REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

SANKYU-ATS CONSORTIUM B, Petitioner,	**CTA EB No. 2840** (CTA Case No. 10471)
	Present:
- versus -	**DEL ROSARIO, *P.J.*, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, MODESTO-SAN PEDRO, REYES-FAJARDO, CUI-DAVID, FERRER-FLORES,** and **ANGELES, *JJ.***
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: JUL 31 2025 3:35 pm

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DECISION

FERRER-FLORES, J.:

The **Petition for Review**[1] filed by **Sankyu-ATS Consortium B (petitioner/Sankyu)** on December 28, 2023 seeks the reversal of the Decision promulgated on August 1, 2023 (assailed Decision),[2] and the Resolution dated November 22, 2023 (assailed Resolution)[3] in CTA Case No. 10471, whereby the Special First Division of this Court denied petitioner's claim for value-added tax (VAT) refund in the total amount of **₱3,744,698.32** for the third quarter of taxable year (TY) 2018, the dispositive portions of the assailed Decision and the assailed Resolution read as follows:

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[1] *Rollo*, pp. 8 to 40.
[2] *Id. at* 54 to 71. Penned by Presiding Justice Roman G. Del Rosario and concurred in by Associate Justice Catherine T. Manahan and Associate Justice Marian Ivy F. Reyes-Fajardo.
[3] *Rollo*, pp. 73 to 77.

Assailed Decision:

> **WHEREFORE**, premises considered, the present Petition for Review is **DENIED** for lack of merit. Accordingly, respondent's denial of petitioner's claim for tax refund, as embodied in Letter Denial dated January 20, 2021, is **AFFIRMED**.
>
> **SO ORDERED.**

Assailed Resolution:

> **WHEREFORE**, premises considered, respondent's Comment (Re: Petitioner's Motion for Reconsideration) is **EXPUNGED** from the records, while petitioner's **Motion for Reconsideration (Decision dated 01 August 2023)** is hereby **DENIED** for lack of merit.
>
> **SO ORDERED.**

PARTIES OF THE CASE[4]

Petitioner is a consortium duly created on October 4,2017 by virtue of a *Consortium Agreement* between ATS Construction International, Inc. and Sankyu, Inc. It is a VAT-registered taxpayer engaged in supplying services and construction materials. It can be served with summons and other court processes of the Court of Tax Appeals (CTA) *En Banc*, through its counsel of record, LMA Law Offices at Unit 22, 2nd Floor ZETA II Building, 191 Salcedo Street, Legaspi Village, Makati City.

Respondent is the **Commissioner of the Bureau of Internal Revenue (BIR)**, duly appointed and empowered to perform the duties and responsibilities of his office, including, among others, the power to decide, cancel, and abate tax liabilities pursuant to Section 204(B) of the National Internal Revenue Code (NIRC) of 1997, as amended, with office address at the BIR National Office Building, Diliman, Quezon City, where he may be served with summons and other processes of the CTA *En Banc*.

FACTUAL ANTECEDENTS

The facts as found by the Court in Division are as follows:[5]

> In its Amended Quarterly VAT Return for the 3rd quarter of TY 2018, petitioner reported zero-rated sales in the amount of P15,540,000.00 and purchases of goods and services in the aggregate amount of P31,205,818.25 with input VAT amounting to P3,744,698.19.

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4 The Parties, *Petition for Review*, *Rollo*, p. 10.
5 The Facts, Decision at 55 to 56. Citations omitted.

On September 30, 2020, petitioner filed with the Revenue District Office No. 98-Cagayan De Oro City a claim for refund of its excess or unutilized creditable input VAT for the 3rd quarter of TY 2018, in the amount of P3,744,698.32.

On January 22, 2021, petitioner received the BIR Letter dated January 20, 2021 issued by Revenue District Office No. 98-Cagayan De Oro City, informing the former of the denial of its claim for refund (Denial Letter), the pertinent portion thereof reads:

> In view of the foregoing, we regret to inform you that your application for VAT refund is denied. As a matter of course, we are returning to your end the entire documents which you have previously submitted.

PROCEEDINGS BEFORE THE COURT IN DIVISION[6]

Petitioner filed its *Petition for Review* with the CTA on February 22, 2021.

