

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

AECOM PHILIPPINES, INC.,
Petitioner,

CTA EB No. 2454
(CTA Case No. 9239)

Present:

- versus -

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

COMMISSIONER OF INTERNAL
REVENUE,
Respondent.

Promulgated:

DEC 09 2022

X- - - - - X

DECISION

DEL ROSARIO, P.J.:

Before the Court *En Banc* is a Petition for Review¹ filed by petitioner Aecom Philippines, Inc. on April 7, 2021, pursuant to Section 4, Rule 8 of the Revised Rules of the Court of Tax Appeals (RRCTA). Petitioner prays for the reversal and setting aside of the Decision dated April 2, 2019 and the Resolution dated February 23, 2021 promulgated by the Special Third Division and Third Division, respectively, in CTA Case No. 9239, entitled *Aecom Philippines, Inc. vs. Commissioner of Internal Revenue*, which denied its Petition for Review and Motion for Reconsideration, both for lack of merit.

The dispositive portions of the assailed Decision and assailed Resolution are as follows:

¹ CTA *En Banc* Docket, pp. 7-39.

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Decision dated April 2, 2019

"WHEREFORE, the instant Petition for Review filed by petitioner Aecom Philippines, Inc. on January 14, 2016, is hereby **DENIED**, for lack of merit.

SO ORDERED."²

Resolution dated February 23, 2021

"WHEREFORE, premises considered, petitioner's Motion for Reconsideration is **DENIED** for lack of merit.

SO ORDERED."³

THE PARTIES

Petitioner, Aecom Philippines, Inc., is a domestic corporation duly organized and existing under Philippine laws, with principal office address at the 23rd Floor, Fort Legend Towers, 31st St., Fort Bonifacio, Global City, Taguig City.⁴ It is duly registered with the Securities and Exchange Commission (SEC) with Company Registration No. A1996-02509,⁵ and with the Bureau of Internal Revenue (BIR) with Certificate of Registration No. OCN 9RC0000321684.⁶

Per its Amended Articles of Incorporation,⁷ petitioner was primarily established for the following purposes:

"To engage in the general business of providing engineering, consultancy, technical, advisory, construction project management, and environmental impact analysis services as well as implementation and execution of plans, and doing any and all other businesses incidental thereto or connected therewith, and the doing and performing of any and all acts and things necessary, proper or convenient for and incidental to the furtherance and/or implementation of the purposes herein enumerated."

On the other hand, respondent Commissioner of Internal Revenue (CIR), is sued in his official capacity, having been duly appointed and empowered to perform the duties of his office, including

² CTA *En Banc* Docket, p. 78.

³ CTA *En Banc* Docket, p. 53.

⁴ Par. 1, Joint Stipulation of Facts and Issues (JSFI), CTA Division Docket, Vol. 1, pp. 247.

⁵ Exhibit "P-1", CTA Division Docket, Vol. 2, p. 536.

⁶ Exhibit "P-3", CTA Division Docket, Vol. 2, p. 552.

⁷ Exhibit "P-2", CTA Division Docket, Vol. 2, pp. 539-551.

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among others, the duty to act on and approve claims for refund as provided by law.⁸

THE FACTS

On January 15, 2014, petitioner electronically filed its Annual Income Tax Return⁹ (ITR) for the year ended September 30, 2013 (FY 2013). Subsequently, it filed on January 15, 2015 an Amended Annual ITR¹⁰ for FY 2013.

Petitioner indicated in its Amended Annual ITR that its Tax Overpayment amounting to ₱18,574,811 is "To be refunded".¹¹

On January 13, 2016, petitioner filed an application for tax refund,¹² along with supporting documents, with the Revenue District Office (RDO) No. 44 for its unutilized creditable withholding taxes (CWTs) in the amount of ₱13,982,433.00.

