

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

TULLETT PREBON CTA EB No. 2713
(PHILIPPINES) INC., (CTA Case No. 10068)
Petitioner,

-versus-

COMMISSIONER OF
INTERNAL REVENUE,
Respondent.

x-----x
COMMISSIONER OF
INTERNAL REVENUE,
Petitioner,

CTA EB No. 2717
(CTA Case No. 10068)

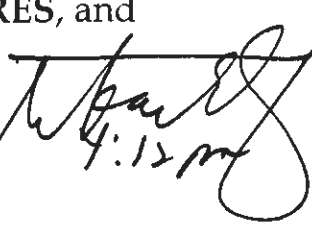
Present:

-versus-

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

TULLETT PREBON
(PHILIPPINES) INC., *Respondent.*

Promulgated:


4:12 pm
MAR 07 2024

x-----x



DECISION

REYES-FAJARDO, J.:

We resolve the Petitions for Review, filed by Tullett Prebon (Philippines) Inc. (TPPI) in CTA EB No. 2713,¹ and the Commissioner of Internal Revenue (CIR) in CTA EB No. 2717,² both assailing the Decision³ dated May 11, 2022, and Resolution⁴ dated October 18, 2022, in CTA Case No. 10068. The assailed Decision and Resolution partially granted TPPI's refund of excess and unutilized Creditable Withholding Tax (CWT) for Calendar Year (CY) 2016, to the extent of ₱7,486,552.83.

The facts follow.

TPPI is a domestic corporation, duly organized and existing under the laws of the Republic of the Philippines, with principal office at 14th Floor RCBC Savings Bank Building, Bonifacio Global City, Taguig. It was incorporated with the primary purpose of operating as a broker between market participants in transactions involving, but not limited to, foreign exchange, deposits, interest rate instruments, fixed income securities, bonds/bills, repurchase agreements of fixed income securities, certificates of deposit, bankers' acceptances, bills of exchange, over-the-counter options of the aforementioned instruments, lesser developed country (LDC) debt, energy, and stock indexes and all related, similar or derivative products, other than acting as a broker for the trading of securities pursuant to the Revised Securities Act of the Philippines.

TPPI is also a registered taxpayer of the Bureau of Internal Revenue (BIR), Large Taxpayers District Office (LTDO), with Tax Identification No. 004-653-622-000.

The CIR is the duly appointed official vested under the appropriate laws with the authority to carry out the functions,

¹ *Rollo* (CTA EB No. 2713), pp. 19-30.

² *Rollo* (CTA EB No. 2717), pp. 6-15.

³ *Rollo* (CTA EB No. 2713), pp. 36-59.

⁴ *Id.* at pp. 61-66.

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duties, and responsibilities of the said office, including, *inter alia*, the power to decide, approve and grant refunds and/or tax credits of overpaid and erroneously paid or collected internal revenue taxes.

On June 26, 2018, TPPI filed with the BIR Regular LT Audit Division II, an administrative claim for refund of, or issuance of tax credit certificate (TCC), for excess and unutilized CWT for CY 2016 in the amount of ₱11,275,870.00.

To date, the CIR has neither approved, nor denied TPPI's administrative claim for refund of, or issuance of TCC, for excess and unutilized CWT for CY 2016.

On April 11, 2019, TPPI filed a Petition for Review before the Court in Division, docketed as CTA Case No. 10068. It seeks the refund or issuance of TCC in the amount of ₱11,275,870.00, representing its alleged excess and unutilized CWT for CY 2016.

