REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

EN BANC

GHD PTY LTD. (FORMERLY GUTTERIDGE HASKIN & DAVEY PTY LTD.), Petitioner,	**CTA EB NO. 2637** (CTA Case No. 9948)
	Present:
- versus -	**DEL ROSARIO,** *P.J.*, **RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, MODESTO-SAN PEDRO, REYES-FAJARDO, CUI-DAVID,** *and,* **FERRER-FLORES,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: SEP 06 2023 4:23 pm

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DECISION

BACORRO-VILLENA, J.:

Assailing the Decision dated 28 July 2021[1] (**assailed Decision**) and Resolution dated 17 May 2022[2] (**assailed Resolution**), respectively, of the Court's First Division[3] in CTA Case No. 9948, entitled *GHD Pty Ltd. (Formerly Gutteridge Haskins & Davey Pty Ltd.) v. Commissioner of Internal Revenue*, petitioner GHD Pty Ltd. (Formerly Gutteridge Haskins & Davey Pty Ltd.) (**petitioner**) filed the instant Petition for

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1 *Rollo*, pp. 40-62.
2 Id., pp. 64-77.
3 Penned by Presiding Justice Roman G. Del Rosario and Associate Justice Catherine T. Manahan, concurring.

Review[4] on 24 June 2022[5] pursuant to Section 3(b)[6], Rule 8, in relation to Section 2(a)(1)[7], Rule 4 of the Revised Rules of the Court of Tax Appeals[8] (**RRCTA**).

PARTIES OF THE CASE

Petitioner is the Philippine branch office of GHD Pty Ltd., a foreign corporation organized and existing under the laws of Australia, with registered address at 11/F Alphaland Southgate Tower, 2258 Chino Roces Avenue corner EDSA, Makati City. It is a registered taxpayer of the Bureau of Internal Revenue (**BIR**), Revenue Region No. 8, Revenue District Office (**RDO**) No. 048 with Tax Identification Number (**TIN**) 203-471-895-000.[9] It is licensed to engage in technical management consultancy in the field of mining, defense and water industry and public works, urban planning and developments, geotechnical and dams and power and energy.[10]

On the other hand, respondent Commissioner of Internal Revenue (**respondent/CIR**) is the head of the BIR with the power or authority to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto or other matters arising under the National Internal Revenue Code (**NIRC**)

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4 Id., pp. 6-38.

5 The Petition for Review was filed within the extended period granted by the *En Banc* Minute Resolution dated 13 June 2022, id., p. 5.

6 **SEC. 3.** *Who may appeal; period to file petition.*
...
(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.
...

7 **SEC. 2.** *Cases within the jurisdiction of the Court en banc.* – The Court *en banc* shall exercise exclusive appellate jurisdiction to review by appeal the following:
(a) Decisions or resolutions on motions for reconsideration or new trial of the Court in Division in the exercise of its exclusive appellate jurisdiction over:
(1) Cases arising from administrative agencies – Bureau of Internal Revenue, Bureau of Customs, Department of Finance, Department of Trade and Industry, Department of Agriculture[.]
...

8 A.M. No. 05-11-07-CTA.

9 Paragraphs 1 and 2, Joint Stipulation of Facts and Issues (JSFI), Division Docket, Volume I, p. 288.

10 See Exhibit "P-1-2", or the License to Transact Business with Securities and Exchange Commission (SEC) License No. A199910362, id., p. 395.

of 1997, as amended, or other laws or portion thereof administered by the BIR.

