REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

UNILEVER GLOBAL SERVICES B.V. PHILIPPINES REGIONAL OPERATING HEADQUARTERS (ROHQ)
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 10385

Present:

CASTAÑEDA, JR., *Chairperson, and*
BACORRO-VILLENA, *JJ.*

Promulgated:
SEP 29 2021 11:00 am

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RESOLUTION

For the Court's resolution is a Motion for Summary Judgment filed by petitioner Unilever Global Services B.V. Philippines Regional Operating Headquarters (ROHQ) [**petitioner**] on 14 June 2021.

In the instant motion, petitioner avers that respondent Commissioner of Internal Revenue (**respondent**) raises no genuine issue in his Answer to the Petition for Review filed by the former making a summary judgment proper under the circumstances.

Petitioner argues that respondent appears to have denied all the allegations in the Petition for Review on the ground of lack of information to form a belief as to the truth thereof. The pertinent paragraph in the Answer assailed by petitioner reads:

> ...
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> 2. He specifically DENIES the allegations contained in paragraph 1, 2, 3, 4, 5, and 6 under the caption "Jurisdiction"; the allegations contained in paragraphs 7, 8, 9, 10, and 11 under the caption "Timeliness"; the allegations contained in paragraph[s] 12, 13, 14, **15**, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, and 35 under the caption "Parties"; the allegations contained in paragraphs 36, 37, 38, 39 and 40 under the caption "Witnesses", all the allegations contained under the captions "Documentary Evidence"; "Statement of the Issues"; "Discussion"; and "Prayer" of the petition **for lack of knowledge or information to form a belief to the truth thereof.**[1]
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> ...

According to petitioner, denials based on lack of information of circumstances which are necessarily within respondent's knowledge are defective denials and are thus equal to admissions pursuant to the principle laid down in *Ferdinand R. Marcos, Jr. v. Republic of the Philippines*[2], wherein the Supreme Court held:

> ...
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> When matters regarding which respondents claim to have no knowledge or information sufficient to form a belief are plainly and necessarily within their knowledge, their alleged ignorance or lack of information will not be considered a specific denial. An unexplained denial of information within the control of the pleader, or is readily accessible to him, is evasive and is insufficient to constitute an effective denial.
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> ...

Particularly, petitioner cites respondent's defective denials of the following allegations in the Petition for Review: (**1**) paragraph 8 as regards the declaration by the national government of a state of national health emergency on 08 March 2020 which is of public knowledge; (**2**) paragraphs 4, 8, 26, 27, 29, 3, and 31 pertaining to Section 112 of the National Internal Revenue Code (**NIRC**) of 1997, as amended, Revenue Memorandum Circular (**RMC**) No. 27-2020[3], and Revenue Regulations (**RR**) No. 16-2020[4] which the CIR is tasked

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1 Division Docket, Volume II, pp. 563-564; Emphasis in the original text.

2 G.R. No. 189434, 25 April 2021; Citation omitted.

3 Extending the Deadline for the Filing of Applications for VAT Refund and Ninety (90)-Day Processing Period Pursuant to Section 112 of the Tax Code of 1997, As Amended, by the R.A. 10963 (TRAIN Law).

4 Regulations Further Suspending the Due Dates in the Application of the Ninety (90)-Day Period to Process Value Added Tax (VAT) Refund/Claim Pursuant to Section 112 of the Tax Code of 1997,

to enforce; and, (**3**) paragraphs 2, 3, 7, 9, 10, 11, 12,16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 31, 32, 33, 34 and 35 in regards to petitioner's application for refund and respondent's denial thereof which from part of the case's records.

While the Court agrees with petitioner's observations on the supposed inconsistencies in respondent's Answer, it could not subscribe to petitioner's stance that these call for a summary judgment in the present case.

In *Calubaquib, et al. v. Republic of the Philippines*[5] (**Calubaquib**), citing the case of *Viajar v. Estenzo*[6], the Supreme Court explained when summary judgments are proper, to wit:

> . . .
> Summary judgments are proper when, ***upon motion*** of the plaintiff or the defendant, the court finds that the answer filed by the defendant does not tender a ***genuine issue*** as to any material fact and **that one party is entitled to a judgment as a matter of law.** A deeper understanding of summary judgments is found in *Viajar v. Estenzo*:
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>> Relief by summary judgment is intended to expedite or promptly dispose of cases **where the facts appear undisputed and certain from the pleadings, depositions, admissions and affidavits**. But if there be a doubt as to such facts and there be an issue or issues of fact joined by the parties, neither one of them can pray for a summary judgment. Where the facts pleaded by the parties are disputed or contested, proceedings for a summary judgment cannot take the place of a trial.
>>
>> An examination of the Rules will readily show that a summary judgment is by no means a hasty one. It assumes a scrutiny of facts in a summary hearing after the filing of a motion for summary judgment by one party supported by affidavits, depositions, admissions, or other documents, with notice upon the adverse party who may file an opposition to the motion supported also by affidavits, depositions, or other documents x x x. In spite of its expediting character, relief by summary judgment can only be allowed after compliance with the minimum requirement of vigilance by the court in a summary

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as Amended by Republic Act (R.A.) 10963 (TRAIN Law) For Taxable Quarters Affected by the Declaration of the National State of Emergency.

