted and evaluated by the ICPA, taken cumulatively, warranted a more judicious appreciation from the CTA, rather than being disregarded wholesale on the sole ground that the general ledger presented did not itemize the billing invoice numbers. The merits of Tullett Prebon's claim should not rise and fall on the strength of a singular piece of evidence, especially when no specific proof is required by law or by the rules.

To clarify, the Court is not invalidating the basic procedural rule that the "findings and conclusions of the [ICPA] may be challenged by the parties and shall not be conclusive upon the [CTA], which may, in whole or in part, adopt such findings and conclusions subject to verification."[35] The CTA is free to adopt or reject the findings of the ICPA.

Similarly, the Court is not inclined to adopt as doctrine that the third requisite may be proved by the mere fact that the income from which CWT is withheld is *less* than the total income reported by the taxpayer-claimant. This goes against the elementary principle that cases before the CTA are litigated *de novo* and that parties "should prove every minute aspect of their cases."[36] This is particularly true in refund cases as tax refunds are strictly construed against the taxpayer.[37] Even so, while not absolutely determinative of the third requisite, *when the total reported sales/income is* ***greater***

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[34] *See Commissioner of Internal Revenue v. Univation Motor Phils., Inc.*, 851 Phil. 1078, 1090 (2019) [Per J. J. Reyes, Jr., Second Division].

[35] CTA RULES, Rule 13, sec. 3.

[36] *Commissioner of Internal Revenue v. Co*, 871 Phil. 862, 882 (2020) [Per J. Caguioa, First Division]. (Citation omitted)

[37] *See id.* (Citation omitted)

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than the income corresponding to the CWT withheld, this should prompt the CTA to be ***more circumspect*** *in its evaluation of the evidence on record*, especially when there is other evidence that could point to the breakdown of the gross income reported, as in this case.

The CTA Special Third Division also erred in not allowing Tullett Prebon to submit the expanded ledger in its motion for reconsideration of its April 12, 2019 Decision,[38] especially when the crux of its Decision rested on the insufficiencies of the earlier ledger.

Although "it is true that strict procedural rules generally frown upon the submission of documents after the trial, the law creating the CTA specifically provides that proceedings before it shall not be governed strictly by the technical rules of evidence and that *the paramount consideration remains the ascertainment of truth*."[39] Rules of procedure should not preclude courts from considering undisputed facts to arrive at a just ruling.[40]

Accordingly, the case should be remanded and Tullett Prebon should be allowed to present and submit the expanded general ledger as evidence to prove the third requisite. The Court leaves the determination of the extent of the effects thereof on the amount of CWT to be refunded to the CTA.

In the same vein, the Court finds Tullett Prebon's second argument meritorious.

In obliterating the amount to be refunded to Tullett Prebon, the CTA ratiocinated as follows:

> To prove the existence of its prior year's excess credits of [PHP] 34,878,400.00, [Tullett Prebon] presented BIR Form[s] No. 2307 for the years 2011 and 2012, which were accounted for by the ICPA as follows:

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[38] CTA Division records, pp. 1119, 1128–1129.

[39] *Commissioner of Internal Revenue v. De La Salle Univ., Inc.*, 799 Phil. 141, 178 (2016) [Per J. Brion, Second Division]. (Emphasis supplied, citation omitted)

[40] *See id.* (Citation omitted)

. . . .

Based on the preceding tables, only the CWT of [PHP] 13,065,607.26 and [PHP] 13,883,935.99 for CYs 2011 and 2012, respectively, totalling [PHP] 26,949,543.25, were properly supported by BIR Forms No. 2307, to wit:

. . . .

However, these CWTs do not represent [Tullett Prebon]'s excess CWTs for CYs 2011 and 2012 since [Tullett Prebon] reflected in its Annual ITRs for the said years, income tax due in the respective amounts of [PHP] 14,233,716.00 and [PHP] 12,400,630.50 or in the sum of [PHP] 26,634,346.50. Deducting this total income tax liabilities of [PHP] 26,634,346.50 from the CWT of [PHP] 26,949,543.25 yields an amount of only [PHP] 315,196.75 excess tax credits as of the end of CY 2012, as shown below:

. . . .

