REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

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COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**CTA EB No. 1256** (CTA Case No.8320)
	Present: **DEL ROSARIO,** *P.J.*, **CASTAÑEDA, JR., BAUTISTA, UY,**
- versus -	**CASANOVA, FABON-VICTORINO, MINDARO-GRULLA,** and **RINGPIS-LIBAN,** *JJ.*
	Promulgated:
NANOX PHILIPPINES, INC., Respondent.	OCT 03 2016 3:39 p.m.

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DECISION

UY, *J.*:

This is a Petition for Review filed on January 7, 2015 by the petitioner, Commissioner of Internal Revenue, against the respondent, Nanox Philippines, Inc., seeking the reversal and setting aside of the Decision dated September 26, 2014[1] and Resolution dated December 4, 2014[2], both rendered by the Second Division of this Court (Court in Division) in CTA Case No. 8320, the dispositive portions of which, respectively, read as follows:

Decision dated September 26, 2014:

"**WHEREFORE**, premises considered, the instant

[1] EB Docket, pp. 24 to 36.
[2] EB Docket, pp. 37 to 41.

Petition for Review is hereby **GRANTED**. Accordingly, respondent is hereby **ORDERED TO REFUND** to petitioner the amount of P9,495,774.38, representing petitioner's erroneously paid final withholding tax.

SO ORDERED."

Resolution dated December 4, 2014:

"**WHEREFORE**, premises considered, respondent's Motion for Reconsideration (Re: Decision Promulgated 26 September 2014), filed on October 14, 2014, is hereby **DENIED** for lack of merit.

SO ORDERED."

THE FACTS

Petitioner is the duly appointed Commissioner (CIR) of the Bureau of Internal Revenue (BIR), with office address at BIR National Office Building, Agham Road, Diliman, Quezon City.

On the other hand, respondent is a domestic corporation duly registered with the Securities and Exchange Commission under the laws of the Philippines, with office address at 1E-5 Clark Premier Industrial Park, M.A. Roxas Highway, Clark Special Economic Zone, Clarkfield, Pampanga.

The factual antecedents in this case as found by the Court in Division, are as follows.

On June 15, 1999, respondent was incorporated as a domestic corporation, organized for the purpose of manufacturing and trading goods such as liquid crystal displays and to trade the same on wholesale/retail basis.

In June 2009, respondent's officers started discussing the possibility of declaring cash dividends to its sole stockholder, Nanox Corporation Japan (Nanox Japan) as shown in several electronic-mail correspondence between respondent's officers and representatives of Nanox Japan.

On July 31, 2009, respondent's Finance Senior Staff, Ms. Annie Mamangun, prepared the documentation for the payment of the 10% final withholding tax equivalent to JPY20,000,000.00 (approximately ₱9,495,774,38) as well as the documentation for the payment of the cash dividends to be distributed to Nanox Japan.

On August 11, 2009, respondent proceeded to process the payment of the 10% withholding tax of JPY20,000,000.00 equivalent to ₱9,495,774.38. For this purpose, respondent filed with the BIR its Monthly Remittance Return of Final Income Taxes Withheld (BIR Form No. 1601-F) indicating the payment of the total withholding tax of ₱9,755,502.97 (consisting of the dividends tax of ₱9,495,774.38 and the royalty tax of ₱259,728.59) for the period ending July 31, 2009. Said amount was paid and remitted by petitioner on August 13, 2009. On the same day, the payment made by petitioner in the amount of ₱9,755,502.97 was acknowledged by a system-generated document and was debited by its banking facility as shown in its Passbook for Savings Account No. 377-3-377-50187-0. Afterwards, respondent filed its Annual Information Return (BIR Form No. 1604-CF) on January 27, 2010, reporting therein the withholding tax it remitted for the month of July 2009.

On September 1, 2009, respondent's Vice President for Finance, Mr. Kazuhiko Yamane, received an email from the President of Nanox, Japan, Jin Tetsuo, regarding the discontinuance of the said cash dividends. As a result thereof, petitioner did not release any amount of cash dividends to its sole stockholder.

Consequently, on November 10, 2009, respondent filed its written claim for refund in the amount of ₱9,495,774.38 representing the 10% final withholding tax paid in relation to the discontinued cash dividends payment. Due to petitioner's inaction, respondent filed a Petition for Review on August 11, 2011, and the case was docketed as CTA Case No. 8320 and was raffled to the Court in Division.

