REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

MATEX INTERNATIONAL, INC., *Petitioner*,	**CTA *EB* NO. 2627** (CTA Case No. 10180)
-versus-	Present: **DEL ROSARIO, P.J., RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, MODESTO-SAN PEDRO, REYES-FAJARDO, CUI-DAVID, FERRER-FLORES,** *and* **ANGELES,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: JAN 30 2024 9:46 am

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D E C I S I O N

MODESTO-SAN PEDRO, J.:

The Case

Before the Court *En Banc* is a Petition for Review,[1] filed on 27 May 2022, under ***Section 4 (b), Rule 8[2] of the Revised Rules of the Court of Tax Appeals ("RRCTA")***,[3] seeking the reversal of the Decision[4] ("Assailed Decision"), promulgated on 15 February 2022, and the Resolution[5] ("Assailed Resolution"), dated 25 April 2022, both issued by the Court's Second Division.

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1 See Petition for Review, *Rollo*, pp. 1-132, with annexes.

2 SECTION 4. Where to appeal; mode of appeal. —
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((b) An appeal from a decision or resolution of the Court in Division on a motion for reconsideration or new trial shall be taken to the Court by petition for review as provided in Rule 43 of the Rules of Court. The Court en banc shall act on the appeal.

3 A.M. No. 05-11-07-CTA, 22 November 2005.

4 See Decision, dated 15 February 2022 ("Assailed Decision"), *Rollo*, pp. 57-88, with Concurring and Dissenting Opinion of Associate Jean Marie A. Bacorro-Villena and Separate Concurring Opinion of Associate Justice Lanee S. Cui-David.

5 See Resolution, dated 25 April 2022 ("Assailed Resolution"), *id.*, p. 120-129.

("Court in Division"); and the rendering of a new Decision granting the claim for refund of alleged erroneously paid final withholding tax ("FWT") in the amount of Ten Million Six Hundred Ninety-Four Thousand One Hundred Forty-Nine Pesos and Twenty Centavos (Php10,694,149.20).[6]

The Parties

Petitioner Matex International Inc. ("petitioner" or "MII") is a corporation duly organized and existing under and by virtue of Philippine laws. It is registered with the Bureau of Internal Revenue (BIR) under Taxpayer Identification Number (TIN) 004-142-653-000, with address at No. 16 Mountain Drive LISP II, La Mesa, Calamba, Laguna 4027.[7] MII is a wholly-owned subsidiary of Matex Co. Ltd.

On the other hand, respondent Commissioner of Internal Revenue ("respondent" or "CIR") is the head of the Bureau of Internal Revenue ("BIR"), the government agency tasked to, among others, assess and collect all national internal revenue taxes. He has the power to decide, in accordance with the ***National Internal Revenue Code*** ("***Tax Code***") and other relevant laws, disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto or other matters arising under the Tax Code, or other laws or portions thereof administered by the BIR.[8]

The Facts

The present controversy stems from an administrative claim for refund or tax credit filed by MII before the BIR on 14 June 2019.[9] Petitioner argues that it is entitled to the refund of erroneously paid FWT based on the following averments:

First, on 6 September 2017, petitioner's Board of Directors (BOD) passed Resolution No. 2017-001[10] to declare and pay cash dividends amounting to **Php175,504,496.34** to its common stockholders, the relevant dates for which are as follows:

Date of Declaration	September 6, 2017
Date of Record	August 31, 2017
Date of Distribution	September 26, 2017

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6 See Prayer, Petition for Review, *id.*, p. 42.
7 See Par. 1, Parties, Petition for Review, *id.*, p. 1; Par. 1, The Parties, Assailed Decision, *id.*, p. 57.
8 See Par. 2, Parties, Petition for Review, *id.*, p. 2; Par. 2, The Parties, Assailed Decision, *id.*, pp. 57-58.
9 See BIR Form No. 1914, Docket (CTA Case No. 10180) – Vol. 1, p. 402.
10 See Secretary's Certificate dated 26 September 2017, *id.*, p. 426.

Second, pursuant to such dividend declaration, petitioner withheld[11] and paid[12] the amount of **Php17,550,513.00** representing FWT arising from the dividends at the rate of 10% pursuant to the Philippines-Japan Tax Treaty (RP-Japan DTA).

Third, it was later on determined by the BOD that the dividends declared exceeded the unrestricted retained earnings (URE) of MII as of 30 September 2017. Prior to reflecting the dividend payment, petitioner's URE, as can be gleaned from it Audited Financial Statements (AFS) as of and for the fiscal year (FY) ending 30 September 2018,[13] amounts only to **Php68,563,638.00** computed as follows:

	Cumulative Earnings
Balance, September 30, 2016	Php58,402,372.00
Adjustment on Allowance for Impairment Loss	12,843,267.00
Net Loss for Fiscal year 2017	(2,682,001.00)
Unrestricted Retained Earnings before dividends	**Php68,563,638.00**

Petitioner then emphasizes that the excess of dividends over such URE was reflected in the FY 2018 Statement of Changes in Equity as deduction from share capital, to wit:

	Share Capital	**Cumulative Earnings**	**Total Equity**
Balance, 30 September 2016	Php124,471,274	Php58,402,372	Php182,873,646
Adjustment on Allowance for Impairment Loss		12,843,267	12,843,267
Dividends Paid	**(106,940,858)**	**(68,563,638)**	**(175,504,496)**
Net Loss for Fiscal year 2017		(2,682,001)	(2,682,001)
Balance, 30 September 2017	**Php17,530,416**	**-**	**Php17,530,416**

Lastly, as a remedy, the BOD reversed and recalled the excessive dividends through Resolution No. 2018-001 dated 11 July 2018.[14] In turn, MII's shareholders allegedly returned[15] the cash dividends paid to them in excess of the corrected amount, net of the corresponding 10% FWT.

Thus, petitioner points out that the 2018 Statement of Changes in Equity also reflects the reversal of dividends as follows:

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[11] See BIR Form 1601-F for the month September 2017, *id.*, p. 396.
[12] See eFPS Payment Form dated 7 October 2017, *id.*, p. 397.
[13] Exhibit "P-4", Audited Financial Statements for the fiscal year ended 30 September 2018, *id.*, pp. 370-395.
[14] Exhibit "P-21", Secretary's Certificate dated 19 July 2018, *id.*, p. 427.
[15] Exhibit "P-17", Certificate of Inward Remittance, CIR19-098076, *id.*, p. 414.