As stated earlier, [Tullett Prebon]'s properly substantiated CWT for CY 2013 amounted to only [PHP] 1,952,059.85, which when added to the prior year's excess credits of [PHP] 315,196.75 yields an aggregate tax credits of [PHP] 2,267,256.60. Considering that [Tullett Prebon]'s income tax due for CY 2013 in the amount of [PHP] 7,676,632.00 is a lot higher than the tax credits of [PHP] 2,267,256.60, [Tullett Prebon] has no excess CWT available for refund[.][41]

Tullett Prebon contends that the CTA erred in ignoring the fact that "[it] applied its income tax credits for CYs 2010 and prior years as payment for its income tax liabilities for CYs 2011 and 2012."[42] By disregarding the excess credits of the prior years for Tullett Prebon's failure to substantiate the same through the submission of the corresponding BIR Form[s] No. 2307 would tantamount to demanding that Tullett Prebon "substantiate with BIR Form No. 2307 all of its CWTs from the time of its incorporation."[43]

Tullett Prebon's contention is well-taken.

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[41] *Rollo*, pp. 145, 147–148.

[42] *Id.* at 22.

[43] *Id.* at 24.

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It was glaring error for the CTA to discount the existence of prior credits for CY 2011 in deciding whether the credits earned by Tullett Prebon in 2011 could be carried over to 2012.

As provided under Section 2.58.3(C) of Revenue Regulation No. 2-98, excess credits may be allowed to be carried over and credited to the succeeding taxable period's tax due so long as the taxpayer "submits with his income tax return, a copy of the first page of his income tax return for the previous taxable period showing the amount of his excess withholding tax credits, and on which return he has not opted for a cash refund or tax credit certificate."

It may be inferred from the foregoing that the income tax returns themselves constitute sufficient proof of the previous period's excess tax credits, as well as the amount of tax credits to be carried over. This flows from the premise that tax returns are filed under pain of perjury.[44] As such, the tax returns may be taken at face value,[45] which necessarily entails the amount of tax credits carried over from prior years. It is the burden of the CIR to establish that these returns are incomplete, false, or issued irregularly.[46] To hold otherwise would result in absurdity and an excessive burden on taxpayer claimants to trace the whole history of its prior year's excess credits that it carries over.

In the case at bench, it is plain from the records that Tullett Prebon submitted its annual ITR for 2011 and 2012 to prove its prior years' excess credits.[47] Its 2011 ITR provides that it had prior year's excess credits of PHP 25,686,119.00 from which the entirety of its CY 2011 income tax due of PHP 14,233,716.00 was applied against.[48] This is also pursuant to the express wording of Section 2.58.3 (C) of Revenue Regulations No. 2-98 which

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[44] Republic Act No. 8424 (1997), sec. 267, Tax Reform Act of 1997.

[45] *See Phil. Airlines, Inc. (PAL) v. Commissioner of Internal Revenue*, 823 Phil. 1043, 1087 (2018) [Per J. Leonen, Third Division]. (Citation omitted)

[46] *See id.* (Citation omitted)

[47] CTA Division records, pp. 922–923, Formal Offer of Evidence.

[48] Exhibit P-36, Scanned Copy of the Exhibits, p. 3. Accessible through CD.

provides that carried over excess credits are to be applied to the income tax due of the *immediately* succeeding taxable period. The composition of the prior year's excess credits carried over to CY 2011 should not be put in issue for this refund claim. If the amount is improper or inaccurate, it is the CIR's duty to adduce evidence to contradict the same. Consequently, the whole of the unused CWT in CY 2011 was correctly carried over by Tullett Prebon to the succeeding years until CY 2013 when it was applied against the income tax due for that year. The same holds true for the movement of excess credits in CY 2012. The CTA failed to duly take into account the foregoing disquisitions appearing on record which would have put things in the proper perspective.

The CTA should likewise appreciate the foregoing pronouncement in the computation of the final amount to be refunded to Tullett Prebon upon remand.

ACCORDINGLY, the Petition for Review on *Certiorari* is **GRANTED**. The November 18, 2020 Decision and the March 22, 2021 Resolution of the Court of Tax Appeals *En Banc* in CTA EB No. 2143 are **REVERSED** and **SET ASIDE**. The records of this case are **REMANDED** to the Court of Tax Appeals in Division which is **DIRECTED** to conduct further proceedings in accordance with this Decision.

SO ORDERED.

Caguioa (Chairperson), Inting, Gaerlan, and *Singh, JJ.*, concur.

APPEARANCES OF COUNSEL

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