Petitioner filed an Answer on October 10, 2011, and interposed certain special and affirmative defenses, and alleged, among others, that respondent failed to prove that it exhausted all administrative remedies before elevating CTA Case No. 8320 to the Court of Tax Appeals; and that respondent failed to prove that it had submitted the complete supporting documents to warrant the granting of the subject application for tax refund. Also, petitioner argues that respondent must prove by clear and convincing evidence that the requirements for refund claim were met, specifically: there must be a written claim for refund filed by the taxpayer and the claim of refund must be a categorical demand for reimbursement.

On October 11, 2011, the Court issued a Notice of Pre-Trial Conference setting the pre-trial conference of the case on November 10, 2011 at 1:30 p.m. and requiring parties to file their respective pre-trial briefs. In compliance therewith, petitioner's Pre-Trial Brief was filed on October 20, 2011 while the Pre-Trial Brief for respondent was filed on November 4, 2011.

Respondent filed its Reply to petitioner's Answer on October 27, 2011 alleging that pursuant to available legal remedies to respondent, it was able to file a formal letter to the Bureau of Internal Revenue for a refund of the withholding tax paid on the subject dividends payment transaction that was discontinued. When the administrative claim for refund was not acted upon, it allegedly proceeded to initiate the judicial remedy with the Court in Division before the expiration of the 2-year period.

During the pre-trial conference held on November 10, 2011 in CTA Case No. 8320, both parties' counsels agreed to file their Joint Stipulation of Facts and Issues within fifteen (15) days from said date[3].

On December 12, 2011, the parties filed their Joint Stipulation of Facts and Issues[4] which was approved by the Court in Division in the Resolution dated December 19, 2011. In the same Resolution, the Pre-Trial was considered terminated[5].

Thereafter, the trial of the case proceeded giving both parties the opportunity to present their documentary and testimonial evidence. Respondent formally offered in evidence Exhibits "FF", "F", "H", "K", "M", "M-1", "LL", "Z", "Y", "KK" and "JJ" which were admitted, with the exception of Exhibit "F", in the Resolution dated August 15, 2013[6]. On the other hand, petitioner's counsel manifested in the June 24, 2013 hearing[7], that petitioner will no longer present

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[3] Minutes of Hearing dated November 10, 2011, Division Docket, (CTA Case No. 8320), Vol. I, p. 325.
[4] Division Docket, (CTA Case No. 8320), Vol. I, pp. 342-345.
[5] Division Docket, (CTA Case No. 8320), Vol. I, p. 345.
[6] Division Docket, (CTA Case No. 8320), Vol. II, pp. 669-670.
[7] Minutes of Hearing dated June 24, 2014, Division Docket, (CTA Case No. 8320), Vol. II, p. 554.

evidence and that he is submitting the instant case for decision. In the same hearing, counsels for both parties were given thirty (30) days from receipt of the Court's Resolution within which to file their respective memoranda.

On November 8, 2013, the case was submitted for decision, taking into consideration respondent's Memorandum filed on October 16, 2013, and petitioner's Memorandum filed on November 5, 2013[8].

In the assailed Decision,[9] the Court in Division rendered judgment in favor of respondent, granting its application for refund of erroneously paid final withholding tax in the amount of ₱9,495,774.38.

Subsequently, petitioner filed a Motion for Reconsideration on October 14, 2014[10] which was denied by the Court in Division in the assailed Resolution[11] for lack of merit.

On December 22, 2014, petitioner filed before the Court *En Banc* a Motion for Extension of Time (to file Petition for Review),[12] praying that petitioner be given an extension of fifteen (15) days from December 24, 2014 or until January 8, 2015 within which to file her Petition for Review.

On January 6, 2015, the Court *En Banc* granted the said Motion for Extension of Time and gave petitioner a final and non-extendible period of fifteen (15) days from December 24, 2014 or until January 8, 2015, within which to file her Petition for Review.[13]

On January 7, 2015, petitioner CIR filed the instant Petition for Review[14] seeking the reversal and setting aside of the assailed Decision dated September 26, 2014[15] and Resolution dated December 4, 2014.

Thereafter, the Court *En Banc* issued the Resolution dated

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[8] Division Docket, Vol. II, (CTA Case No, 8320), p. 708.
[9] EB Docket, pp. 24 to 36; Division Docket (CTA Case No, 8320), pp. 711 to 723.
[10] Division Docket (CTA Case No, 8320), pp. 742 to 750.
[11] EB Docket, pp. 37 to 41; Division Docket (CTA Case No, 8320), pp. 772 to 776.
[12] EB Docket, pp. 1 to 5.
[13] Minute Resolution dated January 6, 2015, EB Docket, p. 6.
[14] EB Docket, pp. 7 to 23.
[15] EB Docket, pp. 24 to 36.