	Share Capital	Cumulative Earnings	Total Equity
Balance, 30 September 2017	Php17,530,416		Php17,530,416
Erroneous Remittance to Shareholders	**106,940,858**		**106,940,858**
Net Loss for Fiscal year 2017		(3,240,565)	(3,240,565)
Balance, 30 September 2018	**Php124,471,274**	(Php3,240,565)	**Php121,230,709**

Regarding these circumstances, MII claims that there had been erroneously paid FWT amounting to Php10,694,149.20 arising from the excess dividend distribution of Php106,940,858 which was allegedly eventually remitted back to petitioner (net of taxes). The corresponding calculations were presented by petitioner as follows:

Name of Stockholder	Corrected Dividend	Tax Due	Tax Withheld	Erroneous
Matex Co., Ltd.	Php68,563,362.92	Php6,856,336.29	Php17,550,379.13	Php10,694,042.84
Toshiaki Matoba	55.02	13.76	35.25	21.49
Chihiro Matoba	55.02	13.76	35.25	21.49
Norio Oshima	55.02	13.76	35.25	21.49
Katsuhito Matoba	55.02	5.51	14.1	8.59
Esperanza Matoba	55.02	5.51	14.1	8.59
Total	**Php65,563,638.00**	**Php6,856,363.59**	**Php17,550,513.00**	**Php10,694,149.20**[16]

As the CIR failed to act on petitioner's administrative claim within the time allowed by the ***Tax Code***, MII filed a Petition for Review[17] on 4 October 2019, docketed as CTA Case No. 10180. The case was raffled to the Court's Second Division.

On 15 February 2022, the Court in Division rendered the Assailed Decision,[18] denying the Petition for Review. Primarily, the Court in Division found that MII failed to establish that the FWT imposed on the dividends were erroneous or illegal. It was further held that MII likewise failed to prove the

[16] See Petition for Review, *Rollo*, p. 8; Sum per Court En Banc's recalculation is Php10,694,124.49.
[17] Docket (CTA Case No. 10180) – Vol. 1, pp. 6-25.
[18] *Supra* note 4.

elements of entitlement to the tax treaty benefits. Thus, the dispositive portion of the Assailed Decision states:

> "**WHEREFORE**, in light of the foregoing considerations, the present *Petition for Review* is **DENIED** for lack of merit.
>
> **SO ORDERED**."[19]

Thereafter, on 9 March 2022, petitioner filed a Motion for Reconsideration,[20] which was likewise denied by the Court in Division on 25 April 2022.[21]

This led to the filing of the instant Petition for Review[22] on 27 May 2022. Respondent, on the other hand, filed his Comment/Opposition[23] on 11 July 2022.

In view thereof, the Court submitted the instant case for decision, on 1 September 2022.[24]

The Issues[25]

I. WHETHER THE CTA IN DIVISION ERRED IN RULING THAT PETITIONER FAILED TO PROVE THAT THE FINAL WITHHOLDING TAXES PAID/REMITTED BY THE PETITIONER ON THE SUBJECT DIVIDENDS ARE ERRONEOUS OR ILLEGAL; AND

II. WHETHER THE CTA IN DIVISION ERRED IN FINDING THAT PETITIONER FAILED TO PROVE THAT MATEX CO. LTD IS A TAX RESIDENT OF JAPAN AS TO WARRANT THE APPLICATION OF PREFERENTIAL TAX RATE FOR DIVIDENDS UNDER THE RP-JAPAN DTA.

The Arguments

In its Petition for Review, petitioner primarily argues that the alleged erroneous dividend declaration resulted to a payment of an illegal or erroneous tax. Specifically, petitioner raises:

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19 See Assailed Decision, *Rollo*, p. 78.
20 Annex "C", Motion for Reconsideration, *Rollo*, pp. 89-117; Docket (CTA Case No. 10180) – Vol. 2, pp. 653-681.
21 *Supra* note 5.
22 *Supra* note 1.
23 See Comment/Opposition (To the Petition for Review dated 26 May 2022), *Rollo*, pp. 152-159.
24 See Resolution dated 1 September 2022, *id.*, pp. 162-163.
25 See Petition for Review, *id*, p. 11.

(1) That there is no requirement to identify the particular year of profit from which such dividends distributed have been founded on because:
   (i) ***SEC Memorandum Circular No. 11-2008*** provides that "unrestricted retained earnings" is "the amount of accumulated profits and gains realized out of the normal and continuous operations of the company";[26]
   (ii) ***Section 73(c) of the Tax Code*** provides for a presumption that any distribution made to the shareholders or member of a corporation shall be deemed to have been made from the most recent accumulated profits or surplus;[27]

(2) That petitioner has sufficiently demonstrated that the supposed balance of the dividend payment formed part of its URE prior to the declaration and payment of the subject dividends as such amount (Php68,563,638) was indicated under Cumulative Earnings as of the FY ended 30 September 2018 in its 2017 and 2018 Comparative AFS;[28]

(3) That petitioner has sufficiently established the appropriate tax base for the subject refund claim;[29] and

(4) That Matex Co. Ltd. is a resident of Japan, and thus, the application of the preferential rate for dividends under the RP-Japan DTA is warranted. To support such claim, petitioner emphasizes that:
   (i) The totality of evidence submitted by petitioner is sufficient to prove that Matex Co. Ltd., who is the recipient of the cash dividend, is a resident of Japan;[30]
   (ii) The CORTT Form under ***RMO 8-2017*** is not the only proof of residency for purposes of claiming a refund of erroneously or illegally collected tax under ***Section 229 of the Tax Code***, as amended;[31]
   (iii) The rule under ***Section 3, Rule 130 of A.M. no. 19-08-15-SC (Amended Rules on Evidence)*** provides for exceptions that should have been applied by the Court in Division;[32]
   (iv) A rigid application of the Revised Rules of Court will result to unjust enrichment on the part of the government resulting to a manifest or miscarriage of justice to the petitioner;[33]
   (v) While the Court in Division denied the admission of petitioner's offer of its CORTT and Matex Co Ltd.'s Tax Residency Certificate, the said documentary exhibits form

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26 See Discussion, Petition for Review, *id.* 12.
27 *Id.*, p. 14.
28 *Id.*, p. 16.
29 *Id.*, p. 19.
30 *Id.*, p. 27.
31 *Id.*, p. 30.
32 *Id.*, p. 32.
33 *Id.*, p. 33.

part of the records of the case and should be given probative value by the Court *En Banc*;[34]

(vi) ***Section 40 of the Revised Rules of Evidence*** allows for the consideration of excluded evidence if the same is attached to or made part of the records of the case;[35] and

(vii) Claims for tax refund are civil in nature; thus, while the claimant has the burden of proving its entitlement, only preponderance of evidence is required in order to recover its erroneously paid taxes.[36]

On the other hand, respondent counter-argues that petitioner failed to prove that the FWT was erroneously paid. Specifically, respondent emphasizes that petitioner failed to show that (1) the dividends declared were actually returned;[37] (2) petitioner has insufficient unrestricted retained earnings at the time of declaration;[38] and (3) that Matex Co. Ltd., to whom petitioner allegedly paid dividend, is a resident of Japan.[39]

The Ruling of the Court

The instant Petition for Review was timely filed before the Court *En Banc*

We shall first look into the timeliness of the filing of the Petition for Review before the Court *En Banc*.

