

REPUBLIC OF THE PHILIPPINES  
COURT OF TAX APPEALS  
Quezon City

**EN BANC**

COMMISSIONER OF INTERNAL  
REVENUE,

Petitioner,

CTA EB NO. 2765  
(CTA Case No. 9030)

- versus -

ZUELLIG PHARMA  
CORPORATION,

Respondent.

x ----- x

ZUELLIG PHARMA  
CORPORATION,

Petitioner,

CTA EB NO. 2777  
(CTA Case No. 9030)

*Present:*

- versus -

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

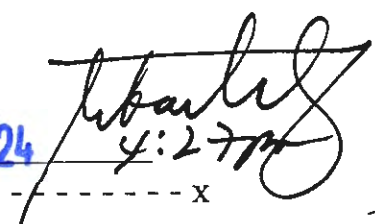
COMMISSIONER OF INTERNAL  
REVENUE,

Respondent.

Promulgated:

NOV 25 2024

x ----- x

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## DECISION

### *BACORRO-VILLENA, J.:*

Assailing the Special Third Division's Decision dated 02 March 2023<sup>1</sup> (**assailed Decision**) and Resolution dated 26 May 2023<sup>2</sup> (**assailed Resolution**) in CTA Case No. 9030, entitled *Zuellig Pharma Corporation v. Commissioner of Internal Revenue*, the parties, the Commissioner of Internal Revenue (CIR) and Zuellig Pharma Corporation (ZPC), filed their separate Petitions for Review on 15 June 2023<sup>3</sup> and 21 July 2023<sup>4</sup>, respectively, pursuant to Section 3(b)<sup>5</sup>, Rule 8, in relation to Section 2(a)(1)<sup>6</sup>, Rule 4 of the Revised Rules of the Court of Tax Appeals<sup>7</sup> (RRCTA).

The assailed Decision granted ZPC a partial refund of ₱381,864,843.32, upon its original claim for refund of excess and unutilized creditable withholding taxes (CWTs) for the calendar year (CY) ended 31 December 2012 amounting to ₱467,578,787.20.<sup>8</sup> The assailed Resolution denied respondent's attempt to reverse and set aside the same.

<sup>1</sup> Division Docket, Volume IV, pp. 1893-1927; Penned by Associate Justice Erlinda P. Uy (Ret.) with Associate Justice Ma. Belen M. Ringpis-Liban and Associate Justice Maria Rowena Modesto-San Pedro, concurring.

<sup>2</sup> Id., pp. 1966-1977.

<sup>3</sup> *Rollo* (CTA EB No. 2765), pp. 1-13. Filed *via* registered mail.

<sup>4</sup> *Rollo* (CTA EB No. 2777), pp. 6-27.

<sup>5</sup> 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.

<sup>6</sup> 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[.]

<sup>7</sup> A.M. No. 05-11-07-CTA.

<sup>8</sup> *Supra* at note 1.

## PARTIES TO THE CASE

ZPC is a corporation duly organized and existing under the laws of the Republic of the Philippines, with its principal place of business at Km. 14 West Service Road, South Superhighway corner Edison Avenue, Barangay Sun Valley, Parañaque City.<sup>9</sup> It is primarily engaged in the business of manufacturing, preparing, compounding, processing, packing, buying, and selling at wholesale and retail, importing and exporting, and otherwise dealing in all kinds of drugs, chemicals, patent, proprietary and other medicines, biological products, oils, dyestuffs, perfumeries, toilet and fancy articles, fancy goods, cosmetics, druggists, sundries, soaps, veterinary products, and generally dealing in goods, wares, merchandise, and personal property of every kind.<sup>10</sup> It is registered with the Bureau of Internal Revenue Large Taxpayers Service (**BIR-LTS**) with Taxpayer Identification Number (**TIN**) 000-172-443-000.<sup>11</sup>

On the other hand, the CIR is the duly appointed authority charged with the power to decide, approve, and grant claims for refund of, or issuance of TCC for, overpaid or erroneously paid or collected internal revenue taxes (including excess and unutilized CWT), pursuant to Section 4<sup>12</sup> of the National Internal Revenue Code (**NIRC**) of 1997, as amended. He or she holds office at the 5th Floor, BIR National Office Building, Senator Miriam P. Defensor-Santiago Avenue, Diliman, Quezon City, where he or she may be served summons and other legal processes of this Court.<sup>13</sup> 

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<sup>9</sup> Paragraph 1, Stipulation of Facts, Joint Stipulation of Facts and Issues (JSFI), Division Docket, Volume I, p. 238.

<sup>10</sup> Par. 2, id.

<sup>11</sup> Exhibit "P-2", id., p. 440.

<sup>12</sup> **SEC. 4. Power of the Commissioner to Interpret Tax Laws and to Decide Tax Cases.** - The power to interpret the provisions of this Code and other tax laws shall be under the exclusive and original jurisdiction of the Commissioner, subject to review by the Secretary of Finance.

The power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other matters arising under this Code or other laws or portions thereof administered by the Bureau of Internal Revenue is vested in the Commissioner, subject to the exclusive appellate jurisdiction of the Court of Tax Appeals.

<sup>13</sup> Par. 4, Stipulation of Facts, JSFI, Division Docket, Volume I, p. 239.


### FACTS OF THE CASE

On 15 April 2013, ZPC filed its Annual Income Tax Return (ITR) for CY 2012 through the BIR's Electronic Filing and Payment System (eFPS).<sup>14</sup>

Therein, ZPC reported a gross income of ₱3,206,575,464.00<sup>15</sup> and net taxable income of ₱602,462,128.00.<sup>16</sup> Consequently, it reported a Regular Corporate Income Tax (RCIT) liability of ₱180,738,638.40<sup>17</sup> for the said CY. It also reported income tax credits in the aggregate amount of ₱788,081,111.80<sup>18</sup>, consisting of (a) prior year's excess credits in the amount of ₱320,502,324.60<sup>19</sup>; and, (b) CWTs accumulated throughout the four quarters of CY 2012 totaling ₱467,578,787.20.<sup>20</sup>

After charging its RCIT liability against its accumulated income tax credits for CY 2012, ZPC's Annual ITR showed a tax overpayment of ₱607,342,473.40<sup>21</sup>, computed as follows:

Total Gross Income	₱3,206,575,464.00
Less: Itemized Deductions	<u>2,604,113,336.00</u>
Net Taxable Income	602,462,128.00
Multiply by: RCIT rate (30%)	x 30%
RCIT Due	<u>180,738,638.40</u>
Less: Total Tax Credits/Payments	
Prior Year's Excess Credits	(320,502,324.60)
CWTs withheld for the first three quarters (₱255,616,507.30)	
CWTs withheld for the 4th Quarter (211,962,279.90)	<u>(467,578,787.20)</u>
<b>Total Amount Payable / (Overpayment)</b>	<b>(₱607,342,473.40)</b>

On the face of its Annual ITR for CY 2012, ZPC indicated that it is electing (by marking the appropriate box on the form) its option to claim for refund its excess and unutilized CWT for CY 2012.<sup>22</sup> It utilized its excess credits from prior years (as of CY 2012), in the amount of 

<sup>14</sup> Exhibit "P-3", id., pp. 441-448.  
<sup>15</sup> Line 20C, Exhibit "P-3", id., p. 443.  
<sup>16</sup> Line 26, id.  
<sup>17</sup> Line 32, id.  
<sup>18</sup> Line 33R, id.  
<sup>19</sup> Line 33A, id.  
<sup>20</sup> Lines 33F and 33H, id.  
<sup>21</sup> Line 37, id., p. 444.  
<sup>22</sup> Id.

₱320,502,324.60<sup>23</sup>, to pay for its RCIT liability for CY 2012 amounting to ₱180,738,638.40.<sup>24</sup> It thus carried forward the balance of the said excess credits, in the amount of ₱139,763,686.20<sup>25</sup>, to CY 2013. In effect, it did not carry over its excess and unutilized CWT for CY 2012 in the amount of ₱467,578,787.20<sup>26</sup> to the succeeding CY.

In summary, the amount of “prior year’s excess credits” carried over to CY 2013 was computed as follows:

Prior year’s excess credits as of CY 2012	₱320,502,324.60
Less: RCIT Due for CY 2012	<u>180,738,638.40</u>
Remainder of “prior year’s excess credits” as of 31 December 2012, carried over to CY 2013	<b>₱139,763,686.20</b>

On 20 May 2013, ZPC filed a letter dated 15 April 2013<sup>27</sup> with the Office of the CIR and the Office of the Deputy CIR - Operations Group. In the said letter, ZPC requested the refund of its excess and unutilized CWTs for CY 2012 in the amount of ₱467,578,787.20.

On 13 June 2013, the BIR-LTS issued Letter of Authority (LOA) No. LOA-116-2013-00000143/eLA201100007149 dated 13 June 2013<sup>28</sup>, authorizing Group Supervisor (GS) Marivic Bautista and Revenue Officers (ROs) Ferly Ann Paez, Jennifer Almedilla, Vivien Guillermo, and Susan Salcedo, all from the Large Taxpayers Regular Audit Division I, to examine ZPC’s books of accounts and accounting records for the period covered 01 January 2012 to 31 December 2012, in relation to its claim for refund of excess and unutilized CWTs for CY 2012.

On 10 April 2015, ZPC filed with the BIR-LTS another letter dated 08 April 2015<sup>29</sup> to supplement its claim for refund, attaching therewith its Application for Tax Credits/Refunds (BIR Form No. 1914).<sup>30</sup> It again prayed for the refund of its excess and unutilized CWTs for CY 2012 in the amount of ₱467,578,787.20.

<sup>23</sup> Supra at note 19.

<sup>24</sup> Supra at note 17.