In the assailed Decision dated May 11, 2022,⁵ the Court in Division found that TPPI's administrative and judicial claims for CWT refund covering CY 2016, were instituted within the prescribed periods in Sections 204(C) and 229 of the 1997 National Internal Revenue Code (NIRC), as amended. Out of the ₱11,275,870.00 claimed as CWT refund, TPPI's various Certificates of Creditable Taxes Withheld at Source (BIR Form No. 2307), along with the corresponding schedule of creditable taxes withheld demonstrated *valid* CWTs amounting to ₱10,148,237.77. However, TPPI's valid CWTs of ₱10,148,237.77 was further diminished by ₱2,661,684.94, the CWTs pertaining to income payments which were not traced in its General Ledgers (GL) and Official Receipts (OR). Precisely, the Court in Division allowed the remainder thereof amounting to ₱7,486,552.83, as TPPI's CWT refund for CY 2016, in the following manner:

WHEREFORE, in light of the foregoing considerations, the instant Petition for Review is **PARTIALLY GRANTED**. Accordingly, [the CIR] is **ORDERED TO ISSUE A TAX CREDIT CERTIFICATE** in favor of [TPPI], in the reduced amount of ₱7,486,552.83, representing its excess and unutilized Creditable Withholding Tax for Calendar Year 2016.

⁵ *Supra* note 3.

SA

SO ORDERED.

Both unfazed, TPPI⁶ and the CIR⁷ moved to assail the Decision dated May 11, 2022.

Under Resolution⁸ dated October 18, 2022, the Court in Division denied TPPI's Motion for Reconsideration and the CIR's Motion for Partial Reconsideration, as follows:

WHEREFORE, in light of the foregoing considerations, [TPPI]'s "*Motion for Reconsideration (Re: Decision dated May 11, 2022)*," and [the CIR]'s "*Motion for Partial Reconsideration (Re: Decision dated 11 May 2022)*," are hereby **DENIED** for lack of merit.

SO ORDERED.

Hence, TPPI's and the CIR's Petitions for Review.

TPPI's Petition for Review (CTA EB No. 2713)

TPPI imputes fault on the Court in Division's disallowance of ₱2,661,684.94, the CWTs corresponding to income payments which were not traced in its GL and OR. Specifically, TPPI puts premium on the item "DIFF Between GL vs 2307" in its reconciliation⁹ schedule to demonstrate that the discrepancies between its GL and its CWT Certificates were on account of: (1) rounding-off of figures; and (2) differences in foreign exchange rates.

TPPI further avers that the Court in Division erred in solely relying on the disallowance found by the ICPA to conclude that the immediately above amount must be deducted from its CWT Refund for CY 2016.

⁶ TPPI's Motion for Reconsideration (Re: Decision dated May 11, 2022). Docket (CTA Case No. 10068), pp. 786-793.

⁷ The CIR's Motion for Partial Reconsideration (Re: Decision dated 11 May 2022). Docket (CTA Case No. 10068), pp. 802-808.

⁸ *Supra* note 4.

⁹ Annex "C," TPPI's Petition for Review. *Rollo* (CTA EB No. 2713), pp. 67-88.

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On the other hand,¹⁰ the CIR counters that the Court in Division is: *one*, correct in disallowing CWTs pertaining to income payments, which may not be traced from TPPI's GL and OR, in the amount of ₱2,661,684.94; and *two*, incorrect in partly granting the amount of ₱7,486,552.83, as TPPI's CWT refund for CY 2016.

CIR's Petition for Review (CTA EB No. 2717)

The CIR maintains that TPPI's judicial claim for CWT refund covering CY 2016 is premature because the latter failed to await his adverse decision on its administrative claim for refund, thereby violating the principle of prior exhaustion of administrative remedies.

The CIR further asserts that the Court in Division may only entertain the pieces of evidence submitted by TPPI at BIR level; thus, the Court in Division erred in considering the pieces of evidence presented by TPPI for the first time at judicial level.

For these reasons, the CIR declares that TPPI's CWT refund for CY 2016 must be wholly denied.

In its Comment (RE: CIR's Petition for Review),¹¹ filed on January 30, 2023, TPPI retorts that Sections 204(C) and 229 of the NIRC, as amended, only mandates that the administrative claim for refund be filed prior to institution of judicial claim of even nature. These provisions do not require the final resolution of the BIR administrative claim, more so if the two (2)-year prescriptive period was about to expire.