On January 14, 2016, petitioner filed a Petition for Review with the Court in Division.¹³

After trial, the Court in Division issued the assailed Decision on April 2, 2019.¹⁴

On April 23, 2019, petitioner filed an Omnibus Motion for Reconsideration and Motion for New Trial (Re: Decision Rendered on April 2, 2019).¹⁵

In the Resolution dated February 18, 2020, the Court in Division granted petitioner's Motion for New Trial; set a Commissioner's Hearing for the presentation, comparison and marking of petitioner's exhibits; ordered the presentation of petitioner's evidence; and, held in abeyance the resolution of petitioner's Motion for Reconsideration.¹⁶

⁸ Par. 3, JSFI, CTA Division Docket, Vol. 1, p. 247.

⁹ Exhibit "P-4", CTA Division Docket, Vol. 2, pp. 553-560.

¹⁰ Exhibit "P-5", CTA Division Docket, Vol. 2, pp. 561-576.

¹¹ Exhibit "P-5", CTA Division Docket, Vol. 2, pp. 561-576.

¹² Exhibits "P-13" and "P-14", CTA Division Docket, Vol. 2, pp. 662-667 and 668.

¹³ CTA Division Docket, Vol. 1, pp. 10-24.

¹⁴ CTA Division Docket, Vol. 3, pp. 1046-1070.

¹⁵ CTA Division Docket, Vol. 3, pp. 1071-1113.

¹⁶ CTA Division Docket, Vol. 3, pp. 1216-1220.

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On July 15, 2020, petitioner's witness, Atty. Clifford E. Chua, was recalled to the witness stand.¹⁷

Thereafter, petitioner filed a Supplemental Formal Offer of Evidence on July 21, 2020.¹⁸ In the Resolution dated October 13, 2020, the Court in Division admitted into evidence petitioner's exhibits and submitted for resolution its Motion for Reconsideration.¹⁹

On February 23, 2021, the Court in Division issued the assailed Resolution denying petitioner's Motion for Reconsideration for lack of merit.²⁰

On March 22, 2021, petitioner filed before the Court *En Banc* a Motion for Extension of Time to File Petition for Review.²¹

On April 7, 2021, petitioner filed the present Petition for Review.²²

On June 11, 2021, the Court *En Banc* granted petitioner's Motion for Extension of Time to File Petition for Review and ordered petitioner to submit a Verification and Certification Against Forum Shopping that is compliant with Sections 4 and 5, Rule 7 of the Rules of Court, as amended by A.M. No. 19-10-20-SC or the 2019 Amendments to the 1997 Rules of Civil Procedure.²³

On June 17, 2021, petitioner filed its Compliance, submitting the required Verification and Certification [Against Forum Shopping] and the supporting Secretary's Certificate.²⁴ In the Resolution dated July 7, 2021, petitioner's Compliance was noted and respondent was ordered to comment on the Petition for Review.²⁵

Respondent failed to file his comment on the Petition for Review.²⁶

¹⁷ Minutes of Hearing dated July 15, 2020, CTA Division Docket, Vol. 3, p. 1361; Exhibit "P-723", Supplemental Judicial Affidavit of Atty. Clifford E. Chua.

¹⁸ CTA Division Docket, Vol. 3, pp. 1363-1369.

¹⁹ CTA Division Docket, Vol. 3, pp. 1402-1403.

²⁰ CTA Division Docket, Vol. 3, pp. 1405-1418.

²¹ CTA *En Banc* Docket, pp. 1-6.

²² CTA *En Banc* Docket, pp. 7-39.

²³ CTA *En Banc* Docket, pp. 98-99.

²⁴ CTA *En Banc* Docket, pp. 100-109.

²⁵ CTA *En Banc* Docket, pp. 111-112.

²⁶ CTA *En Banc* Docket, unpaginated.

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On December 9, 2021, the present Petition for Review was submitted for decision.²⁷

THE ASSIGNED ERROR

Petitioner assigned the following sole error allegedly committed by the Court in Division:

The Court in Division erred in ruling that petitioner failed to prove that the gross income payment that was received and is related to its claimed CWTs was declared and reflected in its Annual ITRs for 2013 and 2012.²⁸

PETITIONER'S ARGUMENTS

Petitioner contends that the Court in Division erred in ruling that it failed to prove that the gross income payment that was received and is related to its claimed CWTs was declared and reflected in its Annual ITRs for FYs 2013 and 2012. It argues that:

1. Petitioner, as the principal taxpayer, has the personality to file the claim for refund;
2. All income payments have a corresponding Project Contract Codes which can be traced in the Progress Service Reports for FYs 2013 and 2012;
3. Petitioner's timing of withholding creditable taxes is upon every payment by its client/payor while the timing of recognition of revenue is based on the percentage of completion using the cost-to-cost approach;
4. Sections 2.58.3(B) of Revenue Regulations (RR) No. 2-98 does not require that the declaration of income payments must be made within the same year of the claim for refund;
5. The Court in Division erred in denying the full amount of refund being claimed by petitioner.²⁹

²⁷ CTA *En Banc* Docket, pp. 114-116.