Sections 3 (b), Rule 8 of the RRCTA provides that a party adversely affected by a decision or resolution of a Division of the CTA on a motion for reconsideration or new trial may appeal to the Court *En Banc* by filing a petition for review within fifteen (15) days from receipt of the assailed decision or resolution.

In the case at hand, the Assailed Resolution was received by the petitioner on 12 May 2022.[40] Counting fifteen (15) days therefrom, the Court finds the instant Petition for Review timely filed on 27 May 2022.

We shall now proceed to determine the merits of the instant case.

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34 *Id.*, p. 34.
35 *Id.*, p. 37.
36 *Id.*, p. 40.
37 See Comment/Opposition, *id.*, p. 154.
38 *Id.*, p. 155.
39 *Id.*, pp. 155-157.
40 See Notice of Resolution stamped "Received" by the petitioner's counsel, Roque Law Firm on 12 May 2022, Docket (CTA Case No. 10180) – Vol. 2, p. 693.

At the outset, the Court notes that MII's arguments in its Petition for Review are mere rehash of the issues already considered by the Court in Division in the Assailed Decision and Assailed Resolution. Nonetheless, the Court shall pass upon the arguments to fully resolve the case.

Upon judicious review of the records and the contentions of the parties, the Court *En Banc* upholds the Court in Divisions' denial of the refund claim on the ground of petitioner's failure to prove that Matex Co. Ltd. is a tax resident of Japan.

Petitioner was able to establish that the dividend declaration was excessive

To be entitled to a refund of erroneously paid taxes, petitioner must comply with the requisites provided by law. In this regard, ***Sections 204 (C) and 229 of the Tax Code*** provides:

> "SEC. 204. Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes. — x x x
>
> (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.
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> x x x
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> 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.
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> 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."
> (Emphasis supplied.)

Gleaning from the above-quoted provisions, a taxpayer-claimant must prove the following requisites to be entitled to a refund: (a) that the tax has been erroneously or illegally collected, or the penalty has been collected without authority, and/or any sum has been excessively or in any manner wrongfully collected; and (b) the claim for refund or credit must have been filed within two (2) years from the date of payment of tax, or penalty, regardless of any supervening cause that may arise after payment.

In ***Commissioner of Internal Revenue v. San Roque Power Corp.,***[41] the Supreme Court interpreted the term "erroneously paid tax" within the context of ***Section 229***, *viz*:

> "From the plain text of Section 229, it is clear that what can be refunded or credited is a tax that is "erroneously, . . . illegally, . . . excessively or **in any manner wrongfully** collected." In short, there must be a **wrongful payment** because what is paid, or part of it, is not legally due. As the Court held in Mirant, Section 229 **should "apply only to instances of erroneous payment or illegal collection of internal revenue taxes**." Erroneous or wrongful payment includes excessive payment because **they all refer to payment of taxes not legally due**."
> (Emphasis included)

Further, in ***SMI-ED Phil. Technology, Inc. v. Commissioner of Internal Revenue ("SMI-ED case")***,[42] the Supreme Court cited examples of "erroneously paid taxes," *viz*:

> "Taxes are generally self-assessed. They are initially computed and voluntarily paid by the taxpayer. The government does not have to demand it. If the tax payments are correct, the BIR need not make an assessment.
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> **The self-assessing and voluntarily paying taxpayer, however, may later find that he or she has erroneously paid taxes. Erroneously paid taxes may come in the form of amounts that should not have been paid. Thus, a taxpayer may find that he or she has paid more than the amount that should have been paid under the law.** Erroneously paid taxes may also come in the form of tax payments for the wrong category of tax. Thus, a taxpayer may find that he or she has paid a certain kind of tax that he or she is not subject to.
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> In these instances, the taxpayer may ask for a refund. If the BIR fails to act on the request for refund, the taxpayer may bring the matter to the Court of Tax Appeals."
> (Emphasis supplied)

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41 G.R. Nos. 187485, 196113 & 197156, 12 February 2013.
42 G.R. No. 175410, 12 November 2014.

In other words, "erroneous" in ***Section 229*** must be construed in its ordinary meaning: that there has been a mistake or incorrect payment of tax. For instance, a taxpayer who at the outset computes for its own tax liability and remits the corresponding payment may subsequently ascertain that it had overpaid tax on account of an error in the initial calculations. Following ***SMI-ED case***, this overpayment is regarded as erroneously paid tax which may be the subject of a claim for refund or credit.

In the Assailed Decision, the Court in Division opined that MII complied with the *second requisite* which pertains to the prescribed two (2)-year prescriptive period. However, as regards the *first requisite*, it found that petitioner failed to establish that the FWT imposed on the subject dividends were erroneous or illegal. In particular, the Court in Division stated:

> "...[I]t is clear that "the surplus profits or income must be a bona fide income founded upon actual earnings or profits"; and the phrase "actual earnings or profits" refers to the net income for the year based on the audited financial statements, as adjusted for certain unrealized items, which are considered not available for dividend declaration.
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> In this case, it is noteworthy that the supposed distribution of the subject dividends was not founded upon petitioner's net income for any year. Neither is there any indication that it is based on any audited financial statements x x x
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> Considering that the said declaration of dividends is **not shown to be founded upon petitioner's net income for any particular year**, this Court cannot ascertain whether the same are excessive. This Court cannot then determine whether there was indeed a corresponding excess in the FWTs paid or remitted.
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> x x x
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> Be that as it may, there is still **no indication that the supposed balance of the dividend payment in the amount of ₱68,563,638.00 formed part of petitioner's unrestricted retained earnings prior to the declaration and payment of the subject dividends** on September 6, 2017, and September 26, 2017, respectively. The said amount **was merely determined by subtracting the amount of ₱106,940,858.00 with the earlier declared total amount of dividends to be distributed** (i.e. ₱175,504,496.00). Moreover, as already noted, petitioner has not clearly identified the amount of unrestricted retained earnings it had, prior to the payment of dividends in the amount of ₱175,504,496.00.
>
> In fine, petitioner has not shown that the appropriate tax base for the subject refund claim."
> (Emphasis supplied.)

Stated differently, the Court in Division propounded that MII was not able to substantiate its claim that there was an erroneous declaration of

dividends due to excessive amounts declared because of its failure (a) to show the particular year from which the relevant net income was founded, and (b) to indicate the amount of URE (*i.e.*, Php68,563,638.00) prior to the payment of such dividends.

The Court *En Banc* disagrees.