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January 28, 2015,[16] ordering respondent to file its Comment within ten (10) days from receipt thereof.

On January 22, 2015, respondent filed its Comment.[17] However, it was shown that the copies thereof were insufficient. Thus, the Court *En Banc* ordered respondent to submit additional seven (7) copies within ten (10) days from notice; otherwise, the said pleading shall be deemed as not filed. In compliance, respondent filed on March 9, 2014 seven (7) additional copies of the said Comment.[18]

Meanwhile, respondent's counsel filed a "Notice of Change of Firm Name and Address" on March 9, 2015".[19]

On March 25, 2015, the Court *En Banc* took note of respondent's compliance in the submission of additional copies of its Comment (Re: Petition for Review) and at the same time required respondent's counsel to submit additional copies of its "Notice of Change of Firm Name and Address" for being insufficient.[20]

On April 17, 2015, respondent submitted the additional copies of its "Notice of Change of Firm Name and Address",[21] which the Court *En Banc* took note on May 7, 2015.[22]

On July 15, 2015, respondent filed an Urgent Motion to Resolve,[23] praying that the Court *En Banc* immediately resolve the instant Petition for Review and render judgment affirming *in toto* the Decision of the Court in Division promulgated on 26 September 2014.

In the Resolution dated August 13, 2015,[24] the Court *En Banc* took note of respondent's Urgent Motion to Resolve and directed the parties to file their respective memorandum, within thirty (30) days from receipt thereof.

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[16] EB Docket, pp. 63 to 64.
[17] EB Docket, pp. 47 to 58.
[18] Respondent's Compliance, EB Docket, pp. 66 to 67.
[19] EB Docket, pp. 70 to 71.
[20] Minute Resolution dated March 25, 2015, EB Docket, p. 73.
[21] Respondent's Compliance, EB Docket, pp. 75 to 76.
[22] Minute Resolution dated May 7, 2015, EB Docket, p. 80.
[23] EB Docket, pp. 81 to 82.
[24] EB Docket, pp. 86 to 87.

Thereafter, the instant case was submitted for decision on October 8, 2015, after petitioner filed a Manifestation on August 26, 2015,[25] in lieu of her Memorandum, stating that she is adopting the arguments raised in her Petition for Review; and after respondent filed its Memorandum on September 11, 2015.[26]

Hence, this Decision.

THE ISSUES

The issue raised in the instant Petition for Review for the resolution of the *Court En Banc* is as follows:

> WHETHER OR NOT THE COURT IN DIVISION HAS JURISDICTION OVER RESPONDENT'S CLAIM FOR TAX REFUND AS RESPONDENT ALLEGEDLY PREMATURELY ELEVATED THIS CASE TO THE HONORABLE COURT.

Petitioner's arguments:

Petitioner contends that the Court in Division has no jurisdiction over the original Petition for Review because respondent prematurely elevated the case before the Court.

According to petitioner, although it appears that respondent complied with what is required under Section 229 of the Tax Code of 1997 by filing an administrative claim for refund, respondent however, allegedly did not submit the complete documents required to substantiate its claim for refund. In view of respondent's actual failure to submit the necessary documents supporting its claim, and its subsequent failure to allege such submission in its Petition for Review, the intendment of the law, in prescribing that the taxpayer comply with all the administrative requirements continuing up to judicial review, was not served. Petitioner emphasizes that respondent did not exhaust its administrative remedies.

Moreover, petitioner asserts that respondent's application for refund should not be warranted because of respondent's failure to

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[25] EB Docket, pp. 88 to 89.
[26] EB Docket, pp. 92 to 110.

prove that the amount of ₱9,755,502.97 was actually credited to the BIR's account as such fact could have been proven by a BIR Confirmation Receipt.

Respondent's counter-arguments:

Respondent counter-argues that the Court in Division has jurisdiction over respondent's claim for tax refund as the alleged procedural infirmity invoked by petitioner has no leg stand on because the matter of failure to submit complete documents at the administrative level had long been resolved in a number of cases by the Court *En Banc* and thus not fatal to a judicial claim for refund.

At the outset, it is allegedly worthy to note that petitioner did not file a Motion to Dismiss on the ground of failure to comply with a condition precedent. Thus, to raise that ground now in its Petition for Review and long after voluntarily submitting himself to the jurisdiction of the Honorable Court is allegedly belated and protracted.