FACTS OF THE CASE

As culled from the assailed Decision, the facts[11] are as follows:

> ...
>
> On October 15, 2016, petitioner filed with the BIR, through the electronic Filing and Payment System (eFPS), its Annual Income Tax Return (ITR) for [Fiscal Year (FY)] 2016.
>
> Petitioner indicated on the face of its Annual ITR for FY 2016 its option to be refunded its income tax overpayment for FY 2016.
>
> On September 27, 2018, petitioner filed with the BIR RDO No. 048 an administrative claim for tax refund of its excess and unutilized [Creditable Withholding Taxes (CWTs)] for FY 2016 in the amount of ₱34,112,873.00.
>
> Due to the inaction of respondent and in order to preserve its right to judicially claim for refund its alleged excess and unutilized CWTs for FY 2016 within the prescribed two (2)-year period, petitioner filed the present Petition for Review before this Court on October 15, 2018.
>
> On December 28, 2018, within the extended period, respondent filed his [or her] Answer (with Motion to Dismiss), raising the following special and affirmative defenses: (*i*) the Petition for Review states no cause of action; (*ii*) petitioner's claim for refund or issuance of [Tax Credit Certificate (TCC)] in the amount of ₱34,112,873.00 representing alleged excess and unutilized CWTs was inaccurate or erroneous since the same is still subject to investigation by the BIR; (*iii*) petitioner must show that it did not carry over its 2016 alleged unutilized CWTs to the succeeding taxable years; and, (iv) petitioner must show that it has complied with the provisions of Section 76, in relation to Sections 204 and 229, of the National Internal Revenue Code (NIRC) of 1997, as amended.
>
> In his [or her] Motion to Dismiss, respondent avers that: (1) he [or she] interposes opposition to petitioner's manifestation that only a notarized copy of the Secretary's Certificate was attached to the Petition for Review and that the Secretary's Certificate authenticated by the Philippine Embassy in Australia will be submitted once its

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[11] Supra at note 1, pp. 41-44; Citations omitted.

counsel receives it; (2) he [or she] moves for the dismissal of the petition on the ground that petitioner has no legal capacity to sue when it filed a defective Petition for Review; and, (3) the Court has no jurisdiction over the judicial claim for refund that was filed beyond the two (2)-year prescriptive period.

Respondent's Pre-Trial Brief and Petitioner's Pre-Trial Brief were both filed on May 27, 2019. The Pre-Trial Conference was held on May 30, 2019.

During the Pre-Trial Conference, petitioner's counsel submitted the Philippine Consular Authentication of the Special Power of Attorney attached to the Petition for Review.

On July 1, 2019, the parties filed their Joint Stipulation of Facts and Issues. In the Resolution dated July 8, 2019, the Court approved the parties' Joint Stipulation of Facts and Issues and terminated the Pre-Trial. On July 30, 2019, the Court issued the Pre-Trial Order.

Upon motion of petitioner, the Court commissioned Mr. Emmanuel Y. Mendoza as Independent Certified Public Accountant (ICPA) on July 25, 2019.

During trial, petitioner presented testimonial and documentary evidence. It presented the following witnesses: Ms. Katrina S. Maninang, petitioner's Tax Manager; and Mr. Emmanuel Y. Mendoza, the Court-commissioned ICPA.

On November 4, 2019, petitioner filed its Formal Offer of Evidence. Petitioner's exhibits were admitted in evidence in the Resolution dated February 11, 2020, save for Exhibit "P-1-2" for failure of the exhibit formally offered and identified to correspond with the document actually marked; and, Exhibit "P-24-31-A", for not being found in the records of the case.

Petitioner filed a Motion for Reconsideration (Re: Resolution dated February 11, 2020) on March 4, 2020 moving for the reconsideration of the denial of its Exhibit "P-1-2". This was granted by the Court in the Resolution dated September 21, 2020.

Considering that respondent manifested during the Pre-Trial Conference that he [or she] will not present any evidence, the Court directed the parties to file their respective memoranda within twenty (20) days from receipt of the September 21, 2020 Resolution.

Petitioner filed its Memorandum on October 20, 2020 while respondent filed a Motion for Extension of Time to File Memorandum on October 21, 2020. Respondent's Motion was expunged from the

records for being a prohibited motion; and, the case was submitted for decision in the Resolution dated November 4, 2020.

On November 10, 2020, the Memorandum (for Respondent) was filed through registered mail and received by the Court on November 24, 2020. This was, however, expunged by the Court in the Resolution dated December 2, 2020.

...

The First Division then promulgated the assailed Decision, the dispositive portion of which reads:

...