It should be emphasized that a corporate entity's power to declare dividends to its stockholders is lodged in its board of directors, *viz.*:

> SECTION 43. Power to Declare Dividends. — **The board of directors of a stock corporation may declare dividends out of the unrestricted retained earnings which shall be payable in cash, in property, or in stock to all stockholders on the basis of outstanding stock held by them:** Provided, That any cash dividends due on delinquent stock shall first be applied to the unpaid balance on the subscription plus costs and expenses, while stock dividends shall be withheld from the delinquent stockholder until his unpaid subscription is fully paid: Provided, further, That no stock dividend shall be issued without the approval of stockholders representing not less than two-thirds (2/3) of the outstanding capital stock at a regular or special meeting duly called for the purpose.
>
> Stock corporations are prohibited from retaining surplus profits in excess of one hundred (100%) percent of their paid-in capital stock, except: (1) when justified by definite corporate expansion projects or programs approved by the Board of Directors; or (2) when the corporation is prohibited under any loan agreement with any financial institution or creditor, whether local or foreign, from declaring dividends without its/his consent, and such consent has not yet been secured; or (3) when it can be clearly shown that such retention is necessary under special circumstances obtaining in the corporation, such as when there is a need for special reserve for probable contingencies.

However, as can be gleaned from the above provision, the authority to declare dividends is conditioned on the existence of URE. Thus, ***Securities and Exchange Commission (SEC) Memorandum Circular (MC) No. 11-08***[43] provides:

> "SECTION 5. Retained Earnings Available for Dividends. — Dividends, whether cash, property or stock, **shall be declared out of unrestricted retained earnings of the Corporation**. Accordingly, **a corporation cannot declare dividends when it has zero or negative retained earnings otherwise known as Retained Earnings deficit.** For such purpose, the surplus profits or income must be a bona fide income founded upon actual earnings or profits. The existence, therefore, of surplus profits arising from the operation of corporate business is a condition precedent to the declaration of dividend.

[43] Guidelines on the Determination of Retained Earnings Available for Dividend Declaration, December 5, 2008.

> For purposes of these Guidelines, the phrase "actual earnings or profits" as mentioned above shall be the net income for the year based on the audited financial statements, adjusted for unrealized items discussed below, which are considered not available for dividend declaration. x x x"

Clearly, the Company's BOD can declare dividends for an amount it deems proper, provided the URE can sufficiently cover the full amount declared. Any exercise of such power in violation of the foregoing rule shall be considered *ultra vires*, consistent with the requirement to uphold the ***Trust Fund Doctrine***.[44]

As defined by ***SEC MC No. 11-08***, *unrestricted retained earnings* arise from **accumulated profits and gains** realized out of the normal and continuous operations of the company after deducting therefrom distributions to stockholders and transfers to capital stock or other accounts. Moreover, based on the above-cited provision of the circular, the profits and gains must be actual, that is, borne out of the net income for the year based on the audited financial statements, adjusted for unrealized items.

Noteworthy from the foregoing is the recognized accumulation of profits and gains, and the absence of a mandate to identify the year from which the income relevant to the declaration of dividends was founded, contrary to what was required by the Court in Division in the Assailed Decision.

Thus, in the case at hand, the Court *En Banc* finds that it is not necessary to determine the wisdom of the BOD as to the amount declared as dividends on 6 September 2017. It is, however, more important to look into the violation, if any, of the limitation imposed by the law (i.e., declaration of dividends from URE).

The URE prior to the declaration of dividends, while not categorically stated in the AFS, can be computed based on the amounts indicated in the statement of changes in equity. We adopt the calculations of URE balance before payment of dividends, presented by Associate Justice Jean Marie A. Bacorro-Villena, in her Concurring and Dissenting Opinion to the Assailed Decision.

	Cumulative Earnings

[44] In *National Transmission Commission v. Court of Appeals* (28 July 1999, 311 SCRA 514-515), the Supreme Court enunciated as follows: "The 'Trust Fund' doctrine considers this subscribed capital as a trust fund for the payment of the debts of the corporation, to which the creditors may look for satisfaction. Until the liquidation of the corporation, no part of the subscribed capital may be returned or released to the stockholder (except in the redemption of redeemable shares) without violating this principle. Thus, dividends must never impair the subscribed capital; subscription commitments cannot be condoned or remitted; nor can the corporation buy its own shares using the subscribed capital as the considerations therefor."

Balance at 30 September 2016	Php58,402,372.00
Adjustment on Allowance for Impairment Loss	12,843,267.00
Net Loss for the FY2017	(2,682,001.00)
Balance at 30 September 2017 (before payments of dividends)	**Php68,563,638.00**

Given that the URE prior to the dividend declaration is only Php68,563,638.00, the excess dividends erroneously declared by petitioner can be computed as follows:

Dividends declared on 6 September 2017	Php175,504,496.00
Balance at 30 September 2017 (before payments of dividends)	68,563,638.00
Erroneously declared dividends	**Php106,940,858.00**

Following the restrictions of ***SEC MC No. 11-08*** and consistent with the Trust Fund Doctrine, MII is duty-bound to reverse and correct the original declaration of dividends.

The return of capital to petitioner's shareholders is not subject to income tax and, consequently, to FWT.

Based on a perusal of the financial statements, the excess dividend declaration was recorded as a reduction to share capital, making the payment a return of investment to the shareholders. Thus, even if the remittance to the shareholders is coined as "dividend", the Court *En Banc* finds that same should actually be considered as a payback of capital not subject to income tax.

As held by the Supreme Court in ***Chamber of Real Estate and Builders Associations, Inc. vs. Secretary Albert Romulo***,[45] "income means all the wealth which flows to a taxpayer other than a mere return on capital." Thus, in order to be taxable, the flow of wealth must be identified as gain derived and severed from one's investment.

It is due to the foregoing that the Court *En Banc* finds respondent's contention regarding petitioner's failure to prove the remittance of the excess dividends back to MII not germane to the case at hand. The outward remittance to MII Japan is a return of capital which should not be subject to income tax or FWT, regardless of whether it was returned to petitioner.

[45] G.R. No. 160756, 9 March 2010.

Now that the **tax base** for the refund of alleged erroneous tax has been determined, We shall now proceed to ascertain whether the proper **tax rate** was used by MII, entitling it to a full refund of the taxes paid.

Petitioner failed to prove that Matex Co. Ltd. is a tax resident of Japan.

In refund cases involving erroneously paid taxes, the Court may determine whether there are taxes that should have been paid in lieu of the taxes actually paid.[46] Thus, the Court may inquire into the correctness of the application of lower (e.g., preferential) tax rates or tax exemptions, which, if found erroneous, may affect the total amount of the alleged overpayment.