Furthermore, respondent contends that it has sufficiently and convincingly discharged its burden of proving its payment to the BIR corresponding to 10% final withholding tax sought to be refunded, through Transaction Acknowledgement Receipt which was formally offered with the Court in Division and cited in the assailed Decision.

THE COURT *EN BANC*'S RULING

The instant Petition for Review is bereft of merit.

In *Commissioner of Internal Revenue vs. Goodyear Philippines, Inc.*,[27] the Supreme Court said:

> "Section 229 of the Tax Code states that judicial claims for refund must be filed within two (2) years from the date of payment of the tax or penalty, providing further that the same may not be maintained until a claim for refund or credit has been duly filed with the Commissioner of Internal Revenue, *viz*:

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[27] G.R. No. 216130, August 3, 2016.

> 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.
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> **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** x x x. (Emphases and underscoring supplied)

Verily, the primary purpose of filing an administrative claim was to serve as a notice of warning to the CIR that court action would follow unless the tax or penalty alleged to have been collected erroneously or illegally is refunded. To clarify, Section 229 of the Tax Code – [then Section 306 of the old Tax Code] – however does not mean that the taxpayer must await the final resolution of its administrative claim for refund, since doing so would be tantamount to the taxpayer's forfeiture of its right to seek judicial recourse should the two (2)-year prescriptive period expire without the appropriate judicial claim being filed. In *CBK Power Company, Ltd. v. CIR*, the Court enunciated:

> In the foregoing instances, attention must be drawn to the Court's ruling in *P.J. Kiener Co., Ltd. v. David (Kiener)*, wherein it was held that in **no wise does the law**, i.e., Section 306 of the old Tax Code (now, Section 229 of the NIRC), **imply that the Collector of Internal Revenue first act upon the taxpayer's claim, and that the taxpayer**

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> **<u>shall not go to court before he is notified of the Collector's action</u>**. In *Kiener*, the Court went on to say that **<u>the claim with the Collector of Internal Revenue was intended primarily as a notice of warning that unless the tax or penalty alleged to have been collected erroneously or illegally is refunded, court action will follow</u>** x x x. (Emphases and underscoring supplied)

In the case at bar, records show that both the administrative and judicial claims for refund of respondent for its erroneous withholding and remittance of FWT were indubitably filed within the two-year prescriptive period. **Notably, Section 229 of the Tax Code, as worded, <u>only required</u> that an administrative claim should first be filed. It bears stressing that respondent could not be faulted for resorting to court action, considering that the prescriptive period stated therein was about to expire. Had respondent awaited the action of petitioner knowing fully well that the prescriptive period was about to lapse, it would have resultantly forfeited its right to seek judicial review of its claim, thereby suffering irreparable damage.**

Thus, in view of the aforesaid circumstances, respondent correctly and timely sought judicial redress, notwithstanding that its administrative and judicial claims were filed only 13 days apart." *(Emphases and underscoring supplied, except for the cited Section 229 and the cited portion of the* CBK Power Company, Ltd. v. CIR *case)*

It is clear from the foregoing jurisprudence, *inter alia*, that Section 229 of the NIRC of 1997, as worded, only requires that an administrative claim should be filed prior to the filing of a judicial claim. It is however silent about the supposed submission of necessary documents supporting the claim by the refund claimant. This is especially true since petitioner, as CIR, ought to know the tax records of all taxpayers, and such being the case, he could have easily disproved the claimant's allegations,[28] and correspondingly deny the refund claim.

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[28] Refer to *BPI-Family Savings Bank. Inc. vs. Court of Appeals, et al.*, G.R. No. 122480, April 12, 2000; and *Commissioner of Internal Revenue vs. Ironcon Builders and Development Corporation,* G.R. No. 180042, February 8, 2010.

Notwithstanding the principle that the CIR ought to know the tax records of all taxpayers[29], he is however not prevented from requesting documents from a refund-claimant in processing the claim. It must be emphasized that such request or the notice to the said claimant for the submission of documents, is something that has to be made by the CIR. Otherwise, upon appeal to this Court, the refund-claimant will not be faulted for not presenting documents to support the refund claim at the administrative level, because it will be required to present and offer all documents that are necessary to establish the refund claim, even when the said documents have not been presented at the administrative level. This is the thrust of the ruling in the case *Pilipinas Total Gas, Inc. vs. Commissioner of Internal Revenue*,[30] wherein the the Supreme Court said:

> "At this stage, a review of the nature of a judicial claim before the CTA is in order. In *Atlas Consolidated Mining and Development Corporation v. CIR*, it was ruled –
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>> x x x 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. <u>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.</u> 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

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[29] *Id.*

[30] G.R. No. 207112, December 8, 2015.