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

SO ORDERED.

...

In the assailed Decision, the First Division found that petitioner failed to prove that the income payments that were subjected to Creditable Withholding Taxes (**CWTs**) were reported or declared as part of its gross income in its Annual Income Tax Return (**ITR**) for fiscal year (**FY**) 2016. In so ruling, it declared that the sales *per* General Ledger (**GL**) amounting to ₱357,904,844.29[12] *did not tally* with the net sales/revenues/receipt/fees (**net sales**) *per* the Annual ITR amounting to ₱459,801,346.00. According to the First Division, it failed to substantiate the resulting difference of ₱101,896,501.00 which it claimed to be attributable to "International Sales", "Unbilled Work" and "International Sales subjected to Foreign Taxes".

In addition, the First Division noted that petitioner failed to also explain the discrepancy in the amount of ₱3,385,432.00 between the net sales *per* the Annual ITR of ₱459,801,346.00 (as above stated) and the service fees revenue of ₱463,186,778.00 in the Audited Financial Statement (**AFS**). Absent the supporting documents to reconcile and explain the disparity, the First Division denied petitioner's claim for CWT refund or for the issuance of tax credit certificate (**TCC**).

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12 The Sales *per* General Ledger is properly reconciled with the Schedule of Gross Sales subject to Withholding Taxes (**referred as Schedule of Sales subject to CWT**) amounting to ₱281,430,310.32. See Decision dated 28 July 2021; supra at note 1, pp. 58-59.

Aggrieved, on 19 October 2021, petitioner filed a Motion for Reconsideration with Motion for Leave of Court to Present Additional Evidence[13] (**MR**), to which respondent filed his or her Comment/Opposition (Re: Motion for Reconsideration with Motion for Leave of Court to Present Additional Evidence dated 19 October 2021)[14] thereto on 11 January 2022.

Subsequently, the First Division promulgated the assailed Resolution[15] denying petitioner's MR. The dispositive portion of which reads:

> ...
>
> **WHEREFORE**, premises considered, petitioner's **Motion for Reconsideration with Motion for Leave of Court to Present Additional Evidence** is hereby **DENIED** for lack of merit.
>
> **SO ORDERED.**
>
> ...

In denying the MR, the First Division reiterated that it only disallowed some of the CWT Certificates (pertaining to the income earned in 2015 but were received only in 2016) for petitioner's failure to present the AFS for FY 2015, GL, journal entries, reconciliation schedules and other documents that would have aided the Court in tracing that the said income was declared in FY 2015. It also stated that it was not bound to accept the Independent Certified Public Accountant's (**ICPA**'s) findings on the said matter *sans* its own verification.

Moreover, the First Division maintained its earlier ruling that petitioner failed to proffer evidence to explain the discrepancies appearing in its sales *per* GL, net sales in the Annual ITR and service fees in the AFS, hence it failed to establish that the income subjected to CWT were properly reported as gross income in FY 2016. Rejecting the motion to present additional evidence to satisfy the above-mentioned differences, the First Division likewise ruled that petitioner was not able to establish that the documents sought to be introduced are newly-discovered nor prove that the previous omission is due to fraud, accident, mistake or excusable negligence. It further considered the

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13 Division Docket, Volume II, pp. 711-728.
14 Id., pp. 767-775.
15 Supra at note 2; Emphasis in the original text.

supposed additional documents as forgotten evidence which, in the absence of any exceptional circumstances, the Court is not bound to receive specially after a judgment has already been rendered. Petitioner's MR was then denied for lack of merit.

PROCEEDINGS BEFORE THE COURT *EN BANC*

Unsatisfied, on 24 June 2022 or within the extended period[16], petitioner filed with the Court *En Banc* the instant Petition for Review.[17] Respondent filed his or her Comment/Opposition (Re: Petition for Review dated 24 June 2022)"[18] on 08 August 2022. Later, the case was submitted for decision on 07 September 2022.[19]

ISSUE

Based on the parties' arguments, the issues may thus be summarized to be —

> WHETHER THE FIRST DIVISION OF THE HONORABLE COURT ERRED IN DENYING PETITIONER GHD PTY LTD. (FORMERLY GUTTERIDGE HASKINS & DAVEY PTY LTD.)'S CLAIM FOR TAX REFUND OR TAX CREDIT CERTIFICATE (TCC) OF ITS EXCESS AND UNUTILIZED CREDITABLE WITHHOLDING TAX (CWT) FOR THE FISCAL YEAR (FY) 2016.

ARGUMENTS AND DISCUSSIONS

In support of the petition, petitioner maintains that the First Division erred in holding that it failed to prove that the income of ₱49,023,111.37 (pertaining to CWT of ₱5,808,632.56 that were collected in 2016) was properly declared as part of its gross income for FY 2015 even after it already submitted sufficient documentary evidence to establish the same. Particularly, its Annual ITRs for Taxable Years (TYs) 2007 to 2015, CWT Certificates for FY 2015, BIR Forms 2307 (supporting its CWT claims for revenue reported in Annual ITR for FY 2015 but

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16 See Motion for Extension of Time to File Petition for Review, *Rollo*, pp. 1-4; *En Banc* Minute Resolution dated 13 June 2022, id., p. 5.
17 Supra at note 4.
18 Id., pp. 113-123.
19 See Resolution dated 07 September 2022, id., pp. 126-127.

collected in FY 2016) and Official Receipts (**ORs**) have been duly presented. According to petitioner, Annex B-1 of the ICPA report[20] clearly shows that the amount of income payments reflected in the aforementioned BIR Forms 2307 matched the amounts in the ORs and billing statements, and were duly declared as income in the GL of FY 2015. Petitioner claims further that although the ICPA report is only persuasive upon the Court, the First Division's ruling is still not in accord with the findings therein.

Petitioner also argues that the First Division erred in sustaining the CWT's disallowance in the amount of ₱929,527.46 based on the ICPA's findings that the documents supporting it are mere photocopies. Petitioner avers that Section 4[21], Rule 130 of the Revised Rules on Evidence, as amended[22], already admits a photocopy or duplicate as an original document when there is no genuine question on the authenticity of the original, or it is not unjust nor inequitable to admit the duplicates in *lieu* of the original. As the two (2) latter circumstances are not present in the instant case, there is no need to compare the photocopies of the disallowed CWT Certificates to the original and the Court should have instead admitted them as is.

Reacting on the principal reason for the denial of its claim for refund or TCC, petitioner submits that it was able to present sufficient evidence to prove that the income payments that were subjected to CWT were reported and declared as gross income for FY 2016. As stated in the report, the ICPA was able to trace the income payments to the GL and reconcile the difference between the amount of revenues in the GL and the amount reflected in the Annual ITR for FY 2016.

Petitioner also points out that the revenue reflected in the Annual ITR is substantially higher than the revenue in the GL which, in turn, is also higher than the revenue in the Schedule of Sales subject to CWT. Hence, it is reasonable to conclude that the income payments subjected to CWT form part of the GL and the Annual ITR. In further support of this assertion, petitioner cites the case of *Golden Arches Development Corporation v. Commissioner of Internal Revenue*[23] wherein this Court ruled previously that when the reported revenues from sale of services

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20 See Exhibit "P-61".
21 SEC. 4. *Original of Document.*
22 A.M. No. 19-08-15-SC.
23 CTA Case No. 6431, 26 April 2004.

and lease of properties are higher than those reflected in the certificates, it may be safely assumed that a taxpayer has declared all of the income subjected to CWT.

Further, petitioner alleges that the tax refunds, being in the nature of a civil case, only require a preponderance of evidence (and not evidence beyond reasonable doubt) to sustain its refund claim; thus, it was erroneous for the First Division to not apply the said quantum of evidence to determine if its claim is meritorious.