5 G.R. No. 170658, 22 June 2011; Citations omitted, emphasis and italics in the original text, and supplied.

6 G.R. No. L-43882, 30 April 1979.

> hearing considering that this remedy is in derogation of a party's right to a plenary trial of his case. **At any rate, a party who moves for summary judgment has the burden of demonstrating clearly the absence of any genuine issue of fact, or that the issue posed in the complaint is so patently unsubstantial as not to constitute a genuine issue for trial, and any doubt as to the existence of such an issue is resolved against the movant.**
>
> ...

The case at bar involves petitioner's claim for refund of unutilized input value-added tax (**VAT**) allegedly attributable to its zero-rated sales for taxable year (**TY**) 2018. The issue of this Court's jurisdiction aside, petitioner's entitlement to the refund claimed rests in proving its compliance with Section 110(B) in relation to Section 112(A) of the NIRC of 1997, as amended. The foregoing provisions require, thus:

> ...
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> **Sec. 110.** *Tax Credits.* -
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> ...
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> (B) *Excess Output or Input Tax.* - If at the end of any taxable quarter the output tax exceeds the input tax, the excess shall be paid by the VAT-registered person. If the input tax exceeds the output tax, the excess shall be carried over to the succeeding quarter or quarters. *Provided, however*, That any input tax attributable to zero-rated sales by a VAT-registered person may at his option be refunded or credited against other internal revenue taxes, subject to the provisions of Section 112.
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> ...
>
> **Sec. 112.** *Refunds or Tax Credits of Input Tax.* -
>
> (A) *Zero-rated or Effectively Zero-rated Sales.* - Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax: *Provided, however*, That in the case of zero-rated sales under Section 106(A)(2)(a)(l), (2) and (b) and Section 108(B)(l) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP): *Provided, further*, That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods of properties

> or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales. *Provided, finally,* That for a person making sales that are zero-rated under Section 108(B)(6), the input taxes shall be allocated rateably between his zero-rated and nonzero- rated sales.
> ...

Furthermore, in *Atlas Consolidated Mining and Development Corporation v. Commissioner of Internal Revenue*[7], the Supreme Court described the nature of a Petition for Review from the CIR's denial in the following wise:

> ...
> ... First, a judicial claim for refund or tax credit in the CTA is by no means an original action but rather an **appeal** by way of petition for review of a previous, unsuccessful administrative claim. Therefore, as in every appeal or petition for review, **a petitioner has to convince the appellate court that the quasi-judicial agency *a quo* did not have any reason to deny its claims.** In this case, it was necessary for petitioner to show the CTA not only that it was entitled under substantive law to the grant of its claims but also that it satisfied all the documentary and evidentiary requirements for an administrative claim for refund or tax credit. Second, cases filed in the CTA are litigated *de novo*. Thus, a **petitioner should prove every minute aspect of its case by presenting, formally offering and submitting its evidence to the CTA.** Since it is crucial for a petitioner in a judicial claim for refund or tax credit to show that its administrative claim should have been granted in the first place, part of the evidence to be submitted to the CTA must necessarily include whatever is required for the successful prosecution of an administrative claim.
> ...

Anent petitioner's arguments, both law and jurisprudence require the Court to take careful scrutiny in deciding matters such as that involved in the case at bar. If the Court were to settle this case *via* a summary judgment, without fully and assiduously studying its every aspect, this Court will fail in its mandate.

As it stands, the irregularity in respondent's denial of petitioner's material allegations will not suffice to establish that petitioner is entitled to its claim as a matter of law as required in *Calubaquib*.

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7 G.R. No. 145526, 16 March 2007; Citations omitted, italics in the original text and emphasis supplied.

Moreover, the fact that respondent partially denied petitioner's claim remains undisputed.

Applying petitioner's argument that respondent's denial of such fact on the basis of lack of knowledge equates to an admission thereof would only bolster the fact of respondent's denial of the refund and the reasons therefor. It is the propriety of this very denial of petitioner's claim by respondent which is put in question in the case at present. The existence therefore, of a genuine issue to be determined by the Court still exists and is the proper subject of a full-blown trial.

WHEREFORE, the foregoing considered, petitioner's Motion for Summary Judgment filed on 14 June 2021 is hereby **DENIED**.

SO ORDERED.

JUANITO C. CASTAÑEDA, JR.
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice