

REPUBLIC OF THE PHILIPPINES  
COURT OF TAX APPEALS  
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL  
REVENUE,

*Petitioner,*

CTA EB No. 2561  
(CTA Case No. 9969)

- versus -

Present:


DEL ROSARIO, PJ,  
RINGPIS-LIBAN,  
MANAHAN,  
BOCORRO-VILLENA,  
MODESTO-SAN PEDRO,  
REYES-FAJARDO,  
CUI-DAVID, and  
FERRER-FLORES, II.

AXELUM RESOURCES  
CORPORATION,

*Respondent.*

Promulgated:

JUN 13 2023

 3:59 p.m.

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DECISION

REYES-FAJARDO, J.:

THE CASE

For action is the Petition for Review filed on January 4, 2022, by the Commissioner of Internal Revenue, challenging the Decision<sup>1</sup> dated June 15, 2021 and the Resolution<sup>2</sup> dated November 8, 2021 in CTA Case No. 9969, whereby the Second Division of the Court (Court in Division) partially granted Axelum Resources Corporation's refund of unutilized input value-added tax (VAT), attributable to its zero-rated sales for the period April 1, 2016 to June 30, 2016, to the extent of

<sup>1</sup> Rollo, pp. 17-39.

<sup>2</sup> *Id.* at pp. 40-46.



Twelve Million Eight Hundred Nineteen Thousand One Hundred Fifty-Four and 46/100 Pesos (₱12,819,154.46).

### THE PARTIES

Petitioner Commissioner of Internal Revenue is empowered to perform the duties of his office, including acting upon on protests cases and approval of claims for refund or tax credit as provided by law and implementing regulations. He can be served with pleadings, notices, and other processes at BIR National Office Bldg., BIR Road, Diliman, Quezon City.

On the other hand, respondent Axelum Resources Corporation, is a corporation duly organized and existing under Philippine laws. The primary purpose of this corporation is "to enter into direct manufacturing and/or toll manufacturing of coconut water and other coconut products for domestic and international market."<sup>3</sup>

### THE FACTS

On June 29, 2018, respondent filed with the Bureau of Internal Revenue (BIR) an *Application for Tax Credits/Refunds* (BIR Form No. 1914), seeking for the refund or tax credit of input VAT in the amount of ₱43,713,177.11 for the Second Quarter of CY 2016.

On October 10, 2018, petitioner received the BIR's VAT Refund Notice, partially granting its claim for refund in the amount of ₱2,768,079.51.

On November 5, 2018, respondent filed a *Petition for Review* before the Court in Division.

On June 15, 2021, the Court in Division rendered the challenged Decision, the dispositive portion of which reads:

**WHEREFORE**, premises considered, the Petition for Review filed by [respondent] Axelum Resources Corporation on November 5, 2018, is **PARTIALLY GRANTED** in the reduced amount of **₱12,819,154.46**.

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<sup>3</sup> P-2-a", Docket, p. 348.

**SO ORDERED.**

On July 1, 2021, petitioner filed a *Motion for Partial Reconsideration (Re: Decision dated 15 June 2021)* with the Court in Division.<sup>4</sup>

On November 8, 2021, the Court in Division rendered the challenged Resolution, denying petitioner's Motion for Partial Reconsideration, the dispositive portion of which reads:

**WHEREFORE**, [petitioner]'s Motion for Partial Reconsideration (Re: Decision dated 15 June 2021) is **DENIED** for lack of merit. Accordingly, the challenged Decision promulgated on June 15, 2021 is hereby **AFFIRMED**.

**SO ORDERED.**

On January 4, 2022, petitioner filed a *Petition for Review* with the Court *En Banc*,<sup>5</sup> to which respondent filed its *Comment/Opposition* on April 8, 2022.<sup>6</sup>

On May 18, 2022, the Court promulgated a Resolution submitting the case for decision.<sup>7</sup>

**THE ISSUE**

Did the Court in Division err in ruling that respondent is entitled to a partial refund amounting to ₱12,819,154.46, representing its excess and unutilized input VAT attributable to its zero-rated sales for the period April 1, 2016 to June 30, 2016?

**THE ARGUMENTS**

Petitioner argues that the Court in Division should have disregarded respondent's evidence in the determination of its refund claim at judicial level, because it was not adduced in its claim at the administrative level, citing *Pilipinas Total Gas, Inc. v. Commissioner of Internal Revenue (PTG)*,<sup>8</sup> as authority.

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<sup>4</sup> Docket (CTA Case No. 9969), pp. 501-510.