Petitioner also argues that its offered evidence is more credible and conclusive than that of the respondent's. Forwarding the case of *Winebrenner & Iñigo Insurance Brokers, Inc. v. Commissioner of Internal Revenue*[24] as its anchor, it contends that after a claimant has successfully laid down the requirements for proving its right to refund, the burden of proof shifts to the opposing party, *i.e.*, the CIR, to disprove the claim by presenting contrary evidence. However, in this case, respondent did not present any evidence to contradict petitioner's claim. With ample preponderant evidence, petitioner could only be deemed to have ably proven that the income payments subjected to CWT were declared in its Annual ITR.

Petitioner likewise asserts that claims for refund of overpaid or erroneously paid taxes are not in the nature of a tax exemption which is construed strictly against the taxpayer, rather they are founded on the principle of *solutio indebiti* which abhors unjust enrichment on the expense of another.

Although it is noted that petitioner is firm on its stance that it sufficiently presented documentary evidence to prove its refund claim, it also prays for the reopening of trial and requests leave of court for the admission of supplemental evidence (to satisfy the documentary requirements prescribed by the First Division in the assailed Decision and Resolution). Petitioner cites several jurisprudence to show that the Supreme Court has, in the past, allowed the reopening of trial in the interest of substantial justice.

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[24] G.R. No. 206526, 28 January 2015.

On the other hand, respondent counters that petitioner's arguments are mere reiterations of those already raised in its prior MR and have already been duly passed upon in the assailed Resolution. Nevertheless, for emphasis, respondent forwards its counter-arguments below.

As for the income declared in FY 2015 (but the CWTs were collected in 2016), respondent contends that the submitted documents *e.g.* Annual ITRs for FY 2015 and ORs are insufficient to prove that the said income was declared in 2015 as the former merely shows the gross revenues for FY 2015 while the latter only provides for the specific income payments. Likewise, although the ICPA stated in the ICPA report that he was able to verify the said income payments in the 2015 Annual ITR, there is no document or reconciliation presented to support this conclusion. Respondent also claims that Section 2.58.3(A)[25] of Revenue Regulations (**RR**) No. 2-98[26] provides that proof of declaration of income earned or received must be made in the same period with the claiming of the related tax credit. Absent any convincing proof that the said income was declared in FY 2015, the First Division was correct in sustaining the disallowance.

Similarly, respondent avers that the First Division did not err when it denied the CWT refund for petitioner's failure to substantiate the "International Sales", "Unbilled Work" and "International Sales subjected to Foreign Taxes" (which are the alleged composition of the discrepancy of the revenues between the Annual ITR and GL). Petitioner's lack of explanation on the differing revenue amounts stated in the GL, Annual ITR and AFS was detrimental to its claim for refund because it failed to satisfy the requisites for refund.

As for the disallowed CWT due to the non-presentation of the originals of the photocopies, respondent argues that for a duplicate to be admitted, it must be compared with the original to verify the accurate reproduction thereof. Absent the comparison, the same cannot be considered as an original.

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25 SEC. 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.

26 Implementing Republic Act No. 8424, "An Act Amending the National Internal Revenue Code, as Amended" Relative to the Withholding on Income Subject to the Expanded Withholding Tax and Final Withholding Tax, Withholding of Income Tax on Compensation, Withholding of Creditable Value-Added Tax and Other Percentage Taxes.

Lastly, respondent vehemently opposes petitioner's prayer to reopen the trial and submit evidence anew in the absence of fraud, accident, mistake, and excusable negligence. There are also no newly-discovered evidence supported by affidavit of merits as required under the rules. Respondent also adopts the First Division's observation that the intended supplemental evidence were already existing during trial and hence they have become forgotten evidence. According to respondent, the First Division's denial of petitioner's move to reopen the trial is proper because petitioner failed to comply with the requisites. If the same is allowed, it will also set a dangerous precedent as it will promote endless suits.

RULING OF THE COURT *EN BANC*

After an assiduous review of the parties' arguments, the Court *En* Banc fully agrees with the First Division's action of denying petitioner's claim for CWT refund or TCC for FY 2016.