²⁸ Petition for Review, CTA *En Banc* Docket, p. 12.

²⁹ Petition for Review, CTA *En Banc* Docket, pp. 7-35.



THE COURT *EN BANC*'S RULING

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

The Court *En Banc* shall first determine whether the present Petition for Review was timely filed.

Section 3(b), Rule 8 of the RRCTA provides:

"Rule 8
Procedure in Civil Cases

xxx xxx xxx

SEC. 3. Who may appeal; period to file petition. –

xxx xxx xxx

(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.** xxx" (*Boldfacing supplied*)

A perusal of the records shows that petitioner received the assailed Resolution on March 8, 2021.³⁰ Counting fifteen (15) days therefrom, petitioner had until March 23, 2021 within which to file its Petition for Review before the Court *En Banc*.

On March 22, 2021, however, petitioner filed a Motion for Extension of Time to File Petition for Review,³¹ which was granted in the Resolution dated June 11, 2021.³² The Court *En Banc* granted petitioner an additional period of fifteen (15) days from March 23, 2021 or until April 7, 2021 within which to file its Petition for Review before the Court *En Banc*. Petitioner timely filed the present Petition for Review on April 7, 2021, or well within the extended period.

The Court in Division did not err in denying petitioner's claim for refund

*Commissioner of Internal Revenue vs. Team (Philippines) Operations Corporation*³³ summarizes three (3) essential requisites for

³⁰ Notice of Resolution, CTA Division Docket, Vol. 3, p. 1404.

³¹ CTA *En Banc* Docket, pp. 1-6.

³² CTA *En Banc* Docket, pp. 98-99.

³³ G.R. No. 185728, October 16, 2013.

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the grant of a claim for refund of creditable withholding income tax, to wit:

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

Here, the sole error alleged to have been committed by the Court in Division pertains to petitioner's compliance with the third requisite.

As aforementioned, the third requisite mandates petitioner to prove that the income payments subjected to CWTs were declared as part of its gross income.

In the assailed Decision, the Court in Division found that petitioner failed to prove that the income upon which the taxes were withheld were included in the return of the recipient, to wit:

“Guided by the foregoing, to ascertain whether the income corresponding to the excess CWTs being claimed were reported in the year of claim, the Court must trace the income payments from the CWT certificates to the related Official Receipts and Invoices and the recording thereof to the Tax Recovery General Ledger (Creditable Withholding Tax ledger) to Accounts Receivable and Work in Progress Account or Revenue Account and Reimbursements Ledger (*Exhibits 'P-508', 'P-509', 'P-510'*).

Using Annex 'F' of the ICPA Report, the Court attempted to trace each CWT to the alleged recording in petitioner's books. However, the tracing proved futile as the scanned copies of the supporting ledgers (*i.e.*, Exhibits 'P-283', 'P-508' to 'P-510') were hardly readable. **Moreover, the Court was unable to verify whether the total income recorded per petitioner's books tallies with that reflected in its 2013 ITR. Hence, petitioner failed to prove that the income upon which the taxes were withheld were included in the return of the recipient.** (*Emphasis supplied*)

In the Supplemental Formal Offer of Evidence, petitioner re-submitted clearer copies of Exhibits “P-283” (Tax Recovery General Ledger Account), “P-508” (Progress Service Report for FY 2013), “P-

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509" (Progress Service Report for FY 2012) and "P-510" (Reimbursements Account). Along with these documents, petitioner elucidated in its Motion for Reconsideration how the Court in Division can match the CWTs to the income declared, to wit:

"41. The income payments and the corresponding tax withheld are evidenced by Certificate of Creditable Tax Withheld at Source (BIR Form No. 2307), which are shown as exhibits in the Report of the Independent Certified Public Accountant. The period the income payments were declared as part of gross income may be traced in petitioner's books using the Project Contract Code (PCC). The PCC serves as a reference code for each project. By using the PCC, the progression of a project can be traced including how much income was declared from such project."

