

**REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY**

EN BANC

**COMMISSIONER OF
INTERNAL REVENUE,**

Petitioner,

CTA EB NO. 2748

(CTA Case No. 9896)

Present:

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

-versus-

**NEW YORK BAY
PHILIPPINES, INC.,**

Respondent.

Promulgated:

APR 18 2024

3:04 PM

X- - - - - X

DECISION

CUI-DAVID, J.:

Before this Court is a *Petition for Review*¹ filed by petitioner Commissioner of Internal Revenue (CIR), praying that the Amended Decision dated September 12, 2022² (assailed Amended Decision) and the Resolution dated March 14, 2023³ (assailed Resolution) promulgated by the Court's Special Third Division (Court in Division) be reversed and set aside.

The dispositive portions of the assailed Amended Decision and assailed Resolution read:

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¹ *En Banc (EB)* Docket, pp. 4-13.

² *Id.*, pp. 59-72.

³ *Id.*, pp. 74-79.

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Assailed Amended Decision dated September 12, 2022:

WHEREFORE, in light of the foregoing consideration, respondent's *Motion for Reconsideration* is **DENIED** for lack of merit.

On the other hand, petitioner's *Motion for Partial Reconsideration* is **GRANTED**. Accordingly, the assailed Decision dated January 26, 2022 is hereby **MODIFIED** to read as follows:

WHEREFORE, in light of the foregoing consideration, the Petition for Review is **GRANTED**. Accordingly, respondent is **ORDERED TO REFUND OR ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the amount of **₱44,226,338.64** representing petitioner's unutilized input VAT attributable to its zero-rated sales for the four quarters of the CY 2016.

SO ORDERED.

SO ORDERED.

Assailed Resolution dated March 14, 2023:

WHEREFORE, in view of the foregoing considerations, respondent's *Motion for Reconsideration* is **DENIED** for lack of merit.

SO ORDERED.

THE PARTIES

Petitioner is the duly appointed CIR empowered to perform the duties of the said office, including, among others, the power to decide, approve, and grant claims for refund or tax credits of erroneously paid or overpaid taxes, as provided by law. He may be served summons, pleadings, and other processes of this Court at his office at the 5th Floor, Bureau of Internal Revenue (BIR) National Office Building, BIR Road, Diliman, Quezon City.⁴

Respondent is a domestic corporation duly organized and existing under Philippine laws with principal place of business at Unit 2102, 21st Floor, Antel Global Corporate Center, Julia Vargas Avenue, Pasig City. It is registered with the BIR Revenue Region No. 7, Revenue District Office (RDO) No. 43 as a VAT

⁴ *Id.*, p. 18.

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taxpayer with Taxpayer Identification Number (TIN) 000-217-994-000.⁵

THE FACTS

Respondent filed its VAT returns for the first, second, third, and fourth quarters of calendar year (CY) 2016⁶ on the following dates:

Period	VAT Return			Filing Date
1 st Quarter	Original	Quarterly	VAT	April 25, 2016
	Return			
	Amended	Quarterly	VAT	May 20, 2016
	Return			
2 nd Quarter	Original	Quarterly	VAT	July 25, 2016
	Return			
	Amended	Quarterly	VAT	July 26, 2016
	Return			
3 rd Quarter	Original	Quarterly	VAT	October 25, 2016
	Return			
	Amended	Quarterly	VAT	January 26, 2017
	Return			
4 th Quarter	Original	Quarterly	VAT	January 23, 2017
	Return			
	Amended	Quarterly	VAT	January 26, 2017
	Return			

On March 28, 2018, respondent filed with the BIR an Application for Tax Credits/Refunds (BIR Form No. 1914),⁷ together with a Cover Letter,⁸ requesting the refund of its excess and unutilized input VAT for the four quarters of CY 2016 in the amount of ₱45,183,477.36, and a Sworn Certification,⁹ attesting that the documents submitted in support of its administrative claim are complete.

On June 29, 2018, respondent received a letter from petitioner denying respondent's administrative claim for refund of its excess and unutilized input VAT for the four (4) quarters of CY 2016 in the amount of ₱45,183,477.36 on the ground that respondent allegedly failed to submit relevant vital documents in support of its claim, pursuant to Revenue Memorandum Circular (RMC) No. 17-2018.¹⁰

⁵ *New York Bay Philippines, Inc. v. Commissioner of Internal Revenue*, CTA Case No. 9896, January 26, 2022, *EB* Docket, pp. 17-18.

⁶ Division Docket – Vol. 2, pp. 516-531.

⁷ Exhibit "P-8", Division Docket – Vol. 2, p. 536.

⁸ Exhibit "P-7", Division Docket – Vol. 2, pp. 532-534.

⁹ Exhibit "P-7-a", Division Docket – Vol. 2, p. 535.