In working out its FWT due, MII applied the ten percent (10%) rate provided under the RP-Japan DTA, *viz*:

> "Article 10
>
> 1. **Dividends** paid by a company which is a **resident of a Contracting State to a resident of the other Contracting State** may be taxed in that other Contracting State.
>
> 2. However, such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident, and according to the laws of that Contracting State, but if the recipient is the beneficial owner of the dividends the tax so charged shall not exceed:
>
> a) **10 per cent of the gross amount of the dividends** if the beneficial owner is a company who holds directly **at least 10 per cent either of the voting shares of the company paying the dividends** or of the total shares issued by that company during the period of six months immediately preceding the date of payment of the dividends;
>
> b) 15 per cent of the gross amount of the dividends in all other cases.
>
> The provisions of this paragraph shall not affect the taxation of the company in respect of the profits out of which the dividends are paid." (Emphasis supplied)

In other words, the 10% treaty rate may be applied to the imposition of FWT if the following conditions concur: *First*, the payor company and the dividend recipient are residents of the Philippines or Japan, respectively; *second*, the recipient is (a) the beneficial owner of the dividends and (b) the holder of at least 10% interest in the payor company's voting shares.

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[46] SMI-ED Phil. Technology, Inc. v. Commissioner of Internal Revenue, G.R. No. 175410, November 12, 2014.

It is no longer disputed that MII (payor) is a resident of the Philippines and that Matex Co. Ltd. (recipient) owns the controlling interest (i.e., 99.9996%) in the former.[47] What remains at issue is whether MII established Matex Co. Ltd.'s residency to justify its availment of the 10% treaty rate.

Article 4, Paragraph 1 of the RP-Japan DTA defines the term "resident of a Contracting State" as follows:

> "1. For the purposes of this Convention, the term "***resident of a Contracting State***" means **any person who, under the laws of that Contracting State, is liable to tax therein by reason of his domicile, residence, place of head or main office, place of incorporation or any other criterion of a similar nature**. But this term does not include any person who is liable to tax in the Contracting State in respect only of income from sources therein."
> (Emphasis, italics, and underscoring supplied.)

Thus, it is incumbent for petitioner to establish the fact that Matex Co., Ltd. is liable to tax in Japan by reason of its domicile, residence, place of head or main office, place of incorporation, or any other criterion of a similar nature.

To implement this mandate, the BIR, through ***Section 4(3) of Revenue Memorandum Order No. 8-2017***, requires the submission of a Certificate of Residence for Tax Treaty Relief (CORTT) Form by the non-resident income recipient to establish the fact of residency in a tax treaty contracting state. The same RMO states that failure to submit the CORTT Form would make the nonresident and/or withholding agent ineligible to avail the preferential tax treaty rates.

The Court in Division held that MII was unable to prove that Matex Co. Ltd. is in fact a resident of Japan on account of its failure to present the originals or certified true copies of the CORTT Form and Matex Co. Ltd.'s Tax Residency Certificate for comparison.

In the instant Petition, MII invokes that the totality of evidence it submitted should be deemed sufficient to prove that Matex Co., Ltd., who is the recipient of the cash dividend, is a resident of Japan. Specifically, petitioner posits that the following documentary and testimonial evidence should suffice to support this claim:

a) Petitioner's 2018 **Comparative Audited Financial Statement** wherein the petitioner was described as a "wholly-owned subsidiary of Matex Co., Ltd., a Japanese Company;"[48]

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[47] See General Information Sheet, Exhibit "P-18", Docket (CTA Case No. 10180) – Vol. I, pp. 415-423.
[48] Exhibit "P-4", *id.*, pp. 370-395.

b) Notarized **Certificate of Remittance** indicating outward remittance for payment of dividend by Matex International Inc. to MUFG Bank in Japan for Matex Co., Ltd.;[49]
c) Notarized **Certificate of Inward Remittance** from Japan by order of Matex Co., Ltd. to be credited to the account of Matex International Inc.;[50]
d) **General Information Sheet** of Matex International Inc. for the year 2017 wherein Matex Co., Ltd. was specifically indicated or identified as Japanes with residential address at 1-125 Mizukoshi, Yao City, Japan;[51]
e) **Judicial Affidavit of Norio Oshima**, paragraphs 7 & 8 stating that petitioner is 99.99% owned by Matex Co., Ltd., a non-resident foreign corporation duly organized under the laws of Japan.[52]

We find this contention unmeritorious since all of the above documents do not conclusively prove the residence of a taxpayer.

As for the AFS and GIS, a mere mention of the stockholder's residence cannot be deemed conclusive as these were prepared by MII, and not by any competent authority in Japan who can duly identify and certify that Matex Co., Ltd. is a "**person who, under the laws of that Contracting State, is liable to tax therein**". The same reasoning equally applies to the Certificates of Remittance which were issued by the banks and to the testimony given by Norio Oshima who is a director and officer of petitioner.

As the Supreme Court ruled in ***David C. Lao and Jose C. Lao vs. Dionisio C. Lao***,[53] "[w]hile it may be true that petitioners were named as shareholders in the General Information Sheet submitted to the SEC, that document alone does not conclusively prove that they are shareholders of [the corporation]". Thus, if the GIS cannot, on its own, establish that a certain person is a shareholder, what more the specific details surrounding the said person, such as its residence or principal place of business.

Further, petitioner's AFS for 2017 expressly mention that petitioner is a wholly-owned subsidiary of Matex Co., Ltd., "a Japanese Company". While it is true that no evidence can best attest to a company's economic status other than its AFS, it is not competent to establish the fact of residence of a certain shareholder. The Notes to the Financial Statements only provide additional information and narrative descriptions or disaggregations of items in those statements. The Supreme Court held in ***Taganito Mining Corporation vs. Commissioner of Internal Revenue***[54] that a refund claimant should present

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49 Exhibit "P-16", *id.*, p. 413.
50 Exhibit "P-17", *id.*, p. 414.
51 Exhibit "P-18", *id.*, p. 415-423.
52 Exhibit "P-24", *id.*, p. 309-318.
53 G.R. No. 170585, 6 October 2008.
54 G.R. No. 201195, 26 November 2014.

the very document evidencing a transaction instead of merely the financial report citing such transaction, *viz*:

> "Taganito argues that the report of the independent CPA shows that purchases and input VAT paid/incurred were properly recorded in its books of accounts. In addition, **it avers that the Balance Sheet in its 2006 Audited Financial Statements showing an account item for property and equipment under its non-current assets indicates that details are found on Note 7 on page 19 of the Notes to Financial Statements, which provide the complete details of its subsidiary ledger**. It also alleges that the pertinent IERIDs were reviewed by the independent CPA and they clearly state that the items imported were dump trucks, and that its Vice-President for Finance testified what consists of its purchases of capital goods.
>
> These arguments cannot be given credence.
>
> First, Taganito failed to prove that the importations pertaining to the input VAT are in the nature of capital goods and properties as defined in the above quoted section. It points to the report of the independent CPA which allegedly reviewed the IERIDs and subsidiary ledger containing the description of the dump trucks. Nonetheless, the **petitioner failed to present the actual IERIDs and subsidiary ledger, which would constitute the best evidence rather than a report merely citing them.** It did not give any reason either to explain its failure to present these documents. The testimony of its Vice-President for Finance would be insufficient to prove the nature of the importation without these supporting documents."
> (Emphasis supplied.)