TPPI further counters that cases before the CTA are litigated anew; hence, the pieces of evidence it presented for the first time at judicial level may be considered by the Court in Division. Said evidence, too, successfully exhibited that the income payments subjected to withholding tax were declared as part of its Income Tax Return.

¹⁰ The CIR's Manifestation with Comment (Re: Comment to [TPPI]'s Petition for Review dated 24 November 2022). *Id.* at pp. 107-110.

¹¹ *Id.* at pp. 93-106.

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RULING

The Petitions for Review lack merit.

TPPI's Petition for Review (CTA EB No. 2713)

One of the requirements for the successful prosecution of a CWT Refund is that the income payments from which taxes were withheld must be declared as part of gross income of the income recipient, pursuant to Section 58(D)¹² of the NIRC, as amended, as implemented by Section 2.58.3(B)¹³ of Revenue Regulations No. 2-98.¹⁴ For partial non-adherence thereon, TPPI's properly substantiated CWTs of ₱10,148,237.77 was reduced by ₱2,661,684.94.

TPPI impugns such reduction by intreating us to scrutinize its reconciliation schedule appended in its Petition for Review in CTA EB No. 2713. Said document would purportedly explain that the discrepancies between its GL and CWT Certificates were on account of: (1) rounding-off of figures; and (2) differences in foreign exchange rates.

We refuse.

A judgment must be based on facts.¹⁵ Facts are generated by evidence.¹⁶ Before evidence may come into being, it must be formally

¹² SEC. 58. *Returns and Payment of Taxes Withheld at Source.* -

...

(D) *Income of Recipient.* - Income upon which any creditable tax is required to be withheld at source under Section 57 shall be included in the return of its recipient but the excess of the amount of tax so withheld over the tax due on his return shall be refunded to him subject to the provisions of Section 204; if the income tax collected at source is less than the tax due on his return, the difference shall be paid in accordance with the provisions of Section 56.

¹³ SECTION 2.58.3. *Claim for Tax Credit or Refund.* -

...

(B) Claims for tax credit or refund of any creditable income tax which was deducted and withheld on income payments shall be given due course only when it is shown that the income payment has been declared as part of the gross income and the fact of withholding is established by a copy of the withholding tax statement duly issued by the payor to the payee showing the amount paid and the amount of tax withheld therefrom.

¹⁴ See *Commissioner of Internal Revenue v. Univation Motor Philippines, Inc.* [Formerly Nissan Motor Philippines, Inc.], G.R. No. 250564, September 7, 2022.

¹⁵ See *Spouses Guidangen v. Wooden*, G.R. No. 174445, February 15, 2012.

¹⁶ Section 1, Rule 128 of the Rules of Court, as amended reads: "**Section 1. Evidence defined.** - Evidence is the means, sanctioned by these rules, of ascertaining in a judicial proceeding the truth respecting a matter of fact."

offered, and admitted by the court.¹⁷ *Fideldia v. Spouses Mulato*¹⁸ illuminated on said concepts and *rationale* thereof, in the following fashion:

... Section 34, Rule 132 of the Rules of Court, provides that "[t]he court shall consider no evidence which has not been formally offered." **A formal offer is necessary, since judges are required to base their findings of fact and their judgment solely and strictly upon the evidence offered by the parties at the trial. To allow parties to attach any document to their pleadings and then expect the court to consider it as evidence, even without formal offer and admission, may draw unwarranted consequences. Opposing parties will be deprived of their chance to examine the document and to object to its admissibility. On the other hand, the appellate court will have difficulty reviewing documents not previously scrutinized by the court below.**¹⁹

TPPI attached²⁰ the reconciliation schedule in its Motion for Reconsideration (Re: Decision dated May 11, 2022) in CTA Case No. 10068. If TPPI is keen on having said document be evaluated by the Court in Division for whatever it is worth, it could have moved for new trial, for the introduction thereof as its evidence. Yet, despite the opportunity presented, TPPI did not even bother to specifically pray for such relief,²¹ before the Court in Division. This gives us added reason to reject the much more belatedly enclosed²² reconciliation schedule in TPPI's Petition for Review in CTA EB No. 2713.