¹⁰ Par. 4. Admitted Facts, Joint Stipulation of Facts and Issues, Division Docket – Vol. 1, p. 268.

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On July 27, 2018, respondent filed a *Petition for Review*,¹¹ which was raffled to the Court in Division. Thereafter, on October 10, 2018, petitioner filed his *Answer*.¹²

After trial on the merits, the Court in Division issued the Decision dated January 26, 2022,¹³ partially granting respondent's *Petition for Review* and ordering petitioner to refund or issue a tax credit certificate (TCC) in favor of respondent the amount of ₱12,445,765.78 representing the latter's unutilized input VAT attributable to its zero-rated sales for the four quarters of CY 2016.

The Court in Division denied respondent's claim for refund in the amount of ₱32,737,711.58, which pertains to the input VAT attributable to respondent's zero-rated sales of services to its affiliate Trans-Fast International FZ-LLC (TF International), due to the absence of service agreement or any other contract to prove that services rendered by respondent to TF International are not in the same category as "processing, manufacturing or repacking of goods," and that said services were rendered in the Philippines.¹⁴

Both were unsatisfied with the Decision of the Court in Division; respondent filed its *Motion for Partial Reconsideration (Re: Decision dated January 26, 2022)* on March 10, 2022, while petitioner filed a *Motion for Reconsideration (Decision dated 26 January 2022)*¹⁵ on March 31, 2022. However, only respondent filed a *Comment (Re: [Petitioner]'s Motion for Reconsideration dated March 16, 2022)*¹⁶ on April 26, 2022.

On June 13, 2022, the Court in Division submitted the parties' respective motions for reconsideration for resolution without petitioner's comment.¹⁷

On September 12, 2022, the Court in Division rendered the assailed Amended Decision¹⁸ recomputing respondent's refundable amount because it found that the Addenda to the Service Agreement between respondent and Trans-Fast Remittance LLC (TF Remittance) referred to the extension of the

¹¹ Division Docket, Vol. - 1, pp. 10-23.

¹² Division Docket, Vol. - 1, pp. 72 to 76.

¹³ EB Docket, pp. 17-27.

¹⁴ Decision dated January 26, 2022 and Amended Decision dated September 12, 2022, EB Docket, p. 39 and 66, respectively.

¹⁵ Division Docket - Vol. 2, pp. 715-721.

¹⁶ *Id.*, pp. 744-754.

¹⁷ Resolution, *id.*, p. 758.

¹⁸ *Supra*, note 2.

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Service Agreement to TF International. This means that “the relevant provisions in the Service Agreement, insofar as it proves that the services rendered are not in the same category as ‘processing, manufacturing or repacking of goods,’ and that the services were performed in the Philippines, also applies to TF International.”¹⁹

Aggrieved, petitioner filed a *Motion for Reconsideration (Amended Decision dated September 12, 2022)*²⁰ on October 12, 2022, to which respondent filed a *Comment (re: [Petitioner’s] Motion for Reconsideration dated October 11, 2022)*²¹ on November 29, 2022.

On March 14, 2023, the Court in Division rendered the assailed Resolution²² denying petitioner’s *Motion for Reconsideration (Amended Decision dated September 12, 2022)* for lack of merit.

On May 12, 2023, petitioner filed a *Petition for Review*²³ within the extended period.²⁴

On June 26, 2023, respondent filed its *Comment (Re: Petition for Review dated May 12, 2023)*.²⁵

On July 10, 2023, the case was submitted for decision.²⁶

THE ISSUE

The *Petition for Review* did not expressly state the *issue* or *assigned error*, but it can be inferred from the Discussion/Argument that petitioner ascribes to the Court in Division the lone error quoted below:²⁷

THE HONORABLE COURT ERRED IN GIVING DUE COURSE TO THE PETITION FOR REVIEW FILED BY HEREIN RESPONDENT IN CTA CASE NO. 9896.

¹⁹ Amended Decision dated September 12, 2022. *EB Docket*, p. 68.
²⁰ Division Docket – Vol. 2, pp. 776-783.
²¹ *Id.*, pp. 787-800.
²² *Supra*, note 3.
²³ *Supra*, note 1.
²⁴ Notice of Resolution dated April 27, 2023. *EB Docket*, p. 3.
²⁵ *EB Docket*, pp. 84-96.
²⁶ Notice of Resolution, *EB Docket*, p. 97.
²⁷ Discussion/Argument, *Petition for Review*, *EB Docket*, p. 9.

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Petitioner's arguments:

Petitioner argues that the judicial claim should be denied for respondent's failure to substantiate its refund claim at the administrative level, pursuant to RMC No. 54-2014, and that actions for tax refund or credit are in the nature of a claim for exemption, so the law must be construed in *strictissimi juris* against the taxpayer and liberally in favor of the taxing authority.