In order to determine that the income payments were declared as part of gross income, petitioner explained that the income payments relating to the creditable taxes withheld must be traced from the certificates to the revenues reported in the Audited Financial Statements (AFS) and the Annual ITR. Based on petitioner's laborious explanations, the tracing procedure can be summarized as follows:

- (1) The income payment and withholding tax are determined from the individual BIR Forms No. 2307 or Certificates of Creditable Tax Withheld at Source (CWT Certificates);
- (2) The amount of income payment is traced to invoices and official receipts (OR) that bear a particular Project Contract Code (PCC);
- (3) The PCC is then presented as a line item in the Project Status Report (PSR); and,
- (4) The revenues reported per PSRs are properly reported per AFS and Annual ITR.

Following the foregoing tracing procedure, it is indispensable for petitioner to first prove that the revenues reported per PSRs are properly reported in the Annual ITR. Once petitioner has proved that the revenues per PSRs are reported in the Annual ITR, the Court can then proceed to determine whether the income payments shown in the CWT Certificates or BIR Forms No. 2307 were part of the revenues reported per PSRs.

In his Report, the Independent Certified Public Accountant (ICPA) made a finding that the revenues on the 2013 and 2012 Project Status Reports and Reimbursement Ledger were properly reported in



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the revenue portion of the Company's AFS and the Annual ITRs for FY 2013 and FY 2012, as shown below:

Particulars	2013	Exh. Ref	2012	Exh. Ref.
Revenue per Books of Account [per PSRs]	324,574,236.63	P-508	351,432,750.90	P-509
Revenue per AFS	324,574,237.00	P-144	351,432,751.00	P-145
Revenue per Income Tax Return	324,574,237.00	P-5	351,432,751.00	P-146

The Court in Division then traced the total sales/revenues in both the Annual ITRs and PSRs for FYs 2012 and 2013 and found that both reflected the same Sales/Revenues, as shown below, indicating that whatever is reflected in the FYs 2012 and 2013 PSRs was duly reported in the Annual ITRs for the same years:

Taxable Year	Per PSR (YTD-GR)	Exhibit	Per AITR	Exhibit
FY 2012	351,432,750.90	"P-509"	351,432,751.00	"P-730"
FY 2013	324,574,236.63	"P-508"	324,574,237.00	"P-5-2"

Upon re-evaluation, however, of the PSRs, the Court *En Banc* finds that petitioner failed to prove that the revenues declared per Annual ITR tally with the revenues declared per PSRs. The ICPA provided reconciling items³⁴ which were not explained in his Report, viz:

FY 2013 (Exhibit "P-508")	
Total (PPR - Project Performance Report)	326,368,368.31
Diff (PSR and TB)	(2,476,080.68)
FY13 audit adj (81301-632-3112-411001-00 TRA - Marine Services Fees - 3rd parties)	320,000.00
FY13 audit adj (81301-632-3112-412003-00 TRA - Marine Intra Co. Service Fees)	361,949.00
Per books after FY13 audit adj	324,574,236.63
Per FY13 AFS	324,574,237.00
Diff	0.37

FY 2012 (Exhibit "P-509")	
Total (PPR - Project Performance Report)	355,719,383.94
FY12 audit adj (81301-632-3112-411001-00)	(14,742.07)
FY12 audit adj (81301-632-3520-411001-00)	(3,069,791.42)
FY12 audit adj (81301-632-3232-411001-00)	(92,742.03)
FY12 audit adj (81301-632-3112-412001-00)	189,450.06
FY12 audit adj (81301-632-3735-412001-00)	(1,404,425.22)
FY12 audit adj (81301-632-3735-412003-00)	(572,946.41)
FY12 audit adj (81301-632-3520-412001-00)	1,196,907.97
FY12 audit adj (81301-632-3232-412001-00)	(254,196.28)

³⁴ Exhibits "P-508-7" and "P-509-8".