CTA must necessarily include whatever is required for the successful prosecution of an administrative claim [*Underscoring Supplied]*.

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 the present case, however, Total Gas filed its judicial claim due to the inaction of the BIR. **Considering that the administrative claim was never acted upon; there was no decision for the CTA to review on appeal *per se*. Consequently, the CTA may give credence to all evidence presented by Total Gas, including those that may not have been submitted to the CIR as the case is being essentially decided in the first instance. The Total Gas must prove every minute aspect of its case by presenting and formally offering its evidence to the CTA, which must necessarily include whatever is required for the successful prosecution of an administrative claim."** *(Emphases and underscoring supplied)*

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In this case, it is undisputed that there was inaction on the part of petitioner on respondent's claim for refund.[31] Nothing in the BIR Records would show that petitioner acted on the said claim, nor did the petitioner request any additional document that he thought was necessary for respondent to successfully obtain the refund claim being sought. Thus, considering that respondent's administrative claim was never acted upon, there was no decision for the Court in Division to review on appeal *per se*. Consequently, the Court in Division may give credence to all evidence presented by respondent, including those that may not have been submitted to petitioner as the case is being essentially decided in the first instance.

Hence, after a careful review of the evidence on record relied upon by the Court in Division in rendering the assailed Decision granting respondent's claim for refund, We see no cogent reason or ground to reverse or modify the same.

Anent petitioner's argument that respondent's application for refund should not be warranted because of respondent's failure to prove that the amount of ₱9,755,502.97 was actually credited to the BIR's account as such fact could have been proven by a BIR Confirmation Receipt, We find the same untenable.

On the contrary, We find sufficient basis to conclude that the amount of ₱9,755,502.97 (which included the final withholding tax on dividends in the amount of ₱9,495,774.38) was remitted by respondent through the following exhibits: the Transaction Acknowledgment Receipt (Exhibit "K") therefor and its Passbook for Savings Account No. 377-3-37750187-0 (Exhibit M-1).[32] These documents, taken together, satisfactorily convince the Court *En Banc* that the said amount was remitted to the BIR.

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[31] See BIR Records, which composed only of 13 pages as follows: Pages 1 to 10 – Letter dated November 6, 2009 of respondent (received by the BIR on November 10, 2009); Page 11 – Document acknowledging receipt by the BIR of photocopies of said Letter and BIR Form 1601F of petitioner for Tax Return Period "07/31/2009"; Page 13 – Letter dated September 12, 2011 by Atty. Felix Paul R. Velasco III, Assistant Chief, Litigation Division, informing the Regional Director of Revenue Region No. IV-San Fernando, Pampanga, BIR, that respondent has filed a Petition for Review before this Court docketed as CTA Case No. 8320, and requesting *"that the docket of the said taxpayer consisting of certified true copies of all documents pertinent thereto be transmitted to"* Atty. Velasco's office; and Page 12 – Letter-Indorsement dated September 23, 2011 by Ms. Araceli L. Francisco, CESO VI, regarding the said Letter of Atty. Velasco.

[32] Division Docket (CTA Case No. 8320) – Vol. II, pp. 573 and 575.

As a corollary, it must be pointed out that assuming that respondent indeed failed to remit the same amount, petitioner could have easily assailed the truthfulness of the said Exhibits, considering that, as already stated earlier, the Commissioner of Internal Revenue ought to know the tax records of all taxpayers.[33] In this connection, petitioner, being the chief of the BIR, which is the repository of the tax returns and records of tax collections, could have easily presented and offered in evidence the pertinent documents or evidence to show that the amount in question was not remitted to the BIR. In not doing so in this case, this disputable presumption comes to mind: *"That evidence willfully suppressed would be adverse if produced".*[34]

WHEREFORE, in light of the foregoing considerations, the Petition for Review is **DISMISSED** for lack of merit. The Decision dated September 26, 2014 and Resolution dated December 4, 2014, both of the Court in Division, are **AFFIRMED**.

Accordingly, petitioner is **ORDERED TO REFUND** to respondent the amount of ₱9,495,774.38, representing petitioner's erroneously paid final withholding tax.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

Juanito C. Castañeda Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

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[33] Refer to Footnote No. 21.
[34] Section 3(e), Rule 131, Rules of Evidence.

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
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