Respondent's arguments:

Respondent contends that this Petition for Review is a mere reiteration of petitioner's motions for reconsideration on the Decision and Amended Decision of the Court in Division. Respondent adds that petitioner failed to identify the documents that respondent supposedly did not provide; thus, his bare allegation deserves scant consideration from this Court. Respondent insists that it complied with the requirements for claiming a refund of its excess and unutilized input VAT for the four (4) quarters of CY 2016, and petitioner was not able to refute the conclusions reached by the Court in Division.

THE COURT EN BANC'S RULING

The Court En Banc has jurisdiction over the instant Petition for Review.

First, We determine whether this *Petition for Review* was timely filed.

Under Section 3(b), Rule 8²⁸ of the Revised Rules of the Court of Tax Appeals (RRCTA), a petition for review must be filed with this Court within fifteen (15) days from receipt of the copy of the questioned resolution of the Court in Division.

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²⁸ 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.

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Petitioner received the assailed Resolution on April 13, 2023.²⁹ Counting fifteen (15) days, petitioner had until April 28, 2023, to file a petition for review with the Court *En Banc*.

On April 26, 2023, petitioner filed a *Motion for Extension of Time to File Petition for Review*,³⁰ asking for an additional period of fifteen (15) days from April 28, 2023, or until May 13, 2023, to file a petition for review, which the Court granted.³¹

Thus, the instant *Petition for Review* filed on May 12, 2023 was on time.

Having settled that the *Petition* was timely filed, We likewise rule that the CTA *En Banc* has validly acquired jurisdiction to take cognizance of this case under Section 2(a)(1), Rule 4³² of the RRCTA.

The Court in Division did not err in giving due course to respondent's claim for refund.

Petitioner's claim that the application for refund or tax credit should be denied since respondent failed to submit the complete supporting documents as required under RMC No. 54-2014 could not be sustained.

Under RMC No. 54-2014,³³ the application for VAT refund must be accompanied by complete supporting documents and a statement under oath attesting to the completeness of the submitted documents:

II. *Filing and Processing of Administrative Claims* —

The application for VAT refund/tax credit must be accompanied by complete supporting documents as enumerated in Annex "A" hereof. In addition, **the taxpayer shall attach a statement under oath attesting to the**

²⁹ *Motion for Extension of Time to File Petition for Review*, par. 1, *EB Docket*, p. 1.

³⁰ *EB Docket*, pp. 1-2.

³¹ Notice of Resolution dated April 27, 2023, *EB Docket*, p. 3.

³² 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 Divisions 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; ...

³³ Clarifying Issues Relative to the Application for Value Added Tax (VAT) Refund/Credit. Revenue Memorandum Circular No. 054-14, June 11, 2014.

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completeness of the submitted documents (Annex "B"). The affidavit shall further state that the said documents are the only documents which the taxpayer will present to support the claim. If the taxpayer is a juridical person, there should be a sworn statement that the officer signing the affidavit (*i.e.*, at the very least, the Chief Financial Officer) has been authorized by the Board of Directors of the company.

Upon submission of the administrative claim and its supporting documents, the claim shall be processed and no other documents shall be accepted/required from the taxpayer in the course of its evaluation. A decision shall be rendered by the Commissioner based only on the documents submitted by the taxpayer. **The application for tax refund/tax credit shall be denied where the taxpayer/claimant failed to submit the complete supporting documents.** For this purpose, the concerned processing/investigating office shall prepare and issue the corresponding Denial Letter to the taxpayer/claimant. [*Emphasis supplied*]

The Supreme Court declared that for administrative claims filed on or after June 11, 2014, or upon the effectivity of RMC No. 54-2014, such as this case, the reckoning point of the 120-day period begins from the filing of the administrative claim with the BIR.³⁴ This is because RMC No. 54-2014 requires a taxpayer to file complete supporting documents simultaneously with its administrative claim for refund,³⁵ as no other documents shall be accepted thereafter.³⁶

Following RMC No. 54-2014, respondent submitted its Sworn Certification attesting to the completeness of its documents. Thus, a disputable presumption exists that respondent had submitted complete supporting documents for its refund claim. This doctrine is confirmed by the Supreme Court in *CBK Power Company Limited v. Commissioner of Internal Revenue*:³⁷

Bearing in mind that the burden to prove entitlement to a tax refund is on the taxpayer, **it is presumed that in order to discharge its burden, petitioner had attached complete supporting documents necessary to prove its entitlement to a refund in its application, absent any evidence to the contrary.** [*Emphasis supplied*]

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³⁴ *Zuellig-Pharma Asia Pacific Ltd. Phils. ROHQ v. Commissioner of Internal Revenue*, G.R. No. 244154, July 15, 2020.