<sup>25</sup> Line 1, Schedule 7, Exhibit “P-14”, Division Docket, Volume II, p. 527.

<sup>26</sup> Supra at note 20.

<sup>27</sup> Exhibits “P-9-a” and “P-9-b”, Division Docket, Volume II, pp. 508-509.

<sup>28</sup> Exhibit “P-11”, id., p. 514.


<sup>29</sup> Exhibit “P-10”, id., pp. 510-512.

<sup>30</sup> Id., p. 513.

## PROCEEDINGS BEFORE THE COURT IN DIVISION

On 14 April 2015, approaching the end of the two (2)-year prescriptive period under Sections 204 (C)<sup>31</sup> and 229<sup>32</sup> of the NIRC of 1997, as amended, and considering that the CIR had not acted upon its administrative claim for refund, ZPC opted to file a Petition for Review.<sup>33</sup> The case was raffled to this Court's Third Division.

On 27 April 2015, the Third Division issued Summons<sup>34</sup> and directed respondent to file an Answer within fifteen (15) days from service. Respondent received the said Summons on 29 April 2015.<sup>35</sup>

On 05 May 2015, the CIR filed his or her Answer<sup>36</sup> interposing special and affirmative defenses which include, among others, the following: (1) ZPC had not properly documented its alleged excess and unutilized CWTs for CY 2012 amounting to ₱467,578,787.20; (2) it is incumbent upon ZPC to discharge its burden of proving entitlement to its claim for refund of alleged excess and unutilized CWTs for CY 2012, which includes the fact of withholding of taxes and their subsequent remittance to the BIR; (3) ZPC must prove that (a) it had filed its claim with the CIR within the two (2)-year period from the date of payment of 

<sup>31</sup> SEC. 204. *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.* — The Commissioner may —

...  
(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.

<sup>32</sup> 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.

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.

<sup>33</sup> Division Docket, Volume I, pp. 10-19.

<sup>34</sup> Id., p. 80.

<sup>35</sup> Id.

<sup>36</sup> Id., pp. 82-86.

the tax, (b) it is shown on the return of the recipient that the income payment received was properly declared as part of gross income, and (c) the fact of withholding is established through a copy of a statement duly issued by the payor to the payee showing the amount paid and the amount of the tax withheld therefrom; and, (4) ZPC must have proven that it had not exercised the option to carry over any excess credits into the succeeding quarters.

On 07 May 2015, the Third Division issued a Notice of Pre-Trial Conference<sup>37</sup> and set the case for pre-trial on 07 July 2015. In compliance with the Court's order, the CIR, as then respondent, filed his or her Pre-Trial Brief<sup>38</sup> on 21 May 2015. Meanwhile, ZPC, as then petitioner, moved<sup>39</sup> to defer the Pre-Trial Conference, which the Court granted in an Order dated 06 July 2015.<sup>40</sup> The said Order moved the Pre-Trial Conference to 01 September 2015. Accordingly, ZPC filed its Pre-Trial Brief<sup>41</sup> on 27 August 2015.

On 01 September 2015, the Pre-Trial Conference proceeded as scheduled.<sup>42</sup> There, the Third Division gave the parties until 16 September 2015 to file their Joint Stipulation of Facts and Issues (JSFI). On 16 September, in compliance with the Court's directive, the parties filed their JSFI.<sup>43</sup> On 27 October 2015, the Third Division issued the Pre-Trial Order<sup>44</sup> thereby terminating the Pre-Trial.

On 04 December 2015, after an extension<sup>45</sup> requested by ZPC and granted by the Court in its Resolution dated 18 December 2015<sup>46</sup>, ZPC timely filed its Motion to Commission an Independent Certified Public Accountant (ICPA)<sup>47</sup> In the hearing set on 09 February 2016<sup>48</sup>, Court granted ZPC's motion and accordingly allowed Katherine O. Constantino (**Constantino**) to take her oath as ICPA, then obliged to

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<sup>37</sup> Id., pp. 88-89.

<sup>38</sup> Id., pp. 90-94.

<sup>39</sup> See ZPC's *Motion to Defer Pre-Trial Conference* filed on and dated 02 July 2015, id., pp. 95-97.

<sup>40</sup> Id., p. 98.

<sup>41</sup> Id., pp. 99-115.

<sup>42</sup> See Minutes of the Hearing dated 01 September 2015, id., p. 233.

<sup>43</sup> Id., pp. 238-245.

<sup>44</sup> Id., pp. 252-259.

<sup>45</sup> See ZPC's *Motion for Extension of Time to File Motion for Commissioning of Independent Certified Public Accountant*, id., pp. 261-263.

<sup>46</sup> Id., pp. 266-267.

<sup>47</sup> Id., pp. 268-270.

<sup>48</sup> See Notice of Hearing dated 05 January 2016, id., p. 285.

submit her ICPA Report pertaining to the examination of approximately a million documents, within a period of sixty (60) days or until 09 April 2016.<sup>49</sup> In the same hearing, the Third Division set the initial presentation of evidence for ZPC, as then petitioner, on 26 April 2016.<sup>50</sup>

In the trial that ensued, ZPC, as then petitioner, presented its testimonial and documentary evidence. It offered the testimonies of the following witnesses: (1) Joel R. Ducut (**Ducut**), ZPC's Assistant Corporate Controller<sup>51</sup>; and, (2) ICPA Constantino.

In the hearing of 08 December 2015, Ducut took the stand as ZPC's first witness.<sup>52</sup> He identified his Judicial Affidavit dated 26 August 2015.<sup>53</sup> In his testimony, he stated that: (1) the subject CWTs in the present claim arose from the withholding of tax upon ZPC's sales of goods and services in CY 2012; (2) ZPC was issued a LOA for a mandatory audit after it filed its administrative claim for refund with the BIR; and, (3) ZPC submitted supporting documents pursuant to BIR's investigation. He also attested to the nature of ZPC's business and the particulars of its Annual Income Tax Returns (ITRs), including the reporting, claim, and carry-over of tax credits, as are relevant to ZPC's refund claim. The CIR's counsel did not conduct cross examination.

In the 09 February 2016 hearing that followed, the Third Division granted ZPC's Motion for Commissioning and approved ICPA Constantino's appointment.<sup>54</sup> On 11 April 2016, ICPA Constantino filed her Report.<sup>55</sup> Meanwhile, on 05 May 2016, the CIR elevated to the Court the BIR Records consisting of 230 pages.<sup>56</sup> On 08 June 2016, ZPC submitted<sup>57</sup> ICPA Constantino's Judicial Affidavit<sup>58</sup> and was thus set to testify thereon.

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<sup>49</sup> See Minutes of the Hearing dated 09 February 2016, id., p. 286.

<sup>50</sup> Id.

<sup>51</sup> Exhibit "P-15", id., pp. 220-232.

<sup>52</sup> See Minutes of the Hearing dated 08 December 2015, id., p. 264.

<sup>53</sup> Supra at note 51.

<sup>54</sup> See Minutes of the Hearing dated 09 February 2016, Division Docket, Volume I, p. 286.

<sup>55</sup> Exhibit "P-25", id., pp. 307-344.

<sup>56</sup> Id., pp. 348-350.


<sup>57</sup> See ZPC's *Submission*, id., pp. 359-361.

<sup>58</sup> Exhibit, "P-24", id., pp. 362-392.



On 13 June 2016<sup>59</sup>, ICPA Constantino assumed the witness stand where she identified her Report dated 11 April 2016<sup>60</sup> as well as her Judicial Affidavit dated 08 June 2016.<sup>61</sup> He corroborated Ducut's testimony and declared that she performed the following procedures to confirm that ZPC was entitled to its refund claim: (1) compared ZPC's records of its CWTs claimed for CY 2012 with the amount of CWTs the latter reported in its corresponding Annual ITR; (2) compared the "per quarter" CWT amounts indicated in ZPC's Summary Alphabetical List of Withholding Taxes (SAWT) against the amount of CWTs shown in its quarterly and annual ITRs; (3) checked the documents supporting the CWTs and ascertained that they were duly supported by CWT Certificates duly issued to ZPC by the withholding agents (or ZPC's clients); (4) checked the pertinent information stated in each CWT Certificate, such as whether the certificate was issued in the proper CY and whether ZPC's name, Taxpayer Identification Number (TIN), and other details were correctly indicated therein; and, (5) ascertained that the exhibits to be submitted to the Court consisted of faithful reproduction of originals of the supporting documents examined. She summarized her findings and her conclusions thereon, and accordingly proffered a recommendation for a refundable amount.

During her cross-examination, the CIR's counsel clarified the amount ICPA Constantino was recommending for refund. In response, she pointed out that the final amount recommended for refund in her Report considered disallowances, including those due to ZPC's failure to substantiate the same with valid CWT Certificates (*i.e.*, mere photocopies).<sup>62</sup> No redirect examination followed.

With ZPC having no further witnesses to present, the Third Division gave it fifteen (15) days, or until 28 June 2016, to file its Formal Offer of Evidence (FOE). Correspondingly, the CIR was given ten (10) days from receipt of a copy thereof to file a comment or opposition. In the same hearing, the Third Division likewise set the initial presentation of the CIR's evidence, as respondent, on 26 September 2016.<sup>63</sup> 

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<sup>59</sup> See Minutes of the Hearing and Order, both dated 13 June 2016, *id.*, pp. 393 and 394, respectively.

<sup>60</sup> *Supra* at note 55.

<sup>61</sup> *Supra* at note 58.

<sup>62</sup> TSN dated 13 June 2016, pp. 9-11.

<sup>63</sup> *Supra* at note 59.

On 27 June 2016, ZPC filed a “Motion for Additional Time to File [FOE]”<sup>64</sup> requesting an additional 30 days to file its FOE, or until 28 July 2016, supposedly due to the sheer volume of its documentary evidence. The Third Division granted ZPC’s request in the Resolution dated 05 July 2016.<sup>65</sup> Accordingly, on 28 July 2016, ZPC filed its FOE consisting of Exhibits “P-1” through “P-722245”.<sup>66</sup> On 29 July 2016, the CIR filed his or her Comment thereto.<sup>67</sup> In the Comment, he or she interposed no objection to the admission of ZPC’s exhibits, but only insofar as how they were identified in open court and how they were verified through comparison with their corresponding originals.<sup>68</sup>

Considering the pendency of ZPC’s FOE, the Court cancelled and reset the hearing set for the CIR’s initial presentation of evidence (originally scheduled on 26 September 2016) until further notice.<sup>69</sup>

Later, in the Resolution dated 08 September 2017<sup>70</sup>, the Third Division acted upon ZPC’s FOE. While most of ZPC’s 722,000 offered Exhibits were admitted, the Third Division denied the admission of approximately 10,000 Exhibits which were either not found in the records or that ZPC failed to present the originals for comparison. The same Resolution likewise set anew the presentation of the CIR’s evidence for 30 January 2018.

Unsatisfied with the outcome, ZPC filed an Omnibus Motion<sup>71</sup> on 02 October 2017, asking the Court to allow it to: (1) submit the missing exhibits; (2) present supplemental evidence to support its previously denied Exhibits’ admissibility as secondary evidence; (3) set a hearing for the presentation of its supplemental evidence; and (4) admit its previously denied evidence. The CIR failed to comment thereon despite due notice.<sup>72</sup>

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<sup>64</sup> Division Docket, Volume I, id., pp. 395-397.

<sup>65</sup> Id., p. 399.

<sup>66</sup> Id., pp. 400-428.

<sup>67</sup> See CIR’s *Comment (Re: Petitioner’s Formal Offer of Evidence)* dated 29 July 2016, id., Volume II, pp. 530-531. Filed *via* registered mail.

<sup>68</sup> Id.

<sup>69</sup> See Order dated 22 September 2016, id., p. 535.

<sup>70</sup> Id., pp. 538-664.

<sup>71</sup> See ZPC’s *Omnibus Motion (Re: Resolution dated September 08, 2017)* dated 02 October 2017, id., pp. 665-679.


<sup>72</sup> See Records Verification Report dated 02 November 2017, id., p. 682.

In the Resolution dated 09 January 2018<sup>73</sup>, the Third Division granted the reliefs ZPC sought, allowing it ten (10) days to present the missing exhibits and setting a hearing on 10 April 2018 for it to present supplemental evidence. Meanwhile, the Third Division held in abeyance the resolution upon the admission of ZPC's previously denied exhibits. It likewise cancelled the CIR's initial presentation of evidence until further orders from the Court.

On 26 January 2018, ZPC filed its "Compliance and Submission" and submitted to the Third Division thirteen (13) CDs containing the missing Exhibits, consisting of those that the ICPA examined.<sup>74</sup>

Later, on 03 April 2018, ZPC filed an "Urgent Motion to Reset Hearing"<sup>75</sup>, manifesting that it needed more time to secure evidence proving the unavailability of the primary evidence (*i.e.*, originals or certified copies), in relation to its denied Exhibits that it sought to have admitted as secondary evidence. In an Order dated 10 April 2018<sup>76</sup>, the Third Division granted the ZPC's Urgent Motion, rescheduling the hearing set for ZPC's presentation of supplemental evidence from 10 April 2018 to 03 July 2018.

In the *interim*, as part of its supplemental evidence, ZPC submitted the Judicial Affidavits of its additional witnesses, (1) Ducut<sup>77</sup>, who already once testified; and, (2) Leah A. Estolano<sup>78</sup> (**Estolano**), ZPC's Accounts Receivable and Collections Manager. The 03 July 2018 hearing proceeded as scheduled, and both Ducut and Estolano were able to complete their testimonies.<sup>79</sup>

Estolano testified through her Judicial Affidavit (dated 27 June 2018<sup>80</sup>) on the efforts that the ZPC exerted to obtain the originals of the CWT Certificates relevant to its claim that were earlier denied admission when the Court acted on its FOE. According to Estolano, ZPC mobilized teams to communicate with its customers to request for 

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<sup>73</sup> Id., pp. 684-687.

<sup>74</sup> Id., pp. 688-707.

<sup>75</sup> Id., pp. 709-712.

<sup>76</sup> Id., p. 715.

<sup>77</sup> Exhibit "P-722249", id., pp. 719-723.

<sup>78</sup> Exhibit "P-722248", id., pp. 731-735.

<sup>79</sup> See Minutes of the Hearing and Order, both dated 03 July 2018, id., pp. 740 and 741-742, respectively.

<sup>80</sup> Supra at note 78.


originals of the said certificates, followed up through personal visits and phone calls and held meetings and discussions for the purpose. She attested that such efforts materialized to a certain degree and ZPC was able to secure some duplicate originals or certified copies. She explained further that other customers either did not have duplicate originals on hand or were unwilling to issue certified copies. Meanwhile, others have since changed addresses, closed their businesses, or changed their authorized signatories (in issuing CWT Certificates).

During her cross-examination, Estolano described further that for the customers they failed to locate, they were unable to obtain updated addresses and their contact numbers on file were likewise inactive.<sup>81</sup>

Upon the Court's inquiry, Estolano explained that ZPC had no further evidence to document its supposed efforts, apart from copies of the letters sent to its customers (with indications of receipt).<sup>82</sup>

Estolano no longer underwent a redirect examination.<sup>83</sup>

When Ducut returned to the witness stand and identified her Supplemental Judicial Affidavit<sup>84</sup>, he mainly testified on the absence of original CWT Certificates. According to Ducut, as most of ZPC's income payors only provided them one original CWT Certificate for each transaction, ZPC no longer retained most of them as these were submitted as attachments to its Annual ITR (as part of the procedure when it claimed the tax credits). Consequently, ZPC was only able to retain photocopies of the same on file.

Ducut further testified that ZPC attempted to employ other methods to obtain copies of the CWT Certificates that would be admissible as primary evidence, including requesting the same from their clients. He mentioned that ZPC also wrote the BIR to request for certified copies of their previously submitted CWT Certificates; however, the BIR had not issued any by the time Ducut had testified. 

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<sup>81</sup> TSN dated 03 July 2018, pp. 8-14.

<sup>82</sup> Id.

<sup>83</sup> Id., p. 15.

<sup>84</sup> Supra at note 77.

In his cross-examination, Ducut clarified that ZPC's customers had different reasons for refusing to issue another certificate or a certified copy thereof. He likewise explained that their team was hesitant to reach out to the BIR for the certificates as they feared it might affect their ongoing claims with the agency, and only did so as a last resort, hence their very recent request with the BIR despite the voluminous documents they sought.<sup>85</sup>

During his redirect examination, Ducut estimated that ZPC is still attempting to retrieve more or less 6,000 certificates relating to the approximately 10,000 that were denied admission. This was after considering around 2,700 that they had successfully retrieved, and confirmation from about 1,000 customers that they will not be issuing a copy.<sup>86</sup>

No re-cross examination followed.

Towards the conclusion of the hearing, the Third Division denied ZPC's request to recall the ICPA, to compare photocopies of CWT Certificates that ZPC obtained from withholding agents after she had already issued her Report. In order to avoid the presentation of piecemeal evidence, the Third Division instead ordered ZPC to present the 2,000 marked original CWT Certificates. It likewise set Commissioner's Hearings for the marking of ZPC's Exhibits and gave it ten (10) days to file its supplemental FOE.

Later, ZPC filed an Omnibus Motion<sup>87</sup> on 18 July 2018 *via* registered mail. In the said Omnibus Motion, ZPC asked the Court to reconsider its previous Order and allow it to present the ICPA anew and let her submit a supplemental ICPA Report, and defer the filing of its FOE until then. The CIR failed to comment.<sup>88</sup> In the Resolution dated 10 September 2018<sup>89</sup>, the Third Division partially granted ZPC's Omnibus Motion. While it suspended the filing of ZPC's FOE until after all the additional marked Exhibits had been submitted, it denied ZPC's prayer to recall the ICPA and submit a supplemental Report. Instead,

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<sup>85</sup> TSN dated 03 July 2018, pp. 19-23.

<sup>86</sup> Id., p. 23.

<sup>87</sup> Division Docket, Volume II, pp. 754-759.

<sup>88</sup> See Records Verification Report dated 22 August 2018, id., p. 764.

<sup>89</sup> Id., pp. 766-769.

the Third Division set a series of Commissioner's Hearings for the marking of ZPC's documentary exhibits.

The Commissioner's Hearings proceeded regularly between 02 October 2018 until 22 August 2019, with some exceptions due to workday suspensions, which necessitated rescheduling.<sup>90</sup> Five (5) additional Commissioner's Hearings were likewise set to accommodate ZPC's request to re-mark certain Exhibits that it observed were erroneously marked during the original scheduled hearings.<sup>91</sup>

Eventually, on 10 September 2020, ZPC was able to file its Supplemental FOE sans the marked, original Exhibits.<sup>92</sup> On 14 October 2020, the CIR filed his or her Comment<sup>93</sup> thereon, *via* registered mail. In the Comment, he or she interposed no objection to the admission of ZPC's exhibits, but only insofar as how they were identified in open court and how they were verified through comparison with their corresponding originals.<sup>94</sup> On 01 February 2021, in compliance with the Third Division's directive in the Resolution dated 02 December 2020<sup>95</sup>, ZPC submitted the hard copies of the Exhibits marked and re-marked during the series of Commissioner's Hearings that had transpired.<sup>96</sup>

In the Resolution dated 08 July 2021<sup>97</sup>, the Third Division acted upon ZPC's Supplemental FOE, admitting most of its offered Exhibits, albeit still with certain exceptions.<sup>98</sup> The same Resolution also set the initial presentation of the CIR's evidence anew on 12 October 2021.

<sup>90</sup> Id., Volume II, pp. 770-1001, Volume III, pp. 1002-1391.

<sup>91</sup> See Order dated 20 June 2019, id., p. 1266, *vis-à-vis* ZPC's *Motion for Re-marking of Exhibits*, id., pp. 1247-1265.

<sup>92</sup> Id., Volume III, pp. 1392-1503, Volume IV, pp. 1504-1666.

<sup>93</sup> See CIR's *Comment (Re: Petitioner's Supplemental Formal Offer of Evidence)* dated 13 October 2020, id., p. 1679.

<sup>94</sup> Id.

<sup>95</sup> Id., pp. 1685-1688.

<sup>96</sup> See ZPC's *Compliance and Submission* dated 01 February 2021, id., pp. 1689-1690.

<sup>97</sup> Id., pp. 1695-1784.

<sup>98</sup> Exhibits "P-11198", "P-11214", "P-11223", "P-694304", "P-694406", "P-698302", and "P-698303" were denied admission for failure of the exhibit formally offered to correspond with the document actually marked. Exhibits "P-692191", "P-692448", "P-692451", "P-692455", "P-692460", "P-692840", "P-693093", "P-693109", "P-693119", "P-693575", "P-693906", "P-694024", "P-694044", "P-694091", "P-694345", "P-694350", "P-694568", "P-694815", "P-694816", "P-694821", "P-694823", "P-694827", "P-694836", "P-694838", "P-694925", "P-695417", "P-695474", "P-695616", "P-696157", "P-696160", "P-696214", "P-696218", "P-696267", "P-696326", "P-696357", "P-696367", "P-696392", "P-697511", "P-697517", "P-697553", "P-697647", "P-698795", "P-698801", "P-698813", "P-698825", "P-698826", "P-698827", "P-698828", "P-698850", "P-698881", "P-698894", "P-698912", "P-700494",

As for the CIR's turn to present witnesses, as then respondent, he or she filed a Manifestation<sup>99</sup> via electronic mail on 08 October 2021, stating that he or she would no longer present any witnesses, then requested a period of thirty (30) days within which to file a memorandum.

The said Manifestation was noted in the Resolution dated 15 October 2021.<sup>100</sup> Accordingly, the Third Division cancelled the hearing set for the purpose then gave both parties 30 days from notice to submit their respective memoranda.<sup>101</sup>

The CIR<sup>102</sup> and ZPC<sup>103</sup> filed their Memoranda on 09 December 2021 and 10 January 2022, respectively. With both parties' memoranda filed, the Third Division submitted the case for decision in its Resolution dated 23 March 2022.<sup>104</sup>

On 02 March 2023, the Special Third Division<sup>105</sup> promulgated the assailed Decision.<sup>106</sup> The dispositive portion of which reads:

...  
**WHEREFORE**, in light of the foregoing considerations, the instant *Petition for Review* is **PARTIALLY GRANTED**. Accordingly, [CIR] is **ORDERED TO REFUND OR ISSUE A TAX CREDIT CERTIFICATE** in favor of [ZPC], in the reduced amount of **₱381,864,843.32**, representing [ZPC's] excess and unutilized CWT for CY ended December 31, 2012.

"P-700518", "P-700620", "P-700622", "P-700623", "P-700625", "P-700631", "P-700637", "P-700641", "P-700671", "P-700680", "P-700752", "P-700754", "P-700757", "P-700787", "P-700805", "P-700829", "P-701563", "P-702499", "P-702662", "P-702664", "P-702667", "P-702670", "P-703653", "P-703654", "P-703657", "P-703658", "P-703666", "P-703679", "P-703688", "P-703712", and "P-705783" were denied admission for failure to submit the duly marked exhibits. Exhibits "P-692695", "P-693786", "P-702451", and "P-702452" were denied admission for failure to present their originals for comparison. Exhibits "P-430243", "P-697270", "P-700670", "P-702873", and "P-703157" were denied admission for not being found in the records of the case.

<sup>99</sup> Division Docket, Volume IV, pp. 1785-1789.

<sup>100</sup> Id., p. 1797.

<sup>101</sup> Id.

<sup>102</sup> Id., pp. 1799-1808.

<sup>103</sup> Id., pp. 1814-1846. Filed via registered mail.

<sup>104</sup> Id., pp. 1889-1890.

<sup>105</sup> Pursuant to CTA Administrative Circular No. 01-2022 dated 21 June 2022, which reorganized the Second and Third Divisions of the Court effective 27 June 2022, Associate Justice Erlinda P. Uy (Ret.) became the Chairperson of the Second Division. Consequently, in this case, the Third Division became a Special Third Division.

<sup>106</sup> Supra at note 1.

**SO ORDERED.**

...

In the assailed Decision, the Special Third Division recognized that ZPC was able to sufficiently prove its compliance with the requisites for granting a CWT refund, but only in the amount of ₱381,864,843.32 out of its total original claim of ₱467,578,787.20. Based on the conduct of the Court's verification procedures, such is the portion of ZPC's claim in which it had sufficiently established: (1) the fact of withholding; and, (2) the fact that the income upon which the taxes were withheld was included in the return of the recipient.

Thus, on 22 March 2023, the CIR filed a Motion for Partial Reconsideration<sup>107</sup> (MPR) while ZPC filed a Motion for Reconsideration<sup>108</sup> (MR) on 28 March 2023. Thereafter, on 02 May 2023, ZPC filed its Comment<sup>109</sup> on the CIR's MPR. However, the CIR failed to file a Comment on ZPC's MR despite due notice.<sup>110</sup>

On 26 May 2023, the Special Third Division promulgated the assailed Resolution<sup>111</sup> denying both the CIR's MPR and ZPC's MR for lack of merit. The dispositive portion reads:

...

**WHEREFORE**, in light of the foregoing considerations, [CIR's] *Motion for Partial Reconsideration (Re: Decision promulgated 2 March 2023)* and [ZPC's] *Motion for Reconsideration (Re: Decision dated March 2, 2023)* are **DENIED** for lack of merit.

**SO ORDERED.**

...

In the assailed Resolution, the Special Third Division pointed out the CIR's MPR merely reiterated matters already considered and resolved in the assailed Decision. With this, it found no rational reason to vacate its earlier pronouncements.

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<sup>107</sup> Division Docket, Volume IV, pp. 1928-1938.

<sup>108</sup> Id., pp. 1941-1951.

<sup>109</sup> Id., pp. 1954-1962.

<sup>110</sup> See Records Verification Report dated 04 May 2023, id., p. 1963.

<sup>111</sup> Supra at note 2.



As for ZPC's MR, ZPC contended that the procedures performed by the ICPA sufficiently made clear that the income, upon which the CWTs are being claimed for refund, were all declared as part of its revenues. To this, the Special Third Division echoed its own verification and further examination of ZPC's supporting documents, emphasizing that it is not bound by the ICPA's findings, and it is free to either completely or partially adopt or disregard the latter's findings.


ZPC likewise asked that the disallowed portions of its claim (due to infirmities found in several of its CWT Certificates) be reconsidered, to which the Court, in disagreement, stressed that actions for tax refund are in the nature of a claim for exemption and the law is not only construed in *strictissimi juris* against the taxpayer, but also the pieces of evidence presented entitling a taxpayer to an exemption is strictly scrutinized and must be duly proven.

### PROCEEDINGS BEFORE THE COURT *EN BANC*

Mutually dissatisfied, on 15 June 2023<sup>112</sup> and 21 July 2023<sup>113</sup>, the CIR and ZPC filed their respective Petitions for Review before the Court *En Banc*. In a Minute Resolution dated 26 July 2023<sup>114</sup>, the Court consolidated the parties' separate petitions.

On 27 July 2023, ZPC filed its Comment<sup>115</sup> on the CIR's petition. On the other hand, the CIR failed to file one, in response to ZPC's Petition for Review.<sup>116</sup> Accordingly, in the Minute Resolution dated 30 November 2023<sup>117</sup>, the Court *En Banc* submitted the consolidated cases for decision.

Thus, for Our consideration are the following -

1. The Petition for Review in CTA EB No. 2765, filed on 15 June 2023 by the CIR, with ZPC's "Comment (Re: Petition for Review dated June 8, 2023)" filed on 27 July 2023; and, 

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<sup>112</sup> Supra at note 3.

<sup>113</sup> Supra at note 4.

<sup>114</sup> *Rollo* (CTA EB No. 2765), p. 68.

<sup>115</sup> See ZPC's *Comment (Re: Petition for Review dated June 8, 2023)*, id., pp. 69-78.

<sup>116</sup> See Records Verification dated 08 November 2023, id., p. 80.

<sup>117</sup> Id., p. 81.

2. The Petition for Review in CTA EB No. 2777, filed by ZPC on 21 July 2023.

The CIR and ZPC raise distinct issues in their respective Petitions, for the Court *En Banc*'s resolution –

### ISSUES

Before the Court *En Banc*, ZPC's petition prays for the assailed Decision to be partially reversed, then for it to be granted the full amount of its refund claim. On the other hand, the CIR seeks the setting aside of the said Decision, with a new one in its place that denies ZPC's claim in its entirety.

From their respective petitions, the issues for the Court *En Banc*'s resolution were extracted and thus summed up as follows –

I.

WHETHER ZUELLIG PHARMA CORPORATION'S NON-SUBMISSION OF THE COMPLETE DOCUMENTS IN ITS ADMINISTRATIVE CLAIM, AS ENUMERATED UNDER RMO NO. 53-98 AND RR NO. 2-2006, IS FATAL TO ITS JUDICIAL CLAIM FOR REFUND;

II.

WHETHER ZUELLIG PHARMA CORPORATION WAS ABLE TO PROVE THAT THE INCOME, UPON WHICH TAXES WERE WITHHELD, WAS PROPERLY DECLARED AS PART OF ITS GROSS INCOME;

III.

WHETHER ZUELLIG PHARMA CORPORATION'S CERTIFICATES OF CREDITABLE TAX WITHHELD AT SOURCE (BIR FORMS NO. 2307) WITH OBSERVED INFIRMITIES WERE RIGHTFULLY EXCLUDED FROM ITS CLAIM FOR REFUND OF EXCESS AND UNUTILIZED CREDITABLE WITHHOLDING TAXES (CWTs) FOR CALENDAR YEAR (CY) 2012; AND,

IV.

WHETHER ZUELLIG PHARMA CORPORATION IS ENTITLED TO THE FULL, ORIGINAL AMOUNT OF ITS CLAIM FOR REFUND OF EXCESS AND UNUTILIZED CREDITABLE WITHHOLDING TAXES (CWTs) BY PROVING ITS CLAIM WITH PREPONDERANCE OF EVIDENCE.



## ARGUMENTS

Relative to the CIR's Petition for Review in CTA EB No. 2765, the CIR asks the Court *En Banc* to reverse and set aside the Decision promulgated on 02 March 2023, then render a new one denying the entire claim for refund.

The CIR explains that ZPC failed to provide supporting documents showing that the income, from which the CWTs are being claimed, was properly declared in ZPC's Annual ITR. He or she highlights that ZPC had not demonstrated any direct link between the CWTs and the income as reflected in the AITR. For the CIR, this constitutes a violation of one of the vital requirements that entitle a taxpayer to a refund of CWT.

Moreover, the CIR further asserts that ZPC failed to substantiate its administrative claim for refund because the latter failed to submit (in the administrative level) the complete requirements in accordance with Revenue Memorandum Order (RMO) No. 53-98<sup>118</sup> and Revenue Regulations (RR) No. 2-2006.<sup>119</sup> Thus, according to the CIR, the instant case should be treated as if ZPC had not filed an administrative claim at all.

Lastly, the CIR places emphasis on the burden upon a taxpayer-claimant to present convincing evidence to substantiate a refund claim, given that a tax refund is in the nature of a tax exemption which must be construed *strictissimi juris* against the taxpayer.

In its Comment thereto, ZPC insists that it had already presented sufficient evidence to prove its compliance with the requisites for the grant of a CWT refund. Relatedly, it was quick to point out that the CIR merely rehashed its arguments from his or her MPR before the Special Third Division, all of which had already been passed upon and

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<sup>118</sup> Checklist of Documents to be Submitted by a Taxpayer upon Audit of his Tax Liabilities as well as of the Mandatory Reporting Requirements to be Prepared by a Revenue Officer, all of which Comprise a Complete Tax Docket.

<sup>119</sup> Mandatory Attachments of the Summary Alphalist of Withholding Agents of Income Payments Subjected to Tax Withheld at Source (SAWT) to Tax Returns with Claimed Tax Credits due to Creditable Tax Withheld At Source and of the Monthly Alphalist of Payees (MAP) Whose Income Received Have Been Subjected to Withholding Tax to the Withholding Tax Remittance Return Filed by the Withholding Agent/Payor of Income Payments.


considered in the assailed Resolution, and even earlier in the assailed Decision.

In defense of its position, ZPC asserts that, against the CIR's contention, the assailed Decision had already acknowledged that it had proven its entitlement to the CWT refund. This was supposedly after considering the evidence it submitted, as corroborated by the ICPA's conclusions based on the procedures she had performed (in evaluating ZPC's supporting documentation).

Further, ZPC claims that the law does not require strict, full compliance with the requirements, under RMO No. 53-98 nor RR No. 2-2005, from a taxpayer-claimant in a CWT refund claim. It avers that the prevailing rules and applicable jurisprudence only treat the checklist of requirements as a guide for the BIR's officers in identifying documentation to be requested from a claimant, and neither issuance states that an incomplete submission of the documents enumerated therein would be fatal to a refund claim.

Meanwhile, in its own Petition for Review in CTA EB No. 2777, ZPC mainly questions the denied portion of its original refund claim. It avers that all of the relevant income (upon which the subject CWTs claimed are based) had been properly declared in the pertinent Annual ITR and Audited Financial Statements (AFS) for the period. Likewise, it contends that the full amount of its claimed CWTs had been duly substantiated by its documentary evidence. For both assertions, ZPC points to the ICPA's findings in her report.

On another note, while ZPC admits to certain infirmities in the details of some of the CWT Certificates it had presented, it retorts that the other details therein sufficiently prove the fact of withholding. For ZPC, there are no laws nor jurisprudence requiring the information in CWT Certificates to be precise and accurate. It disagrees that it should be faulted for errors in the certificates issued by its customers, given that it had no participation nor control in the preparation thereof.

Finally, ZPC invokes substantial justice in dissuading the government from keeping money that it is not entitled to, by insisting on technicalities. It submits that a refund claim is one that is civil in 

nature. Accordingly, while the claimant bears the heavy burden to prove its entitlement, it only needs to do so with a preponderance of evidence. For ZPC, it had successfully discharged this burden and is thus entitled to the entirety of its original claim.


### **RULING OF THE COURT EN BANC**

After a thorough consideration of the respective arguments raised by the parties *vis-à-vis* the pertinent laws, rules, and jurisprudence, the Court *En Banc* fails to find merit in either petition. Nevertheless, the Court shall endeavour to successively thresh out the parties' arguments, if only to put to rest the issues raised.

THE TAXPAYER-CLAIMANT MUST  
COMPLY WITH THE REQUISITES FOR  
A CLAIM OF REFUND OR ISSUANCE OF  
A TAX CREDIT CERTIFICATE (TCC).

As long settled by and in jurisprudence<sup>120</sup>, in order for a taxpayer to successfully claim for a refund or issuance of a TCC involving excess CWTs, the following requirements must be satisfied:

1. The claim must be filed with the CIR within the two (2)-year period from the date of payment of the tax;
2. The fact of withholding must be established by a copy of a statement duly issued by the payor to the payee showing the amount paid and the amount of the tax withheld; and,
3. It must be shown on the return that the income received was declared as part of the gross income.

As a careful reading of the parties' arguments would reveal, it is worth noting that ZPC's compliance with each of the requisites is no longer wholly in dispute. Particularly, the CIR focuses on ZPC's alleged 

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<sup>120</sup> See *Commissioner of Internal Revenue v. Philippine Bank of Communications*, G.R. No. 211348, 23 February 2022.

failure to prove that it had duly declared the income, upon which the subject CWTs were withheld, in its Annual ITR.

Reciprocally, ZPC argues the alternative for the totality of its claim, insisting that the remainder had been erroneously disallowed. It likewise makes the same case with respect to the validity of its supporting documents proving the fact of withholding. However, for both instances, ZPC naturally takes issue only with the disallowed portions.

Accordingly, in the absence of any reversible error by the Special Third Division, the Court *En Banc* is inclined to leave its other findings undisturbed. Moving forward, the Court *En Banc* shall now proceed with the discussion of the issues raised by the parties.

FAILURE TO SUBMIT COMPLETE DOCUMENTS DOES NOT RESULT IN THE OUTRIGHT DENIAL OF A CLAIM FOR REFUND OR TAX CREDIT CERTIFICATE (TCC).

We first address respondent's claim that petitioner's failure to submit complete documents pursuant to RMO No. 53-98<sup>121</sup> and RR No. 2-2006<sup>122</sup> renders its administrative refund claim *pro forma* and warrants the denial thereof.

A reading of both issuances reveals that neither state that the non-submission of the documents enumerated therein would *ipso facto* result in the denial of a claim for tax refund or credit. At most, RR No. 2-2006 merely imposes a fine as a penalty for non-submission of the information or statement required therein. Still, such lapse does not lead to the outright denial of any claim for refund or TCC.

This is exemplified in *Commissioner of Internal Revenue v. Univation Motor Philippines, Inc. (formerly Nissan Motor Philippines, Inc.)*<sup>123</sup>, where the Supreme Court held:

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<sup>121</sup> Supra at note 118.

<sup>122</sup> Supra at note 119.

<sup>123</sup> G.R. No. 231581, 10 April 2019; Citations omitted, emphasis supplied and italics in the original text.

...

Petitioner CIR argued that failure of the respondent to submit the required complete documents as required by Revenue Memorandum Order No. 53-98 and Revenue Regulations No. 2-2006 rendered the petition with the CTA dismissible on the ground of lack of jurisdiction. It reasoned out that when a taxpayer prematurely filed a judicial claim with the CTA, the latter has no jurisdiction over the appeal.

**In the instant case, respondent's failure to submit the complete documents at the administrative level did not render its petition for review with the CTA dismissible for lack of jurisdiction.** At this point, it is necessary to determine the grounds relied upon by a taxpayer in filing its judicial claim with the CTA. The case of *Pilipinas Total Gas, Inc. v. Commissioner of Internal Revenue* is instructive, thus:

**A distinction must, thus, be made between administrative cases appealed due to inaction and those dismissed at the administrative level due to the failure of the taxpayer to submit supporting documents.** If an administrative claim was dismissed by the CIR due to the taxpayer's failure to submit complete documents despite notice/request, then the judicial claim before the CTA would be dismissible, not for lack of jurisdiction, but for the taxpayer's failure to substantiate the claim at the administrative level. When a judicial claim for refund or tax credit in the CTA is an appeal of an unsuccessful administrative claim, the taxpayer has to convince the CTA that the CIR had no reason to deny its claim. It, thus, becomes imperative for the taxpayer to show the CTA that not only is he entitled under substantive law to his claim for refund or tax credit, but also that he satisfied all the documentary and evidentiary requirements for an administrative claim. It is, thus, crucial for a taxpayer in a judicial claim for refund or tax credit to show that its administrative claim should have been granted in the first place. Consequently, a taxpayer cannot cure its failure to submit a document requested by the BIR at the administrative level by filing the said document before the CTA.

**In this case, it was the inaction of petitioner CIR which prompted respondent to seek judicial recourse with the CTA.** Petitioner CIR did not send any written notice to respondent informing it that the documents it submitted were incomplete or at least require respondent to submit additional documents. As a matter of fact, **petitioner CIR did not even render a Decision denying respondent's administrative claim on the ground that it had failed to submit all the required documents.**



Considering that the administrative claim was never acted upon, there was no decision for the CTA to review on appeal *per se*. However, this does not preclude the CTA from considering evidence that was not presented in the administrative claim with the BIR. Thus, RA No. 1125 states:

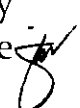
Section 8. *Court of record; seal; proceedings.* — The Court of Tax Appeals shall be a court of record and shall have a seal which shall be judicially noticed. It shall prescribe the form of its writs and other processes. It shall have the power to promulgate rules and regulations for the conduct of the business of the Court, and as may be needful for the uniformity of decisions within its jurisdiction as conferred by law, but such proceedings shall not be governed strictly by technical rules of evidence.

The law creating the CTA specifically provides that proceedings before it shall not be governed strictly by the technical rules of evidence. The paramount consideration remains the ascertainment of truth. Thus, the CTA is not limited by the evidence presented in the administrative claim in the Bureau of Internal Revenue. **The claimant may present new and additional evidence to the CTA to support its case for tax refund.**

Cases filed in the CTA are litigated *de novo* as such, respondent “should prove every minute aspect of its case by presenting, formally offering and submitting . . . to the Court of Tax Appeals all evidence . . . required for the successful prosecution of its administrative claim.” Consequently, **the CTA may give credence to all evidence presented by respondent, including those that may not have been submitted to the CIR as the case is being essentially decided in the first instance.**

...

Similar to the foregoing, the CIR had not acted on ZPC’s administrative claim within the reglementary period. It is thus apparent from the foregoing disquisitions that failure to submit “complete documents”, as required by either of the aforementioned issuances, would not be fatal to its claim.

In the same light, it is clear that the CIR’s inaction in a claim for refund does not preclude this Court from considering evidence that was not presented in the administrative claim with the BIR. ZPC, in line with the heavy burden it must discharge, is thus at liberty to proffer any supporting documentation, even those not presented during the 



anterior administrative proceedings, as it would deem necessary to bolster its claim.


THE SPECIAL THIRD DIVISION  
CORRECTLY DISALLOWED THE  
PORTION OF ZUELLIG PHARMA  
CORPORATION'S (ZPC's) REFUND  
CLAIM THAT WAS NOT SUPPORTED  
BY DULY ISSUED CWT CERTIFICATES.

With respect to the *second* and *third requisites* for a CWT refund claim, Section 2.58.3(B) of RR No. 2-98<sup>124</sup>, as amended, is instructive, viz:

...  
SEC. 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.**<sup>125</sup>  
...

Thus, as regards the *second requisite*, the Supreme Court, in *Commissioner of Internal Revenue v. Philippine National Bank*<sup>126</sup>, affirmed that a certificate of creditable tax withheld at source is the competent proof to establish the fact that taxes are withheld and that proof of actual remittance is not a condition to claim for a refund of unutilized tax credits, to wit:

...  
**The certificate of creditable tax withheld at source is the competent proof to establish the fact that taxes are withheld.** It is not necessary for the person who executed and prepared the 

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<sup>124</sup> Implementing Republic Act No. 8424, "An Act Amending the National Internal Revenue Code, as Amended" Relative to the Withholding on Income Subject to the Expanded Withholding Tax and Final Withholding Tax, Withholding of Income Tax on Compensation, Withholding of Creditable Value-Added Tax and Other Percentage Taxes.

<sup>125</sup> Emphasis supplied and italics in the original text.

<sup>126</sup> G.R. No. 180290, 29 September 2014; Citations omitted, emphasis and italics in the original text.

certificate of creditable tax withheld at source to be presented and to testify personally to prove the authenticity of the certificates.

...

Thus, upon presentation of a withholding tax certificate complete in its relevant details and with a written statement that it was made under the penalties of perjury, the burden of evidence then shifts to the Commissioner of Internal Revenue to prove that (1) the certificate is not complete; (2) it is false; or (3) it was not issued regularly.

Petitioner's posture that respondent is required to establish actual remittance to the Bureau of Internal Revenue deserves scant consideration. **Proof of actual remittance is not a condition to claim for a refund of unutilized tax credits.** Under Sections 57 and 58 of the 1997 National Internal Revenue Code, as amended, **it is the payor-withholding agent, and not the payee-refund claimant such as respondent, who is vested with the responsibility of withholding and remitting income taxes.**


This court's ruling in *Commissioner of Internal Revenue v. Asian Transmission Corporation*, citing the Court of Tax Appeals' explanation, is instructive:

...

... The Certificates of Creditable Tax Withheld at Source issued by the withholding agents of the government are *prima facie* proof of actual payment by herein respondent-payee to the government itself through said agents.

...

Based on the foregoing, it is undeniable that the fact of withholding may be established by presenting the pertinent certificates of creditable tax withheld at source where the relevant details (amount paid and the amount of tax withheld) are reliably reflected.

To prove its compliance with the *second requisite*, ZPC submitted the Certificates of Creditable Tax Withheld at Source (BIR Form No. 2307)<sup>127</sup> duly issued by its withholding agents for CY 2012, albeit with 

<sup>127</sup> Exhibits "P-41" to "P-290", "P-292" to "P-1097", "P-1099" to "P-1483", "P-1485" to "P-2652" to "P-2654" to "P-3215", "P-3217" to "P-4020", "P-4022" to "P-4355", "P-4357" to "P-5439", "P-5441" to "P-5889", "P-5975", "P-5981" to "P-6552", "P-6555" to "P-7451", "P-7453" to "P-9417", "P-9419" to "P-11193", "P-11195" to "P-11197", "P-11199", "P-11200", "P-11202" to "P-11222", "P-11224" to "P-11268", "P-11273" to "P-11284", "P-11286", "P-11288", "P-11289",


some exceptions. To facilitate verification, ZPC also submitted a Schedule of CWTs (for CY 2012)<sup>128</sup> that it had prepared.

As the ICPA so determined, and subject to the further review and verification by the Special Third Division, ZPC's original claim of ₱467,578,787.20 had eventually been reduced to ₱381,864,843.32, summarized as follows:

CWTs wherein the income payments were traced to ZPC's books, AFS, or Annual ITR	₱394,539,132.52
Less: CWTs not duly supported by CWT Certificates	
Less: CWTs not duly supported by CWT Certificates, as determined by the ICPA	₱2,540,412.01
Less: CWTs not duly supported by CWT Certificates, <i>per</i> the Court's verification	10,133,877.19      12,674,289.20
<b>Refundable CWTs for CY 2012</b>	<b>₱381,864,843.32</b>

Out of the difference, a total of ₱12,674,289.20 represented the portion of its claim lacking valid and original CWT Certificates, ₱10,133,877.19 of which was uncovered from the Special Third Division's own review. Meanwhile, the more substantial reduction stemmed from the chunk of ZPC's claim wherein the corresponding income could not be reliably traced to its books, AFS, nor Annual ITR.

The numerous infirmities observed in each of the certificates in question (issued to ZPC as payee) consisted of one or a combination of the following: (1) incorrect payee's name; (2) missing, unreadable, or incorrect payee's TIN; (3) incorrect payee's address; (4) missing or incorrect amount of income payment; and, (5) lack of signature from the issuing payor's authorized representative.

ZPC objects to the disallowances, contending that the burden (to prove its non-entitlement) had shifted to the CIR once it had 

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"P-11291" to "P-11302", "P-11304", "P-11331", "P-11334" to "P-11337", "P-11339", "P-11341" to "P-11343", "P-11345" to "P-11360", "P-11362" to "P-11382", "P-11384" to "P-11392", "P-11394" to "P-11403", "P-11405" to "P-11419", "P-11421" to "P-11424", "P-11432" to "P-11440", "P-11443", "P-11444", "P-11446", "P-11448" to "P-11461", "P-11463", "P-11474" to "P-11481", "P-11483" to "P-11490", "P-11505" to "P-11512", "P-11527", "P-11530", "P-11532" to "P-11536", "P-11570" to "P-11988", "P-11991", "P-11992", "P-11996" to "P-12098", "P-12101" to "P-12527", "P-12529" to "P-12597", "P-12599" to "P-12663", "P-12665" to "P-13145", "P-13147" to "P-18910", "P-18912" to "P-18999", "P-19003" to "P-19202", "P-21467" to "P-21469" to "P-21493", and "P-466081", Hard Drive.

<sup>128</sup> Exhibit "P-28", *id.*


demonstrated compliance with the minimum statutory requirements for its refund claim. It further states that, in any case, the infirmities may be cross-referenced with its records, and any missing or incorrect information can be inferred or reconciled. ZPC then washed its hands from participation and control over the actual preparation of the certificates it had received from its clients.