In sum, the mere mention in petitioner's own AFS and GIS that Matex Co., Ltd., is a "citizen of Japan" or a "Japanese Company" does not establish the fact that such company is actually a resident of Japan by reason of its domicile, residence, place of head or main office, place of incorporation, or any other criterion of a similar nature.

Further on this issue, MII also appeals its submission of the original CORTT form stamped received by the BIR[55] and the Tax Residence Certificate ("TRC") of Matex Co., Ltd. issued by the Japanese tax office.[56]

To recall the proceedings before the Court in Division, copies of the CORTT and TRC were offered as evidence, marked as Exhibits "P-13" and "P-14", respectively, on 29 June 2020.[57] However, these were denied admission due to failure to submit the originals or certified true copies of the

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55 See Certificate of Residence (for Tax Treaty Relief), Docket (CTA Case No. 10180) – Vol. 2, pp. 520-522.

56 See Certificate of Tax Residence dated 13 July 2017, *id.*, p. 523.

57 See Formal Offer of Evidence dated 29 June 2020, Docket (CTA Case No. 10180) – Vol. 1, pp. 328-495, with annexes.

same for comparison.[58] Thereafter, in a Motion for Partial Reconsideration filed on 6 October 2020,[59] petitioner submitted the original CORTT form with attached TRC, without explanation on its failure to submit the same together with the documents initially offered as evidence. The Motion for Reconsideration was denied on 4 December 2020.[60]

In view of the foregoing, petitioner now requests for the Court *En Banc* to relax the application of procedural rules, and give probative weight on the CORTT and TRC. Further, petitioner raises that while these documents were denied admission, these were subsequently tendered to the court, pursuant to ***Section 40 of the Revised Rules of Court***,[61] and thus still form part of the records of the case.

The Court *En Banc* finds no merit in petitioner's position.

It is true that procedural rules may be relaxed in the interest of substantial justice. They may not, however, be declassed as mere technicalities which can be ignored to favor the circumstances of one party. In the case of ***Fortune Tobacco Corp. vs. Commissioner of Internal Revenue***,[62] the Supreme Court cited the case of ***Daikoku Electronics Phils., Inc. v. Raza***,[63] which states:

> "To be sure, the **relaxation of procedural rules cannot be made without any valid reasons proffered for or underpinning it.** To merit liberality, petitioner must show reasonable cause justifying its noncompliance with the rules and must convince the Court that the outright dismissal of the petition would defeat the administration of substantive justice. . . . The desired leniency cannot be accorded absent valid and compelling reasons for such a procedural lapse. . . .
>
> We must stress that the bare invocation of **"the interest of substantial justice" line is not some magic wand that will automatically compel this Court to suspend procedural rules.** Procedural rules are not to be belittled, let alone dismissed simply because their non-observance may have resulted in prejudice to a party's substantial rights. Utter disregard of the rules cannot be justly rationalized by harping on the policy of liberal construction."
> (Emphasis in the original)

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58 See Resolution dated 27 July 2020, Docket (CTA Case No. 10180) – Vol. 2, pp. 505-506.
59 See Motion for Partial Reconsideration (of Resolution dated July 27, 2020), *id.*, pp. 514-517.
60 See Resolution dated 4 December 2020, *id.*, pp. 590-591.
61 Section 40. Tender of excluded evidence. — If documents or things offered in evidence are excluded by the court, the offeror may have the same attached to or made part of the record. If the evidence excluded is oral, the offeror may state for the record the name and other personal circumstances of the witness and the substance of the proposed testimony.
62 G.R. No. 192024, 1 July 2015.
63 G.R. No. 181688, 5 June 2009.

In the case at hand, the Court *En Banc* finds no compelling reason to relax the application of procedural rules.

First, it must be noted that petitioner proffered no explanation on its failure to submit the original or certified true copies of the documents upon its Formal Offer of Evidence. *Second*, as discussed by the Court in Division in the Resolution, dated 4 December 2020,[64] the subsequent submission of the CORTT and TRC cannot be admitted due to the lack of the opportunity on the part of the respondent to assail the identity and authenticity of the same. Disregarding this right of the respondent will be plainly unequitable. *Third*, assuming due consideration may be given to these documents, the Court *En Banc*, still finds the TRC insufficient of probative value due to the lack of authentication.

The TRC issued by the Japanese tax office is considered a public document under ***Section 19, Rule 132 of the Revised Rules on Evidence***.[65] In order to be admissible, ***Section 24*** of the same rule requires a certification made by a secretary of the embassy or any officer in the foreign service of the Philippines stationed in the foreign country in which the record is kept, that such officer has custody of the same, and the authentication by the seal of his or her office. Prior to the amendment introduced by ***A.M. No. 19-08-15-SC, Section, 24, Rule 132 of the Revised Rules on Evidence*** provides:

> "**Section 24.** *Proof of official record.* — The record of public documents referred to in paragraph (a) of Section 19, when admissible for any purpose, may be evidenced by an official publication thereof or by a copy attested by the officer having the legal custody of the record, or by his deputy, and accompanied, if the record is not kept in the Philippines, with a certificate that such officer has the custody. **If the office in which the record is kept is in foreign country, the certificate may be made by a secretary of the embassy or legation, consul general, consul, vice consul, or consular agent or by any officer in the foreign service of the Philippines stationed in the foreign country in which the record is kept, and authenticated by the seal of his office.**"
> (Emphasis supplied.)

Upon review of the records, the Court *En Banc* notes that while the original CORTT form was submitted by the petitioner, the attached TRC therein does not appear to be authenticated. The CORTT form originally

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64 See Resolution dated 4 December 2020, Division Docket Vol. 2, pp. 590-591.

65 Section 19. Classes of documents. – For the purpose of their presentation in evidence, documents are either public or private.
Public documents are:
(a) The written official acts, or records of the sovereign authority, official bodies and tribunals, and public officers, whether of the Philippines, or of a foreign country;
(b) Documents acknowledged before a notary public except last wills and testaments;
(c) Documents that are considered public documents under treaties and conventions which are in force between the Philippines and the country of source; and
(d) Public records, kept in the Philippines, of private documents required by law to be entered therein.
All other writings are private.

stamped received by the BIR duly proves its existence, the execution by MII and Matex Co. Ltd., and the fact that the same was submitted to the tax authorities upon availment of the tax treaty benefit. On the other hand, it is the TRC attached thereto which could have served as proof of the income recipient's tax residency as the same was issued by the Japanese tax authorities. However, since the TRC lacks the authentication required by ***Section 24, Rule 132,*** it cannot be deemed sufficient to prove that Matex Co. Ltd. is indeed a tax resident of Japan.