Since said reconciliation schedules were *not* offered, let alone, admitted as evidence, any data contained therein should automatically be ignored. *Sans* satisfactory proof why a fragment of TPPI's income payments were *not* traced in its GL and OR, the disallowance of the CWTs corresponding thereto, amounting to ₱2,661,684.94, must be upheld.

Neither do we subscribe with TPPI's stance that the disallowances on its CWTs were solely moored on the ICPA's findings. To be precise, the Court in Division first scrutinized and

¹⁷ Section 34, Rule 132 of the Rules of Court, as amended states in part: "Section 34. *Offer of evidence.* - The court shall consider no evidence which has not been formally offered. ..."

¹⁸ G.R. No. 149189, September 3, 2008.

¹⁹ Boldfacing supplied. Citations omitted.

²⁰ Annex "A," TPPI's Motion for Reconsideration (Re: Decision dated May 11, 2022). Docket (CTA Case No. 10068), pp. 794-801.

²¹ Relief, TPPI's Motion for Reconsideration (Re: Decision dated May 11, 2022). *Id.* at pp. 791-792.

²² Annex "C," TPPI's Petition for Review. *Rollo* (CTA EB No. 2713), pp. 67-88.

validated the source documents from which the ICPA's findings were based. Only after such examination did the Court in Division find the ICPA's disallowances to be in order.²³

CIR's Petition for Review (CTA EB No. 2717)

The CIR asserts that: (1) TPPI failed to exhaust administrative remedies for failure to await his decision on its administrative claim for CWT refund; and (2) the evidence of TPPI presented for the first time in the proceedings before the Court in Division may *not* be weighed, much less, be considered by the latter.

We are not swayed.

For one, TPPI's refund claim is pivoted on Sections 204(C) and 229 of the NIRC, as amended,²⁴ which, in turn, pertains to refund of illegally, erroneously, or excessively collected internal revenue taxes, among others. These provisions do *not* require TPPI to await the BIR's action on its administrative claim for CWT refund, prior to

²³ See pages 13-17, assailed Decision in CTA Case No. 10068. *Id.* at pp. 48-52.

²⁴ SEC. 204. *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.* —

...

(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, [t]hat a return filed showing an overpayment shall be considered as a written claim for credit or refund.

...

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 without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.

In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment: Provided, however, [t]hat 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.

seeking judicial redress. *Commissioner of Internal Revenue v. Philippine Bank of Communications*²⁵ is on point:

[Sections 204(C) and 229 of the NIRC, as amended] require both administrative and judicial claims to be filed within the same two-year prescriptive period. With reference to Section 229 of the NIRC, the only requirement for a judicial claim of tax credit/refund to be maintained is that a claim of refund or credit has been filed before the CIR; **there is no mention in the law that the claim before the CIR should be acted upon first before a judicial claim may be filed.**

Clearly, the legislative intent is to treat the judicial claim as independent and separate action from the administrative claim; provided that the latter must be filed in order for the former to be maintained. **While the CIR should be given opportunity to act on [the taxpayer]'s claim, [the taxpayer] should not be faulted for lawfully filing a judicial claim before the expiration of the two-year prescriptive period, notwithstanding the alleged defects in its administrative claim.** This is considering that, unlike administrative claims for Input Tax refund/credit before the CIR, which have a required specific period of action (the expiration of which shall be deemed as a denial), there is no such period of action required in administrative claims for CWT refund/credit before the CIR.