ZPC then excerpts the purportedly relevant section of the ICPA's findings<sup>129</sup> that supports its position that its CWTs were "properly supported by original BIR Form 2307", to wit:

...  
**VI. RESULTS OF VERIFICATION**

Based on the procedures performed above, we estimate that the amount of P446,735,385.15 are unutilized creditable income taxes withheld for CY 2012 that are properly supported by original BIR Form 2307 computed as follows (see *Annexes 3 and 61* for details summarizing results of verification in Page 14 for sale of goods, Pages 18 and 19 for service income and Page 21 for rental income):

	Annex Reference	Income Payment	Tax Withheld
CWT properly supported by original BIR Form 2307	Annex 3-a	₱44,200,197,594.83	₱440,273,020.48
CWT duly supported by original BIR Form 2307 with no income payment amount indicated therein	Annex 3-b	10,090,269.00	100,902.69
CWT duly supported by original BIR Form 2307 with Petitioner's name but no Petitioner's TIN indicated therein	Annex 3-c	211,971,500.73	2,080,201.72
CWT duly supported by original BIR Form 2307 with incorrect Petitioner's TIN indicated therein	Annex 3-d	426,407,962.46	4,245,540.93
CWT duly supported by original BIR Form 2307 with incorrect income payment amount and Petitioner's TIN indicated therein	Annex 3-e	3,963,146.67	35,719.33
<b>Total</b>		<b>₱44,852,630,473.69</b>	<b>₱446,735,385.15</b>

...  
 We are unswayed. 

<sup>129</sup> Exhibit "P-25", p. 35, ICPA Report, USB; Emphasis in the original text.

A close examination of the pertinent discussions in the ICPA Report *vis-à-vis* the supporting documentation confirms that, while the larger total of ₱446,735,385.15 is indeed supported by CWT Certificates, the amount does not consider those with defects therein. In fact, as can be gleaned above, the table that follows specifically segregated CWTs supported with certificates with infirmities.

In any case, it must be underscored that, under Section 3, Rule 13 of the RRCTA, as amended, the findings of the ICPA are *not* conclusive upon this Court, to wit:

...

SEC. 3. *Findings of independent CPA.* — The submission by the independent CPA of pre-marked documentary exhibits shall be subject to verification and comparison with the original documents, the availability of which shall be the primary responsibility of the party possessing such documents and, secondarily, by the independent CPA. The findings and conclusions of the independent CPA may be challenged by the parties and shall not be conclusive upon the Court, which may, in whole or in part, adopt such findings and conclusions subject to verification.<sup>130</sup>

...

From a plain reading of the above provision above, it is clear that the Court is *not* bound by the ICPA's findings and conclusions. An ICPA is primarily commissioned to assist the Court in the determination of the merit of taxpayer's petition. Accordingly, the Court may adopt, totally or partially, or entirely disregard, the ICPA's report depending on its own appreciation of the evidence upon which the ICPA report is based.

In other words, the Court will still examine and verify the documents audited or examined by the ICPA. Moreover, the ICPA Report is but a tool or guide to aid the Court in the resolution of the case. The final determination of the merits or probative value of such report belongs to the Court. The ICPA Report is persuasive in nature and is accorded respect, but it is by no means conclusive upon the Court. However, this is not to say that the Court disregards the ICPA Report. Certainly, the ICPA findings *vis-à-vis* the pertinent pieces of evidence

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<sup>130</sup> Underscoring supplied and italics in the original text.

presented by ZPC were duly taken into consideration, and were thoroughly examined by the Court in arriving at its own conclusions.

Indeed, the further reduction of ₱10,133,877.19 resulted from the Special Third Division's subsequent review. A second look at the disallowed CWT Certificates (with infirmities) confirmed that the exceptions flagged in the assailed Decision were all supported by the documents in the case's records.


It bears stressing that a tax refund or credit claim, like a claim for tax exemption, is to be construed strictly against the taxpayer.<sup>131</sup> As the claimant, ZPC has the burden of proof to establish the factual basis of its claim for a tax refund or credit.<sup>132</sup>

Relevantly, Section 2.58.3 (B) of RR No. 2-98<sup>133</sup> states:

...  
SEC. 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.**<sup>134</sup>

Applying the foregoing rule, insofar as CWT Certificates that were not signed by the payor or payor's authorized representative, or those that contain erroneous material details (of the payee or the amount of tax withheld and income payments), or outright lack the same, these appropriately warrant disallowance.

It is well-settled that the taxpayer-claimant in a refund or tax credit claim must not only prove entitlement to the claim but also 

<sup>131</sup> *Silicon Philippines, Inc. (formerly Intel Philippines Manufacturing, Inc.) v. Commissioner of Internal Revenue*, G.R. Nos. 184360, 184361, and 184384, 19 February 2014.

<sup>132</sup> *Citibank, N.A. v. Court of Appeals, et al.*, G.R. No. 107434, 10 October 1997.

<sup>133</sup> Supra at note 124.

<sup>134</sup> Italics in the original text, emphasis and underscoring supplied.

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X ----- X

compliance with all the documentary and evidentiary requirements.<sup>135</sup> It bears the burden to prove its entitlement to the refund.<sup>136</sup> Indeed, CWTs that appear complete in the relevant details may be regarded as *prima facie* true and correct and can thus be taken at face value. However, by submitting CWT Certificates containing incomplete or inaccurate information, a taxpayer demonstrates its failure to exercise ordinary diligence and prudence in proving its claim. Additionally, the valid and accurate certificates, indispensable as they are to the claim for refund, should have been presented by ZPC during the trial, pursuant to its duty to prove every minute aspect of its claim.

In line with what the Special Third Division aptly declared, while there is no law nor regulation expressly requiring that the information contained in a CWT Certificate be precise and compliant with a specific format, it is understood that filling out forms carries with it the obligation on the part of the taxpayer to ensure that the information declared therein must be true and accurate.

All told, in the instant petition, We are precluded from weighing anew the findings of fact of the Court in Division, absent manifest showing of a misapprehension of facts or grave abuse of discretion on its part.<sup>137</sup>

ZUELLIG PHARMA CORPORATION  
(ZPC) HAD ALREADY PROVEN TO A  
CERTAIN EXTENT THAT IT HAD  
DECLARED IN ITS INCOME TAX  
RETURN THE PERTINENT GROSS  
INCOME UPON WHICH TAXES WERE  
WITHHELD.

As for the *third requisite*, ZPC was constrained to prove that the income payments related to its claimed CWTs were declared as part of its gross income subject to IT in CY 2012. 

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<sup>135</sup> *Eastern Telecommunications Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 183531, 25 March 2015.

<sup>136</sup> See *Commissioner of Internal Revenue v. Far East Bank & Trust Company (now Bank of the Philippine Islands)*, G.R. No. 173854, 15 March 2010.

<sup>137</sup> See *Commissioner of Internal Revenue v. A. Soriano Corporation, et al.*, CA-G.R. SP No. 29967, 31 January 1994, citing *Premier Insurance & Surety Corporation v. Hon. Intermediate Appellate Court, et al.*, G.R. No. L-64143, 28 February 1986.

**DECISION**

X ----- X

To sustain its affirmative position, ZPC presented its: (1) Annual ITR for CY 2012<sup>138</sup>; (2) AFS for CYs 2011 and 2012<sup>139</sup>; (3) Reconciliation of Net Income *per* Books against Taxable Income<sup>140</sup>; (4) Schedule of Creditable Withholding Taxes Traced to Books and Related Invoices<sup>141</sup>; (5) Schedule of CWTs According to Alphanumeric Tax Codes (ATCs)<sup>142</sup>; (6) Details for Sales Adjustments for CY 2012, *per* General Ledger (GL) Code 4000030, amounting to ₱113,363,626.90 *per* Trial Balance as of 31 December 2012<sup>143</sup>; and, (7) Consolidated Sales Register for CY 2012.<sup>144</sup>

As the Special Third Division had occasion to validate, the ICPA earlier made a positive determination on how much of ZPC's income payments with complementary CWTs were verifiably included in the latter's gross income, as declared in its Annual ITR:

...  
**VI. RESULTS OF VERIFICATION**  
 ...

Out of the properly supported CWT above, we have ascertained that the income payments relative to CWT amounting to ₱394,539,132.52 were included as part of the Petitioner's books (trial balance as of December 31, 2012 to be presented as *Exhibit P-32*), audited financial statements (previously presented as *Exhibit P-5*) and annual income tax (previously presented as *Exhibit P-3*) as follows (see *Annex 61* for details summarizing results of verification in *Annex 58* for sale of goods as reported in Pages 16 and 17, *Annex 59* for rental as reported in Page 22 and *Annex 60* for service income as reported in Page 20)<sup>145</sup>:

	Annex Reference	Income Payment	Tax Withheld
CWT properly supported by original BIR Form 2307	Annex 3-a	₱42,116,749,625.82	₱391,998,720.51
CWT duly supported by original BIR Form 2307 with no income payment amount indicated therein	Annex 3-b	6,386,464.79	52,413.00
CWT duly supported by original BIR Form 2307 with Petitioner's name but no Petitioner's TIN indicated therein	Annex 3-c	122,269,809.16	1,215,826.21

<sup>138</sup> Exhibit "P-3", Division Docket, Volume I, pp. 441-448.  
<sup>139</sup> Exhibit "P-5", id., Volume I, pp. 458-500, Volume II, p. 501.  
<sup>140</sup> Annex 8, ICPA CD.  
<sup>141</sup> Annex 37, ICPA CD.  
<sup>142</sup> Annex 2, ICPA CD.  
<sup>143</sup> Exhibit "P-21495", Hard Drive.  
<sup>144</sup> Exhibit "P-37", Hard Drive.  
<sup>145</sup> Exhibit "P-25", *supra* at note 129.



CWT duly supported by original BIR Form 2307 with incorrect Petitioner's TIN indicated therein	Annex 3-d	137,607,740.54	1,236,453.50
CWT duly supported by original BIR Form 2307 with incorrect income payment amount and Petitioner's TIN indicated therein	Annex 3-e	7,375,446.23	35,719.30
<b>Total</b>		<b>₱42,390,389,086.54</b>	<b>₱394,539,132.52</b>

...