Therefore, as the tax residency of income recipient was not duly proven, MII failed to satisfy the Court *En Banc* on its claimed propriety of the application of the 10% preferential rate under the RP-Japan DTA.

Applying the 30% FWT on the corrected dividend, no excess or erroneous taxes are refunded to petitioner

Based on the discussions in the previous section, We recompute the tax due on the corrected dividends to Matex Co., Ltd. and determined that no excess tax were due to the petitioner for refund, as shown in the table below:

Corrected Dividends to Matex Co., Ltd.	Php 68,563,362.92
Tax due at 30%	20,569,008.88
Tax withheld	17,550,379.13
Excess tax withheld	**0**

All told, the Court *En Banc* finds no reason to disturb the findings of the Court in Division. The denial of the Petition for Review is in order.

WHEREFORE, premises considered, the instant Petition for Review is hereby **DENIED** for lack of merit. Accordingly, the Decision dated 15 February 2022 and the Resolution dated 25 April 2022 of the Court's Second Division are hereby **AFFIRMED**.

SO ORDERED.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

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

(with Dissenting Opinion)
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 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

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

MATEX INTERNATIONAL, INC., *Petitioner,*	**CTA EB No. 2627** *(CTA Case No. 10180)*
- versus -	Present: **DEL ROSARIO**, *PJ,* **RINGPIS-LIBAN,** **MANAHAN,** **BACORRO-VILLENA,** **MODESTO-SAN PEDRO,** **REYES-FAJARDO**, *and* **CUI-DAVID,** **FERRER-FLORES,** **ANGELES**, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	**Promulgated:** JAN 30 2024 9:46 am

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DISSENTING OPINION

REYES-FAJARDO, J.:

With all due respect, contrary to the *ponencia*'s ruling, I find that Matex International, Inc. (MII) is entitled to the refund sought.

To recall, on September 6, 2017, the MII Board declared a cash dividend amounting to ₱175,504,496.00. MII withheld and remitted 10% final withholding tax (FWT) on this transaction amounting to ₱17,550,513.00 This 2017 transaction shall be hereinafter referred to collectively as the "Original Transaction."

In 2018, MII revisited its balances. It noted that the balance of unrestricted retained earnings as of September 30, 2017 was only ₱68,563,638.00. Thus, it should have only declared dividends to this extent and the original declaration had been excessive by ₱106,940,858.00. In turn, the excess/overpaid FWT amounted to

₱10,694,124.00, which is the subject of the instant claim for refund or credit.

For reasons set out below, I find that MII is entitled to the refund or credit sought. MII's original transaction and adjustments thereto were **valid, duly recorded** in its books, and **properly reflected** in its Audited Financial Statements. Ultimately, MII demonstrated that there was **erroneously paid tax** consisting of overpaid FWT on dividends.

Significantly, I agree with the *ponencia*'s holding as to the timeliness of MII's claim and the excessive nature of the subject dividend declaration. However, I take exception to its refusal to accord tax treaty benefits to MII.

It is settled that an overpayment in tax shall be regarded as erroneous within the meaning of Section 229 of the National Internal Revenue Code, as amended (Tax Code), and, thus, may be the subject a claim for refund or credit.[1] A taxpayer that filed its return and paid the tax due thereon voluntarily may, subsequently, ascertain that it had overpaid tax on account of an error in its initial computation.

To determine whether MII overpaid FWT in 2017, we must inquire into the following: (a) Was MII correct in applying the 10% rate under the RP-Japan Treaty to the subject transaction? (b) Did MII establish the fact of overpayment?

MII correctly applied 10% treaty rate.

It is no longer disputed that MII (payor) is a resident of the Philippines and that Matex Co. Ltd. (recipient) owns the controlling interest (*i.e.*, 99.9996%) in the former. What remains at issue is whether MII established Matex Co. Ltd.'s residency to justify its availment of the 10% treaty rate.

Verily, the *ponencia* upholds the Court in Division's finding that MII was unable to prove that Matex Co. Ltd. is in fact a resident

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1 See *SMI-ED Phil. Technology, supra.*

of Japan on account of its failure to present the originals or certified true copies of the CORTT Form and Matex Co. Ltd.'s Tax Residency Certificate for comparison.

I disagree with this position. The CIR has already made an **express recognition** of Matex Co. Ltd.'s Japan residency and the subject transaction's eligibility in availing of the preferential treaty rate.

As early as 2013, MII already sought tax treaty relief from the tax authorities relative to the payment of dividends to Matex Co. Ltd. Consequently, prior to its declaration of dividends in 2017, the CIR issued **ITAD BIR Ruling No. 160-14**[2] dated August 18, 2014 and **confirmed that Matex Co. Ltd. is a resident of Japan and that Matex International, Inc.' payment of dividends to Matex Co. Ltd. is subject to the 10% RP-Japan treaty rate**. Relevant portions of the ruling are reproduced below:

> **Matex is a corporation organized and existing under the laws of Japan and is a resident thereof based on its Articles of Association and Residence Certificate issued by the Gifu-Kita Tax Office in Japan on February 26, 2014.** Matex is located at 125, 1-chome, Yao City, Osaka, Japan. Based on the Certification of Non-Registration issued by the Securities and Exchange Commission on March 10, 2014, Matex is not registered as a corporation or partnership in the Philippines x x x
>
> Under Article 10, dividends arising in the Philippines and paid to a resident of Japan may be taxed in the Philippines at a rate not to exceed 10 percent if the company recipient of the dividends holds directly at least 10 percent of the voting shares or the total shares of the company paying the dividends for a period of six months immediately preceding the date of payment of the dividends, and 15 percent in all other cases.
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> **Accordingly, since Matex holds directly at least 10 percent of the total shares of Matex Philippines during a period of six months immediately preceding the date of payment of the dividends, where Matex actually holds 99.99 percent of these shares since November 14, 2002, such dividends paid by Matex Philippines to Matex are subject to income tax at the rate of 10 percent, pursuant to paragraph 2 (a), Article 10 of the Philippines-Japan tax treaty.** (Emphasis supplied.)

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[2] Signed by Kim S. Jacinto-Henares, Commissioner of Internal Revenue.

Rulings issued by the CIR, such as the above-cited, are **binding upon the tax authorities**.[3] It cannot be withdrawn or abandoned unilaterally if it will prejudice any taxpayer who had the legal right to rely thereon.[4] Under the principle of equitable estoppel,[5] "the [CIR] is precluded from adopting a position contrary to one previously taken where injustice would result to the taxpayer."[6]

MII was prudent enough to seek clarification from the tax authorities before proceeding with the transaction. Thus, availment and application of the preferential rate were expressly authorized by the CIR. In these lights, to deprive MII of said treaty benefit would certainly amount to an injustice.