<sup>5</sup> *Rollo*, pp. 1-16.

<sup>6</sup> *Id.* at pp. 57-64.

<sup>7</sup> *Id.* at pp. 66-68.

<sup>8</sup> *Id.*

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Petitioner insists that the Court in Division's reliance on the Independent Certified Public Accountant (ICPA) report is misplaced. According to him, respondent is only entitled to an input VAT refund of ₱2,768,079.51, or the amount recommended by the BIR.

On the other hand, respondent echoes the ruling of the Court in Division. It states that it was able to establish that it is entitled to the amount of refund granted in its favor. Respondent asserts that the findings of the Court in Division are a result of a thorough examination of the ICPA report and all the documents it presented during trial.

### THE COURT'S RULING

The *Petition for Review* is denied.

The Court *En Banc* notes that the arguments put forward by petitioner in his *Petition for Review* are the very same flawed contentions he advanced in his Motion for Partial Reconsideration (Re: Decision dated 15 June 2021), all of which have already been weighed, and found wanting by the Court in Division in the challenged Decision and Resolution. In any event, the Court *En Banc* shall again discuss the salient points in the challenged Decision and Resolution.

Petitioner argues that the Court in Division should have disregarded respondent's evidence in the determination of its refund claim at judicial level, because it was not adduced in its claim at the administrative level, citing *PTG*,<sup>9</sup> as authority.

The argument is specious.

In relation to an administrative claim for input VAT refund, *PTG* envisaged two (2) scenarios, namely: *first*, dismissal thereof by the BIR was due to the taxpayer's failure to submit complete documents, despite the former's notice or request; or *second*, inaction tantamount to a denial, or denial *other than* due to taxpayer's failure to submit complete documents, despite notice or request.

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<sup>9</sup> G.R. No. 207112, December 8, 2015 citing *Atlas Consolidated Mining and Development Corporation v. Commissioner of Internal Revenue*, G.R. No. 145526, March 16, 2007.

In the *first* scenario, the refund claimant must show the Court its entitlement to a VAT refund under substantive law, and submission of complete supporting documents at administrative level requested by petitioner.

In the *second* scenario, a taxpayer-claimant may present all evidence to prove its entitlement to a VAT refund, and the Court will consider all evidence offered even those not presented before respondent at the administrative level.<sup>10</sup>

By said observations, petitioner's denial of respondent's administrative claim for input VAT refund falls under the *second* scenario. To be precise, petitioner's input VAT refund claim was partially granted by respondent in the amount of ₱2,768,079.51. The revenue officer's report<sup>11</sup> provided the following reason:

Final evaluation of the case disclosed that there was substantial compliance with the requirements set forth in processing claims for tax credit/refund including documentary requirements under Revenue Memorandum Order (RMO) No. 16-2007 and 17-2018. However, additional deductions from the claim were made as a result of the following findings on the document submitted:...

Indeed, the partial denial of respondent's administrative claim for input VAT refund was occasioned by the additional deductions thereon based on the documents it submitted. It means that said denial was *other than* due to taxpayer's failure to submit complete documents, despite notice or request. Following *PTG*, the Court may give credence to all evidence presented by respondent to support its prayer for refund, irrespective of whether such evidence was presented at administrative level, as the case is being essentially decided in the first instance. After all, in a judicial claim for refund, what is crucial is the evidence presented by the claimant before the Court. *Commissioner of Internal Revenue v. Philippine Bank of Communications*<sup>12</sup> confirmed:

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<sup>10</sup> See *Pilipinas Total Gas, Inc. v. Commissioner of Internal Revenue*, G.R. No. 207112, December 8, 2015, citing *Atlas Consolidated Mining and Development Corporation v. Commissioner of Internal Revenue*, G.R. No. 145526, March 16, 2007, as cited in *Stefanini Philippines, Inc. v. Commissioner of Internal Revenue*, CTA Case No. 10188, November 23, 2022 and *Commissioner of Internal Revenue v. CE Luzon Geothermal Power Company, Inc.*, CTA EB Case No. 2132 (CTA Case Nos. 7180 & 7279), January 28, 2021.

<sup>11</sup> Pp. 388 to 396 of the BIR records, Page 5 of the Petition for Review.

<sup>12</sup> G.R. No. 211348, February 23, 2022.

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As applied in the instant case, since the claim for tax refund/credit was litigated anew before the CTA, the latter's decision should be solely based on the evidence formally presented before it, notwithstanding any pieces of evidence that may have been submitted (or not submitted) to the CIR....