To reiterate, the requisites for claiming a tax credit or a refund of CWT are as follows: (1) the claim must be filed with the CIR within the two (2)-year period from the date of payment of the tax; (2) it must be shown on the return that the income received was declared as part of the gross income; and, (3) the fact of withholding must be established by a copy of a statement duly issued by the payor to the payee showing the amount paid and the amount of the tax withheld.[27]

Since there is no dispute as to the first (1ST) requisite, We shall proceed to discuss the assailed issues relating to the second (2nd) requisite.

PETITIONER FAILED TO PROFFER SUFFICIENT EVIDENCE TO PROVE THAT THE INCOME PAYMENTS SUBJECTED TO CREDITABLE WITHHOLDING TAXES (CWT) THAT WAS RECEIVED IN FISCAL YEAR (FY) 2016 WAS DECLARED IN FISCAL YEAR (FY) 2015.

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27 *Commissioner of Internal Revenue v. Philippine Bank of Communications*, G.R. No. 211348, 23 February 2022; Citation omitted.

Petitioner insists that it was able to establish that the income amounting to ₱49,023,111.37 was declared in FY 2015 through the submitted documents *e.g.* Annual ITRs, ORs and BIR Forms 2307. In addition, petitioner claims that the ICPA had already traced the income declarations in FY 2015 and was documented in the report. Unfortunately, the records reveal otherwise.

In the case of *Commissioner of Internal Revenue v. Univation Motor Philippines, Inc. (formerly Nissan Motor Philippines, Inc.)*[28], the Supreme Court held that claimant therein was able to establish that it complied with the 3rd requisite (herein referred as the 2nd requisite) when this Court traced the income payments subjected to CWT to the GLs of the relevant period when they were declared:

> ...
>
> In this case, respondent was able to establish through the documentary evidence it submitted compliance with the second and third requisites. As correctly evaluated by the CTA 1st division:
>
> > To prove its compliance with the second requisite, petitioner [now respondent] presented Schedule/Summary of Creditable Taxes Withheld for the year 2010 and the related Certificates of Creditable Taxes Withheld at Source (BIR Form No. 2307) duly issued to it by various withholding agents for the year 2010, reflecting creditable withholding taxes in the total amount of P12,868,745.87.
> >
> > **Anent the third requisite, the court was able to trace the income payments related to the substantiated CWT of P12,868,745.87 (*save for the amount of P139,127.97 CWT*) to petitioner's General Ledger (GL) for CY 2010, 2009, 2008 and 2006 and noted that the same were reported in petitioner's Annual ITRs for the years 2010, 2009, 2008 and 2006.**
>
> ...

Herein, an examination of the ICPA report and the relevant annexes[29] thereto shows the matching procedure used the income payments subjected to CWT to the ORs and of the GL of FY 2015. However, *petitioner's GL for FY 2015* (that would have allowed this Court to trace and verify that the income payments were declared in 2015) was never presented during the trial. Also, We agree with respondent's

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28 G.R. No. 231581, 10 April 2019; Citation omitted, italics in the original text, emphasis and underscoring supplied.

29 Annexes B-1 to B-8 of the ICPA Report.

observation that the Annual ITR for 2015 and the related ORs (which petitioner deemed sufficient evidence) are not adequate for Us to ably determine that the income payments were indeed declared in 2015. It is noted that the Annual ITR merely reflected the gross revenue while the ORs showed the specific income payments. As it is, there is dearth of evidence linking the specific income payments in the OR with the gross revenue in the Annual ITR, thus We cannot validate the ICPA's findings.

As held in the assailed Resolution, this Court makes an independent verification and it is not bound to accept the conclusion reached in the ICPA report:

> ...
>
> Section 3, Rule 13 of the Revised Rules of the Court of Tax Appeals (RRCTA), as amended, provides:
>
> > "SECTION 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 conclusion subject to verification.**"
>
> As so provided, the ICPA's findings are not conclusive upon the Court as the same are subject to its verification, to determine their accuracy, veracity and merit. The Court may either adopt or reject the ICPA Report, wholly or partially, depending on the outcome of its own independent verification.[30]
>
> ...