Furthermore, the non-submission of the originals or certified true copies of the CORTT Form and Matex Co. Ltd.'s Tax Residency Certificate should not be fatal to its claim.

In this regard, we are guided by the Supreme Court's pronouncement in *Commissioner of Internal Revenue v. Ocier* (*Ocier*),[7] *viz.*:

> Nonetheless, the petitioner's failure to establish the nature of the transaction as a sale between the respondent and Tan due to the non-offer of the evidence did not prevent the CTA En Banc from resolving the issue in favor of the petitioner. **There was enough proof extant in the records on which to base a ruling against the respondent. The CTA En Banc had the positive duty as a court of law to consider and give due regard to everything on record relevant and competent to its resolution of the ultimate issue presented for its adjudication. Even if the CTA En Banc could not validly consider and appreciate any matter that had not been formally offered by the petitioner, it could not turn a blind eye as to disregard the record** that showed the transfer of shares that gave rise to the tax liability on the part of the respondent, including the evidence formally offered by the

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3 "Being a specific interpretative rule addressing issues raised by a particular taxpayer, it binds the CIR only with respect to the inquiring taxpayer." *Aces Philippines Cellular Satellite Corp. v. Commissioner of Internal Revenue*, G.R. No. 226680, August 30, 2022.

4 See Section 246, Tax Code.

5 *Commissioner of Internal Revenue v. Negros Consolidated Farmers Multi-Purpose Cooperative*, G.R. No. 212735, December 5, 2018; *Commissioner of Internal Revenue v. San Roque Power Corp.*, G.R. Nos. 187485, 196113 & 197156, February 12, 2013, 703 PHIL 310-434.

6 *Commissioner of Internal Revenue v. Philippine Health Care Providers, Inc.*, G.R. No. 168129, April 24, 2007, 550 PHIL 304-315.

7 G.R. No. 192023 , November 21, 2018.

> respondent himself as well as his admission. The CTA En Banc was all too aware of the presence of such proof in the records because it precisely declared that "the Court need no longer look into whether or not the subject BW shares were actually transferred, as this was clearly not controverted." Thus, the CTA En Banc gravely erred in upholding the ruling of the CTA in Division. (Emphasis supplied)

It is basic that the party seeking a refund or credit bears the burden of proving the factual basis of its claim. Thus, in line with the above-quoted *Ocier*, the Court may consider the **totality of the evidence available on record** if only to adjudicate the claim completely.

In MII's case, the exclusion of the CORTT Form should not be fatal to its claim for the following reasons:

First, verily, Revenue Memorandum Order No. 008-17[8] requires the claimant to submit this document, as part of an application for claiming tax treaty benefits and even mentions expressly that it "shall serve as proof of residency of the non-residents. Residency is a minimum requirement for the availment of preferential tax treaty rates or tax exemption under all effective tax treaties of the Philippines." However, this administrative requirement cannot be construed strictly against the claimant. Denial of the use of preferential treaty rates solely because the claimant failed to submit the original copy of the CORTT Form would be tantamount to imposing upon the claimant additional requirements that have not been provided by the law.[9]

Second, Matex Co. Ltd.'s residency is established in other documents in the records: MII's *Articles of Incorporation*[10] and *General Information Sheet*[11] both refer to Matex Co. Ltd. as MII's controlling stockholder and a **citizen of Japan**. Further, its *2017*

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8 Procedure for Claiming Tax Treaty Benefits for Dividend, Interest and Royalty Income of Nonresident Income Earners (October 24, 2016).

9 See *Commissioner of Internal Revenue v. Interpublic Group of Companies, Inc.*, G.R. No. 207039, August 14, 2019; *CBK Power Company Ltd. v. Commissioner of Internal Revenue*, G.R. Nos. 193383-84 & 193407-08, January 14, 2015, 750 PHIL 748-766; *Deutsche Bank AG v. Commissioner of Internal Revenue*, G.R. No. 188550, August 19, 2013, 716 PHIL 676-693.

10 Docket (CTA Case No. 10180) - Vol. 1, p. 350.

11 Docket (CTA Case No. 10180) - Vol. 1, p. 419.

Audited Financial Statements[12] expressly mention that MII is a wholly-owned subsidiary of Matex Co. Ltd., **a Japanese Company**.

Certainly, MII's inability to present the original of a document required by an administrative issuance does not foreclose the probative value of other documents in the records tending to establish the same fact of residency.

MII established the overpayment of FWT.

The following circumstances establish that MII overpaid its FWT in 2017: *First*, MII made a self-assessment and voluntary payment of FWT on the original transaction. The fact of remittance/payment of FWT amounting to ₱17,550,513.00 is established by BIR Form No. 1601-F for September 2017[13] and the accompanying eFPS Payment Form.[14] *Second*, MII determined that the original declaration exceeded the unrestricted retained earnings balance. This subsequent determination was well-within the Board's statutory authority to declare dividends. *Third*, the excessive declaration corresponded to overstatements in the tax base and, ultimately, the FWT due. *Fourth*, this prompted MII to seek the refund of the amount of ₱10,694,124.00 representing the **excess of its FWT remittance** (*i.e.*, ₱17,550,513.00) **over the adjusted FWT** (₱6,856,388.00).

That MII has demonstrated clearly that it remitted FWT only by mistake gives rise to the State's corollary duty to restore the sum representing such erroneous payment.[15]

Based on these considerations, I **VOTE** to **GRANT** MII's Petition for Review and **REVERSE AND SET ASIDE** the assailed Decision promulgated on February 15, 2022 and Resolution promulgated on April 25, 2022, both rendered by the Second Division of this Court in CTA Case No. 10180. Accordingly, respondent must be **ORDERED TO REFUND or ISSUE A TAX**

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12 Docket (CTA Case No. 10180) – Vol. 1, pp. 464-467.
13 Docket (CTA Case No. 10180) – Vol. 1, p. 396.
14 Docket (CTA Case No. 10180) – Vol. 1, p. 397.
15 *CBK Power Company Ltd. v. Commissioner of Internal Revenue*, G.R. Nos. 193383-84 & 193407-08, January 14, 2015, 750 PHIL 748-766; *Philippine Geothermal Inc. v. Commissioner of Internal Revenue*, G.R. No. 154028, July 29, 2005, 503 PHIL 278-288.

CREDIT CERTIFICATE in favor of petitioner in the amount of ₱10,694,124.00 representing erroneously paid FWT relative to the month of September of 2017.

SO ORDERED.

Marian Ivy F. Reyes-Fajardo

MARIAN IVY F. REYES-FAJARDO
Associate Justice