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FY12 audit adj (81301-632-3232-412003-00)	(165,681.58)
FY12 audit adj (81301-632-3237-412001-00)	(98,466.06)
Per books after FY12 audit adj	351,432,750.90
Per FY12 AFS	351,432,751.00
Diff	0.10

It bears stressing that the Court is not bound by the findings of the ICPA. Section 3, Rule 13 of the RRTCA, as amended, provides:

“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 conclusion subject to verification.” (Boldfacing supplied)

The ICPA’s findings are not conclusive upon the Court as the same are subject to verification, to determine its accuracy, veracity and merit. The Court may either adopt or reject the ICPA Report, wholly or partially, depending on the outcome of its own independent verification. Thus, absent an explanation justifying the reconciling items shown above, the Court cannot simply adopt the finding of the ICPA that the total sales/revenues declared in the Annual ITR tally with the total sales/revenues reported in the PSRs.

The discrepancy between the total amount of ₱326,368,368.31 reported in the YTD GR³⁵ found in the PSR for FY 2013 and the Net Sales/Revenues/Receipts/Fees reflected in the AFS and Annual ITR for FY 2013 amounting to ₱324,574,237.00 leaves doubt as to the veracity of the amounts presented in the PSRs. Similarly, for FY 2012, the discrepancy between the total amount of ₱355,719,383.94 reported in the YTD GR and the Net Sales/Revenues/Receipts/Fees reflected in the AFS and AITR amounting to ₱351,432,750.90 likewise leaves doubt as to the veracity of the amounts presented in the PSRs.

Notably, the Court in Division in the assailed Decision declared that **it was unable to verify whether the total income recorded per petitioner’s books (per PSR) tallies with that reflected in its 2013 ITR.** Hence, petitioner failed to prove that the income upon which the taxes were withheld were included in the return of the recipient. In view of the foregoing discussion, the Court sustains the aforesaid finding of the Court in Division.

³⁵ “YTD GR” means Year-to-Date Gross Revenue.



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Considering that petitioner failed to match the revenues presented in the PSRs and the revenues declared in the AFS and Annual ITR, the Court no longer finds it necessary to proceed with the determination of whether the income payments as shown in the CWT Certificates were part of the revenues reported per PSRs.

It bears stressing that a claimant for tax refund has the burden of proof to establish the factual basis of his or her claim for tax credit or refund.³⁶ Tax refunds or credits, just like tax exemptions, are strictly construed against taxpayers, the latter having the burden to prove strict compliance with the conditions for the grant of the tax refund or credit.³⁷ The claimant should prove every minute aspect of its case by presenting, formally offering and submitting its evidence to Court.³⁸

Here, petitioner failed to discharge the burden of proof of showing that the Court in Division erred in denying its refund claim.


WHEREFORE, premises considered, the present Petition for Review is **DENIED** for lack of merit. Accordingly, the Court in Division's assailed Decision dated April 2, 2019 and assailed Resolution dated February 23, 2021 in CTA Case No. 9239 are **AFFIRMED**.

SO ORDERED.


ROMAN G. DEL ROSARIO
Presiding Justice

WE CONCUR:


ERLINDA P. UY
Associate Justice


MA. BELEN M. RINGPIS-LIBAN
Associate Justice

³⁶ *Citibank N.A. vs. Court of Appeals and Commissioner of Internal Revenue*, G.R. No. 107434, October 10, 1997.

³⁷ *IFC Capitalization (Equity) Fund, L.P. vs. Commissioner of Internal Revenue*, G.R. No. 256973, November 15, 2021.

³⁸ *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue*, G.R. No. 145526, March 16, 2007.

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CATHERINE T. MANAHAN **ON LEAVE** **JEAN MARIE A. BACORRO-VILLENA**
Associate Justice Associate Justice

ON LEAVE
MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice


MARIAN IVY F. REYES-FAJARDO
Associate Justice

ON LEAVE
LANEE S. CUI-DAVID
Associate Justice


CORAZON G. FERRER-FLORES
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.


ROMAN G. DEL ROSARIO
Presiding Justice