PETITIONER FAILED TO PROVE THAT INCOME PAYMENTS SUBJECTED TO CREDITABLE WITHHOLDING TAXES (CWT) WERE DECLARED AS PART OF THE GROSS INCOME IN THE ANNUAL INCOME TAX RETURN (ITR) FOR FISCAL YEAR (FY) 2016.

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30 Supra at note 2, p. 68; Emphasis in the original text.

In *United International Pictures AB v. Commissioner of Internal Revenue*[31], the Supreme Court denied the claim for refund of petitioner therein for its failure to submit evidence that would allow the Court to trace the discrepancy of the income stated between the certificate of taxes withheld and income tax return:

> ...
>
> A perusal of the certificate of tax withheld would reveal that petitioner earned P146,355,699.80. On the contrary, its annual income tax return reflects a gross income from film rentals in the amount of P145,381,568.00. However, despite the P974,131.80 difference, both the certificate of taxes withheld and income tax return filed by petitioner for taxable year 1999 indicate the same amount of P7,317,785.00 as creditable tax withheld. What's more, **petitioner failed to present sufficient proof to allow the Court to trace the discrepancy between the certificate of taxes withheld and the income tax return.**
>
> Parenthetically, the Office of the Solicitor General correctly pointed out that the amount of income payments in the income tax return must correspond and tally to the amount indicated in the certificate of withholding, since there is no possible and efficacious way by which the BIR can verify the precise identity of the income payments as reflected in the income tax return.
>
> Therefore, **petitioner's claim for tax refund for taxable year 1999 must be denied, since it failed to prove that the income payments subjected to withholding tax were declared as part of the gross income of the taxpayer**.
>
> ...

Applying the foregoing in the instant case, an examination of the records reveals that *petitioner did not submit any competent evidence or documents to substantiate the noted differences between the GL and the Annual ITR.* Moreover, *petitioner did not make any attempt to explain the difference between the Annual ITR and the revenue stated in the AFS for FY 2016.* With the glaring discrepancies noted in the supporting documents, We cannot thus share petitioner's stance. It is a basic rule that bare allegations, unsubstantiated by evidence, are not equivalent to proof. Simply, mere allegations are not evidence.[32]

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31 G.R. No. 168331, 11 October 2012; Emphasis supplied.

32 *Government Service Insurance System v. Prudential Guarantee and Assurance*, Inc., *et al.*, G.R. No. 165585, 20 November 2013.

PETITIONER'S MOTION FOR REOPENING OF TRIAL IS NOT MERITORIOUS.

In the alternative, petitioner invokes substantial justice in its bid to reopen trial and submit additional evidence for the Court to reconsider granting its claim for CWT refund or TCC. Unfortunately, petitioner itself fell short of providing permissible grounds for the Court to do so. We quote in agreement the First Division's disquisition on the matter:

> ...
>
> The Rule requires that motions for new trial founded on fraud, accident, mistake or excusable negligence must be accompanied by affidavits of merits, *i.e.*, affidavits showing the facts (not mere conclusions or opinions) constituting the valid cause of action or defense which the movant may prove in case a new trial is granted, because a new trial would serve no purpose and would just waste the time of the court as well as the parties if the complaint is after all groundless or the defense is nil or ineffective.
>
> ...
>
> More importantly, in *Eduardo R. Dee vs. Alba, Hortenciana et al.*, the Supreme Court held that absence of any of the requirements forbids the Court from allowing the evidence sought to be introduced to be admitted in evidence, *viz*:
>
> > "Section 1 of Rule 37, Rules of Court, allows a party to file a motion for new trial provided the following requirements are present, namely: (1) that the evidence was discovered after trial; (2) that such evidence could not have been discovered and produced at the trial even with the exercise of reasonable diligence; (3) that such evidence is material, not merely cumulative, corroborative, or impeaching; and (4) that such evidence, if admitted, would probably change the judgment. **The absence of any of the requirements forbids the court from allowing the evidence sought to be introduced to be admitted in evidence. Clearly, if the allegedly newly discovered evidence could have been presented during the trial with the exercise of reasonable diligence, the same cannot be considered newly discovered.**"

A perusal of petitioner's Motion for Leave of Court to Present Additional Evidence, shows that the same was neither based on fraud, accident, mistake or excusable negligence, nor based on newly discovered evidence. Petitioner's request to present additional

evidence is merely grounded on the interest of substantial justice and to aid the Court in judiciously evaluating the merit of the case.