Petitioner insists that the Court in Division's reliance on the ICPA report is misplaced. According to him, respondent is only entitled to an input VAT refund of ₱2,768,079.51, or the amount recommended by the BIR.

The Court is not persuaded.

Section 3, Rule 13 of the Revised Rules of the Court of Tax Appeals (RRCTA) reads:

**SEC. 3. Findings of independent CPA.** - The submission by the independent CPA of pre-marked documentary exhibits shall be subject to verification and comparison with the original documents, the availability of which shall be the primary responsibility of the party possessing such documents, and secondarily, by the independent CPA. **The findings and conclusions of the independent CPA may be challenged by the parties and shall not be conclusive upon the Court, which may, in whole or in part, adopt such findings and conclusions subject to verification.**<sup>13</sup>

Indeed, the findings and conclusions of the ICPA are recommendatory. However, upon validation thereof, the Court may totally or partially adopt said findings and conclusions. The requisite verification was met. As exhaustively discussed in the challenged Resolution:

...

The Court notes that [petitioner's] arguments in the subject Motion are a mere rehash of the points raised in his memorandum. The same have been considered by the Court when the case was deliberated and need not be revisited since there has been no presentation of new information relevant to the case, thus, the motion is denied.

In this case, [respondent] submitted the required supporting documents for its local purchases of goods and services, including

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<sup>13</sup> Boldfacing supplied.

the purchase of assets classified as Construction in Progress, and respondent failed to refute the evidence submitted by petitioner [now respondent] to support its claim.<sup>14</sup> ...

...

Pursuant to the foregoing provision, [respondent] is correct to point out that [petitioner] should have challenged the findings of the ICPA when she submitted her report, when she was presented as a witness and when [respondent] formally offered as evidence the ICPA report. However, [petitioner] failed to even comment on [respondent's] Formal Offer of Evidence.

Also, per BIR Records, [respondent] submitted the complete documents. A bulk of [respondent's] input taxes on local purchases of goods and services comes from its acquisitions of assets classified as projects in progress. **The same were found by the ICPA and the Court as partially supported by official receipts; invoices stamped with "Bureau of Internal Revenue, VAT Credit Audit Division, VAT Refund Claimed"; and Deeds of Sale, which includes a schedule of the projects, their description and corresponding amounts.**

The BIR's Revised Checklist of Mandatory Requirements for Claims for VAT Refund shows that petitioner is "Complete as to Requirements," particularly on the local purchases of goods and services since a check mark (✓) has been indicated before every item therein (Items 4.1 to 4.7), ...<sup>15</sup>

Therefore, the Court in Division may *not* be faulted for relying on the ICPA Report, much more, in granting respondent's claim for refund, albeit in the reduced amount of ₱12,819,154.46.

**WHEREFORE**, the Petition for Review filed on January 4, 2022, by the Commissioner of Internal Revenue is **DENIED**, for lack of merit. The Decision dated June 15, 2021, and the Resolution dated November 8, 2021 in CTA Case No. 9969 are **AFFIRMED**.

**SO ORDERED.**

*Marian Ivy F. Reyes-Fajardo*  
**MARIAN IVY F. REYES-FAJARDO**  
Associate Justice

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<sup>14</sup> Page 2, challenged Resolution.

<sup>15</sup> Page 3, challenged Resolution. Citations omitted. Boldfacing supplied.

WE CONCUR:



ROMAN G. DEL ROSARIO  
Presiding Justice



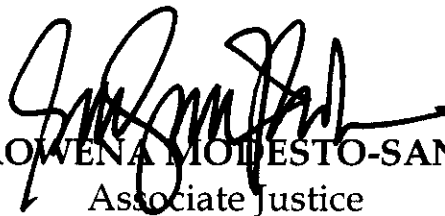
MA. BELEN M. RINGPIS-LIBAN  
Associate Justice



CATHERINE T. MANAHAN  
Associate Justice



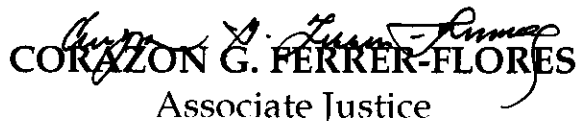
JEAN MARIE A. BACORRO-VILLENA  
Associate Justice



MARIA ROWENA MODESTO-SAN PEDRO  
Associate Justice



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', with a large, stylized flourish at the end.

ROMAN G. DEL ROSARIO  
Presiding Justice