³⁵ *Taihei Alltech Construction (Phil.), Inc. v. Commissioner of Internal Revenue*, G.R. No. 258791, December 7, 2022.

³⁶ *Zuellig-Pharma Asia Pacific Ltd. Phils. ROHQ v. Commissioner of Internal Revenue*, G.R. No. 244154, July 15, 2020.

³⁷ G.R. Nos. 198729-30, January 15, 2014.

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Respondent cannot be faulted if it believes it has submitted complete documents in support of its refund claim. Suppose petitioner is truly certain that respondent could not fully substantiate its claim for refund, petitioner should have presented factual evidence, not only mere *allegations*, to successfully controvert respondent's refund claim.

A perusal of the present *Petition for Review* reveals that petitioner failed to specifically rebut any of the factual findings of the Court in Division that respondent was able to substantiate its claim for refund. The Court notes that petitioner's arguments mainly consist of general averments quoting the provisions of the Tax Code and its implementing regulations but without specifying the alleged missing documents from respondent nor identifying any specific ground or error purportedly committed by the Court in Division.

After poring over the evidence submitted in this case, the Court finds no error committed by the Court in Division in ruling that respondent is entitled to its refund claim relative to its sales to TF International. We quote with approval the Court in Division's disquisition on this matter:

A reading of the Addenda to the Service Agreement between petitioner and TF Remittance reveal that said addenda refer to the extension of the Service Agreement to TF International. Exhibit "P-29-8" clarifies the complete name of TF International, which initially referred to the Agreement as Trans Fast FZE, to wit:

"Addendum to the Agreement for Payments to
the Philippines
xxx xxx xxx

The undersigned parties hereby clarifies that the complete name of Trans-Fast FZE is Trans-Fast International FZ LLC. In this regard, the parties hereby agree to revise the name "Trans Fast FZE" in the original agreement to reflect "Trans-Fast International FZ LCC" as the true and actual name of the company"

Moreover, the rest of the Addenda to the Service Agreement set out the service fees to be paid by TF Remittance and TF International to petitioner for the money remittance services that it will render pursuant to the Service Agreement[.] ...

Mr

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Based on the foregoing exhibits, the Court finds that that *[sic]* the Service Agreement to TF Remittance extends to TF International pursuant to the above-mentioned Addenda. As such, the relevant provisions in the Service Agreement, insofar as it proves that the services rendered are not in the same category as “*processing, manufacturing or repacking of goods,*” and that the services were performed in the Philippines, means to apply to TF International.

Re-computation of petitioner’s refundable amount

With the foregoing consideration, the Court finds that petitioner’s sales to TF International in the amount of P451,659,770.65 qualify for VAT zero-rating under Section 108 (B) (2), in relation to Section 113 (A) (2), (B) (1), (2) (c) and (3) of the NIRC of 1997, as amended[.] ...

Consequently, petitioner’s valid zero-rated sales now amount to **P628,569,036.47** (P176,909,265.82 plus P451,659,770.65).

Thus, the Court is convinced that respondent is entitled to its claim as it overcame the strict scrutiny on tax refunds against it. On the other hand, aside from perfunctorily quoting the provisions of the law and regulations, petitioner failed to present sufficient evidence to rebut the above conclusion of the Court in Division. As aptly held by the Court in Division:³⁸

The Court finds no reason to revisit its findings thereon since respondent failed to pinpoint specific evidence, such as official receipts or sales invoices, which the Court should not have favorably considered, or that which the Court erroneously considered as compliant with the invoicing requirements provided under the law, rules, and regulations. Hence, the Court cannot give credence to respondent’s bare allegations and general statements without proof to debunk the findings of the Court. Basic is the rule that bare allegations, unsubstantiated by evidence, are not equivalent to proof, *i.e.*, mere allegations are not evidence.

As such, the reversal of the assailed Amended Decision and the assailed Resolution is unwarranted and must perforce be denied.



³⁸ Resolution dated March 14, 2023, EB Docket, p. 78.

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WHEREFORE, all things considered, the *Petition for Review* is **DENIED** for lack of merit. Accordingly, the Amended Decision dated September 12, 2022, and the Resolution dated March 14, 2023,³⁹ promulgated by the Court's Special Third Division in CTA Case No. 9896, are **AFFIRMED**.

SO ORDERED.

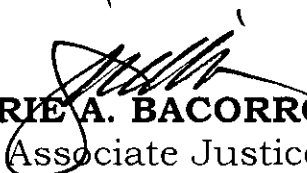

LANEE S. CUI-DAVID
Associate Justice

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


MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice


MARIAN IVY F. REYES-FAJARDO
Associate Justice

³⁹ *Id.*, pp. 74-79.

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Corazon G. Ferrer-Flores
CORAZON G. FERRER-FLORES
Associate Justice

H
HENRY S. ANGELES
Associate Justice

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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