Indeed, the CIR's arguments regarding the prematurity of the judicial claims are untenable.²⁶

For another, no blunder may be attributed on the Court in Division, in considering and weighing the pieces of evidence presented by TPPI for the first time at judicial level. Indeed, cases before the CTA are litigated *de novo*; hence, party-litigants are mandated to prove every minute aspect of their cases.²⁷ "... [S]ince the claim for tax refund/credit was litigated anew before the CTA, the latter's decision should be solely based on the evidence formally presented before it, notwithstanding any pieces of evidence that may have been submitted (or not submitted) to the CIR. Thus, what is vital in the determination of a judicial claim for a tax credit/refund of CWT is the evidence presented before the CTA, regardless of the body of evidence found in the administrative claim."²⁸

²⁵ G.R. No. 211348, February 23, 2022.

²⁶ Boldfacing supplied.

²⁷ See *Commissioner of Internal Revenue v. Manila Mining Corporation*, G.R. No. 153204, August 31, 2005.

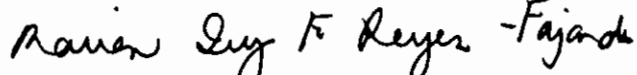
²⁸ *Commissioner of Internal Revenue v. Philippine Bank of Communications*, *supra* note 25.

In precis, the Court in Division found that TPPI is only entitled to CWT refund for CY 2016, in the amount of ₱7,486,552.83.

So must it be.


WHEREFORE, the Petitions for Review, filed by Tullett Prebon (Philippines) Inc. in CTA EB No. 2713, and by the Commissioner of Internal Revenue in CTA EB No. 2717, are **DENIED**, for lack of merit. The Decision dated May 11, 2022, and Resolution dated October 18, 2022, in CTA Case No. 10068, are **AFFIRMED**.

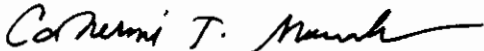
SO ORDERED.


MARIAN IVY F. REYES-FAJARDO
Associate Justice

We Concur:


(With Separate Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice



MA. BELEN M. RINGPIS-LIBAN
Associate Justice


CATHERINE T. MANAHAN
Associate Justice

ON LEAVE
JEAN MARIE A. BACORRO-VILLENA
Associate Justice

ON OFFICIAL BUSINESS
MARIA ROWENA MODESTO-SAN PEDRO
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 consolidated cases were 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

**TULLET PREBON (PHILIPPINES)
INC.,**

Petitioner,

CTA EB No. 2713
(CTA Case No. 10068)

- versus -

**COMMISSIONER OF INTERNAL
REVENUE,**

Respondent.

X-----X
**COMMISSIONER OF INTERNAL
REVENUE,**

Petitioner,

CTA EB No. 2717
(CTA Case No. 10068)

Present:

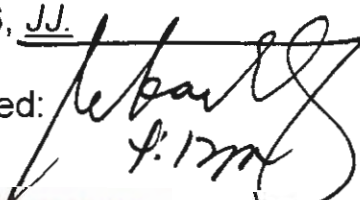
**DEL ROSARIO, P.J.,
RINGPIS-LIBAN,
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BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO,
CUI-DAVID,
FERRER-FLORES, and
ANGELES, JJ.**

- versus -

**TULLET PREBON (PHILIPPINES)
INC.,**

Respondent

Promulgated:


MAR 07 2024

X-----X

SEPARATE OPINION

DEL ROSARIO, P.J.:

I concur in the denial of the Petition for Review filed by **TULLET PREBON (PHILIPPINES) INC. (TPPI)** in **CTA EB No. 2713** for lack of merit.

I wish to point out, however, that the Petition for Review of the **COMMISSIONER OF INTERNAL REVENUE (CIR)** in **CTA EB No. 2717** was filed beyond the prescribed period.