The CIR, however, opines otherwise. ZPC, on the other hand, maintains that it had proven its claim in full.

In particular, the CIR claims that, in the present case, ZPC had not provided any evidence in support of the *third requisite*. Conversely, ZPC submits that it is apparent (from the source documents it presented, in conjunction with the ICPA's findings) that all the CWTs it claimed for refund were duly recorded and declared, in compliance with the *third requisite*.

Neither assertion is tenable as an absolute.

At the onset, the pieces of evidence that ZPC had made available for the purpose render the CIR's assertion meritless. Clearly, there is sufficient supporting documentation in the case's records to decisively justify ZPC's compliance with the *third requisite*.

Succinctly, the Court has the prerogative to appreciate the findings of the ICPA alongside the evidence upon which the ICPA Report is based. The Court, following its own verification procedures, may opt to adopt any portion of the ICPA's findings as it deems practicable for the productive resolution of the case before it.

Again, the burden of proof to establish the right to a refund lies with the taxpayer-claimant who must show compliance with the statutory requirements of the NIRC of 1997, as amended, and existing jurisprudence. In the present case, the Special Third Division had already affirmed the declaration of a substantial portion of ZPC's income payments (upon which CWTs were withheld) in its gross income for CY 2012.

However, ZPC remains adamant in asking for the approval of its claim in its totality, interposing that the ICPA apparently “concluded that [ZPC]’s total revenue declared in its annual ITR for CY 2012 can be directly attributed to [its] system generated Trial Balance and AFS”<sup>146</sup>, pointing to the ICPA’s disquisitions:

...

3. Reconciliation of income appearing in the annual income tax of CY 2012 (previously presented as *Exhibit P-3*) with the amounts appearing in the Audited Financial Statements for CY 2012 (previously presented as *Exhibit P-5*), with Reconciliation of net Income Per Books against Taxable Income (to be presented as *Exhibit P-33*) and the Trial Balance as of December 31, 2012 (to be presented as *Exhibit P-32*) is shown in *Annex 8*. The Trial balance is a system downloaded schedule consolidating information of both the SDS Accounting System (used during the 1st to 3rd quarters of CY 2012) and the SAP Accounting System (used for the 4th quarter of CY 2012).

Accordingly, based on the reconciliation, we can conclude that the Revenue information in the Annual income tax return for CY 2012 (previously presented as *Exhibit P-3*) can be traced to the Petitioner’s system generated Trial Balance as of December 31, 2012 (to be presented as *Exhibit P-32*) and audited financial statements (to be presented as *Exhibit P-5*).<sup>147</sup>

...

A perusal of the ICPA Report elucidates that ZPC was referencing the ICPA’s outline of findings and observations, that is, what appears to be her declaration of her understanding of ZPC’s process and the interplay of the latter’s source documents, records, and schedules.

Noteworthy, the actual results<sup>148</sup> of the ICPA’s verification procedures come later in the report, and exhibit a lower amount of ₱394,539,132.52, contrary to ZPC’s position that its entire claim of ₱467,578,787.20 was duly substantiated. Suffice to say, the same amount had already been accounted for in the partial grant of refund ordered in the assailed Decision.<sup>149</sup>

<sup>146</sup> Par. 21, ZPC’s Petition for Review, *rollo* (CTA EB No. 2777), pp. 17-18.

<sup>147</sup> Exhibit “P-25”, ICPA Report, p. 10, ICPA USB; Underscoring supplied, emphasis and italics in the original text.

<sup>148</sup> VI. Results of Verification, Exhibit “P-25”, ICPA Report, *supra* at page 32.

<sup>149</sup> *Supra* at page 27.

After further inspecting ZPC's remaining arguments on the matter, We find that the same no longer hold any merit. Clearly, mere allegations do not constitute evidence.<sup>150</sup> As such, a claimant cannot compel their consideration without being fortified by the proper evidence. Moreso, We cannot give credence to a selective reinterpretation of the evidence on record. It goes without saying that the Court does not take lightly to attempt at a discourse that tend to mislead.

ZPC's further claim that the CIR's failure to object to the admission of ZPC's Annual ITR for CY 2012 results in an equivalent admission that the income payments, upon which CWTs were being claimed for refund, were all declared as part of the total revenues as reported therein.

Briefly, in the context of the admissibility of offered evidence, We must highlight its distinction with the same's probative value. Admissibility refers to the question of whether certain pieces of evidence are to be considered at all, while probative value refers to the question of whether the admitted evidence proves an issue.<sup>151</sup> Thus, a particular item of evidence may be admissible, but its evidentiary weight depends on judicial evaluation within the guidelines provided by the rules of evidence.<sup>152</sup> Alternatively stated, the admission of a document in evidence does not result in the blanket acceptance of the truth of its contents. Indeed, all the relevant evidence available will be taken together and appreciated collectively.

Nonetheless, the CIR's failure to object, present any evidence, or refute the evidence presented by ZPC does not *ipso facto* entitle the latter to a tax refund. It is not the duty of the government to disprove a taxpayer's claim for refund.<sup>153</sup> Moreover, as discussed further above, the burden to prove entitlement to a refund claim is borne by the taxpayer-claimant.<sup>154</sup>

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<sup>150</sup> See *Dionarto Q. Noblejas v. Italian Maritime Academy Phils., Inc., et al.*, G.R. No. 207888, 09 June 2014.

<sup>151</sup> *Ma. Melissa Villanueva Magsino v. Rolando N. Magsino*, G.R. No. 205333, 18 February 2019.

<sup>152</sup> *Id.*

<sup>153</sup> *Commissioner of Internal Revenue v. Far East Bank & Trust Company (now Bank of the Philippine Islands)*, supra at note 136.

<sup>154</sup> *Id.*

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ZUELLIG PHARMA CORPORATION  
(ZPC) CANNOT BE ENTITLED TO THE  
FULL, ORIGINAL AMOUNT OF ITS  
REFUND CLAIM BY SIMPLY PROVING  
THE FACT OF SUCH CLAIM WITH  
PREPONDERANCE OF EVIDENCE.

As for its final argument, ZPC puts forward that refund claims of erroneously paid taxes, being civil in nature, only require proof by preponderance of evidence. Accordingly, as it had already proven with preponderance of evidence that it had duly substantiated excess and unutilized CWTs for CY 2012, it should be entitled to the full refund it is claiming.

ZPC's argument is misplaced.

The Court *En Banc* recognizes that the standard of proof in civil cases (such as the instant judicial claim for refund) is indeed preponderance of evidence. However, it must be emphasized that the strict construction in the appreciation of evidence still applies in cases where compliance with documentary requirements is an important aspect to determine whether or not a taxpayer is entitled to the claim for refund, like the present case.

Here, the taxpayer-claimant fell short in discharging the said burden to the full extent of its claim. As cases filed before this Court are litigated *de novo*, the litigant is bound to prove every minute aspect of its case.<sup>155</sup> In other words, the claimant in a CWT refund must prove compliance with each of the established requisites *through preponderance of evidence*. Nevertheless, in the case at bar, the totality of the evidence on record adequately support a partial grant, as ordered in the assailed Decision.

We consistently adhere to the notion that tax refunds are to be construed *strictissimi juris* against the claimant thereof. Jurisprudence dictates that the applicant must prove not only entitlement to its claim, but also compliance with all the documentary and evidentiary

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<sup>155</sup> See *Commissioner of Internal Revenue v. Manila Mining Corporation*, G.R. No. 153204, 31 August 2005.

requirements therefor.<sup>156</sup> Such is a question of fact which could only be answered after reviewing, examining, evaluating, or weighing anew the probative value of the evidence before the Court.<sup>157</sup>

**WHEREFORE**, with the foregoing considered, the consolidated Petitions for Review filed by the Commissioner of Internal Revenue on 15 June 2023 and Zuellig Pharma Corporation on 21 July 2023, respectively, are **DENIED** for lack of merit.


Accordingly, the assailed Decision dated 02 March 2023 and the assailed Resolution dated 26 May 2023, respectively, of the Court's Special Third Division in CTA Case No. 9030, entitled *Zuellig Pharma Corporation v. Commissioner of Internal Revenue*, are hereby **AFFIRMED**.

**SO ORDERED.**

  
JEAN MARIE A. BACORRO-VILLENA  
Associate Justice

**WE CONCUR:**

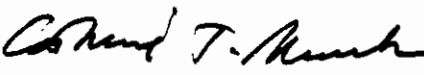
  
ROMAN G. DEL ROSARIO  
Presiding Justice

  
MA. BELEN M. RINGPIS-LIBAN  
Associate Justice

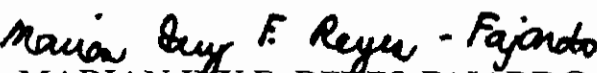
<sup>156</sup> See *Western Mindanao Power Corporation v. Commissioner of Internal Revenue*, G.R. No. 181136, 13 June 2012.


<sup>157</sup> See *Fortune Tobacco Corporation v. Commissioner of Internal Revenue*, G.R. No. 192024, 01 July 2015.


x-----x

  
CATHERINE T. MANAHAN  
Associate Justice

**ON LEAVE**  
MARIA ROWENA MODESTO-SAN PEDRO  
Associate Justice

  
MARIAN IVY F. REYES-FAJARDO  
Associate Justice

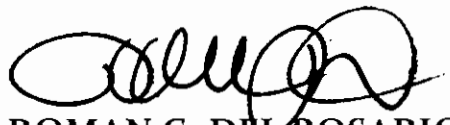
  
LANEE S. CUI-DAVID  
Associate Justice

  
CORAZON G. FERRER-FLORES  
Associate Justice

**ON LEAVE**  
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 cases were assigned to the writer of the opinion of the Court.

  
ROMAN G. DEL ROSARIO  
Presiding Justice