Truth to tell, the Court finds that the additional evidence which petitioner seeks leave of court to present constitutes "forgotten" evidence since it intends to present only after obtaining an unfavorable decision. As held in of [*sic*] *Office of the Ombudsman, Represented by Hon. Simeon V. Marcelo vs. Carmencita D. Coronel*:

> "xxx **Forgotten evidence refers to evidence already in existence or available before or during a trial; known to and obtainable by the party offering it; and could have been presented and offered in a seasonable manner, were it not for the sheer oversight or forgetfulness of the party or the counsel.** Presentation of forgotten evidence is disallowed, because it results in a piecemeal presentation of evidence, a procedure that is not in accord with orderly justice and serves only to delay the proceedings. A contrary ruling may open the floodgates to an endless review of decisions, whether through a motion for reconsideration or for a new trial, in the guise of newly discovered evidence."

In view of the foregoing, the GLs of Revenue for FYs 2015 and 2016, reconciliation and schedules, which petitioner seeks leave of court to present, are neither newly discovered evidence nor omitted due to fraud, accident, mistake or excusable negligence.[33]

...

Similarly, We find no meritorious ground to apply the principle of unjust enrichment or *solutio indebiti* to the instant case. In the case of *The Commissioner of Internal Revenue v. Acesite (Philippines) Hotel Corporation*[34], the Supreme Court already clarified that the principle of unjust enrichment is applicable to the government while actions for refund are strictly construed against the taxpayer who must discharge the burden convincingly:

> ...
> **Solutio indebiti applies to the Government**
>
> Tax refunds are based on the principle of quasi-contract or *solutio indebiti* and the pertinent laws governing this principle are found in Arts. 2142 and 2154 of the Civil Code...
> ...

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33 Supra at note 2, pp. 77-77; Citations omitted and emphasis in the original text.

34 G.R. No. 147295, 16 February 2007; Citations omitted, italics and emphasis in the original text and underscoring supplied.

> The Government comes within the scope of *solutio indebiti* principle as elucidated in *Commissioner of Internal Revenue v. Fireman's Fund Insurance Company*, where we held that: "Enshrined in the basic legal principles is the time-honored doctrine that no person shall unjustly enrich himself at the expense of another. It goes without saying that the Government is not exempted from the application of this doctrine."
>
> **Action for refund strictly construed...**
>
> Since an action for a tax refund partakes of the nature of an exemption, which cannot be allowed unless granted in the most explicit and categorical language, it is strictly construed against the claimant who must discharge such burden convincingly. ...
>
> ...

In sum, the Court *En Banc* agrees with the First Division's finding that petitioner failed to prove that the income payments subjected to CWT were declared as part of the gross income in the Annual ITR for FYs 2015 and 2016. With petitioner's non-compliance with the 2nd requisite for CWT refund, the Court will no longer belabor itself with a further discussion of the remaining contention on petitioner's compliance with the 3rd requisite[35] (or the disallowance due to the submission of CWT photocopies only).

WHEREFORE, in view of the foregoing, the instant Petition for Review filed by GHD Pty Ltd. (Formerly Gutteridge Haskin & Davey Pty Ltd.) on 24 June 2022 is hereby **DENIED** for lack of merit. Accordingly, the assailed Decision and Resolution dated 28 July 2021 and 17 May 2022, respectively, of the First Division in CTA Case No. 9948, entitled *GHD Pty Ltd. (Formerly Gutteridge Haskins & Davey Pty Ltd.) v. Commissioner of Internal Revenue,* are **AFFIRMED**.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

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35 Supra at note 27.

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

ON LEAVE
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.

ROMAN G. DEL ROSARIO
Presiding Justice