SEPARATE OPINION

Tullet Prebon (Philippines) Inc. vs. Commissioner of Internal Revenue
Commissioner of Internal Revenue vs. Tullet Prebon (Philippines) Inc.
CTA EB Nos. 2713 & 2717 (CTA Case No. 10068)
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In *Commissioner of Customs vs. Court of Tax Appeals and Philippine Casino Operators Corporation*,¹ the Supreme Court held that even if the Office of the Solicitor General (OSG) has deputized lawyers in a government agency, service on it of legal processes, and not on the deputized lawyers, is determinative of the reckoning period to file pleadings, *viz.*:

“x x x In *National Power Corp. v. NLRC*, it was already settled that **although the OSG may have deputized the lawyers in a government agency represented by it, the OSG continues to be the principal counsel, and, therefore, service on it of legal processes, and not that on the deputized lawyers, is decisive.** It was explained:

. . . The lawyer deputized and designated as ‘special attorney-OSG’ is a mere representative of the OSG and the latter retains supervision and control over the deputized lawyer. **The OSG continues to be the principal counsel . . . , and as such, the Solicitor General is the party entitled to be furnished copies of the orders, notices and decisions.** The deputized special attorney has no legal authority to decide whether or not an appeal should be made.

As a consequence, **copies of orders and decisions served on the deputized counsel, acting as agent or representative of the Solicitor General, are not binding until they are actually received by the latter.** We have likewise consistently held that the proper basis for computing reglementary period to file an appeal and for determining whether a decision had attained finality is service on the OSG . . .” (*Boldfacing supplied*)

In this case, the OSG received the assailed Resolution dated October 18, 2022 on **October 25, 2022**,² while the lawyers of the Bureau of Internal Revenue, the OSG’s deputized counsels, received the same on **November 10, 2022**.³ Pursuant to the abovementioned ruling of the Supreme Court, the fifteen (15)-day period⁴ to file an appeal before the Court *En Banc* should be reckoned from the OSG’s receipt of the assailed Resolution on **October 25, 2022**. Thus, the CIR had until **November 9, 2022** to file his petition for review.

¹ G.R. No. 132929, March 27, 2000.

² Division Docket, Vol. 2, p. 835.

³ *Id.*

⁴ Section 3(b), Rule 8, Revised Rules of the Court of Tax Appeals, as amended.

SEPARATE OPINION

Tullet Prebon (Philippines) Inc. vs. Commissioner of Internal Revenue
Commissioner of Internal Revenue vs. Tullet Prebon (Philippines) Inc.
CTA EB Nos. 2713 & 2717 (CTA Case No. 10068)
Page 3 of 3

The CIR filed a Motion for Extension of Time to File Petition for Review on **November 24, 2022**.⁵ It is a basic rule of remedial law that a motion for extension of time to file a pleading must be filed before the expiration of the period sought to be extended. The Court's discretion to grant a motion for extension is conditioned upon such motion's timeliness, the passing of which renders the court powerless to entertain or grant it.⁶

Notwithstanding that the Court issued a Minute Resolution dated November 25, 2022 granting the CIR's Motion for Extension of Time to File Petition for Review, such was explicitly conditioned "that the motion for extension is filed on time". As clearly shown above, said Motion was filed beyond the deadline on **November 9, 2022**. Since the motion was filed after the lapse of the prescribed period, there was no more period to extend. Accordingly, the Court failed to acquire jurisdiction over the CIR's Petition for Review.

ALL TOLD, I *VOTE* to:

- (1) DENY TPPI's Petition for Review in CTA EB No. 2713 for lack of merit; and,
- (2) DISMISS CIR's Petition for Review in CTA EB No. 2717 for lack of jurisdiction.


ROMAN G. DEL ROSARIO
Presiding Justice

⁵ EB Docket, CTA EB No. 2717, p. 1.

⁶ *Philippine National Bank vs. Deang Marketing Corporation and Berlita Deang*, G.R. No. 177931, December 8, 2008.