Respondent, then, filed his *Answer* on February 18, 2022.

On April 26, 2022, petitioner filed its *Pre-Trial Brief*, while respondent filed his *Pre-Trial Brief* on May 2, 2022. The Pre-Trial Conference was held on May 5, 2022.

The parties filed their *Joint Stipulation of Facts* on June 1, 2022. Thereafter, the Pre-Trial Order was issued.

Petitioner offered the testimonies of its witnesses, namely, Ms. Yvonne Karla M. Telan and the Independent Certified Public Accountant (ICPA), Mr. Ericson D. Tadeja, during trial. Afterwards, petitioner's *Formal Offer of Evidence with Manifestation* was filed on October 4, 2022. The Court, in a Resolution dated January 12, 2023, admitted petitioner's exhibits except for: Exhibits "P-2", for failure to submit the duly marked exhibit; and, "P-25" and "P-25-a", for failure to contain the sworn attestation required under the Judicial Affidavit Rule.

Respondent, on the other hand, did not present any witness.

Petitioner submitted its *Memorandum with Manifestation for Refund and/or Issuance of a Tax Credit Certificate* on February 20, 2023; whereas, respondent failed to file his Memorandum.

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6 The Facts, *Rollo*, p. 56 to 58. Citations omitted.

In a Minute Resolution dated March 13, 2023, petitioner's Exhibits "P-25" and "P-25-a" were admitted, and the present case was submitted for decision.

On August 1, 2023, the Special First Division rendered the assailed Decision, a PDF copy of which was sent to petitioner on even date, and the physical copy of which was received by petitioner on August 16, 2023.

Petitioner then filed, on August 16, 2023, a *Motion for Reconsideration*, which was denied by the Court in the assailed Resolution received by petitioner on November 28, 2023.

PROCEEDINGS BEFORE THE COURT *EN BANC*

On December 13, 2023, petitioner filed a *Motion for Extension of Time to file a Petition for Review under Section 3, Rule 8 of the Revised Rules of the Court of Tax Appeals in Relation to Rule 43 of the Rules of Court.*[7] This was granted by the Court in the Minute Resolution dated December 15, 2023, which granted petitioner until December 28, 2023 within which to file its Petition for Review.

The instant *Petition for Review* was filed on December 28, 2023.[8]

Respondent failed to filed his comment on the *Petition for Review* per Records Verification issued by the Court's Judicial Records Division on May 14, 2024.[9] On June 26, 2024, the instant case was submitted for decision.[10]

ISSUES

The issues raised by petitioner in the instant *Petition for Review* are:[11]

1. The Honorable Court in Division erred when it denied the admission of a copy of the duly marked Philippine Economic Zone Authority (PEZA) Certification of Philippine Sinter Corporation (PSC) for TY 2018.

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7 *Rollo*, pp. 1 to 5.
8 *Id.* at 8 to 42.
9 *Id.* at 102.
10 *Id.* at 103.
11 *Rollo*, p. 13.

2. The Honorable Court in Division erred in resolving the entire case on the sole basis of non-submission of the duly marked PEZA Certification.

3. The Honorable Court in Division failed to appreciate all other pieces of evidence that establish and prove that the sales of petitioner were zero-rated or effectively zero-rated.

ARGUMENTS

Petitioner argues that it was able to prove that its sales to PSC, which is an entity registered with the PEZA, was zero-rated or effectively zero-rated. According to petitioner, it was able to establish that it operates as a consortium with the sole purpose of selling goods and services to its one and only client, PSC. It asserts that the PEZA Certification of PSC was attached to the *Amended Petition for Review* filed before the Court in Division. Moreover, its witness, in her Judicial Affidavit, testified that the petitioner's sales were made only to PSC and that the latter is a PEZA-registered enterprise located in an Economic Zone.

Petitioner likewise claims that the PEZA Certification of PSC was produced and presented and is not inadmissible. As the PEZA Certification was marked, identified, authenticated and a copy of which was formally offered, petitioner, thus, maintains that the Court should have given weight to said document. It also contends that the Court may take judicial notice of the existence of the PEZA Certification as there was no objection interposed by respondent in relation to the formal offer and the element of convenience befits this case. Since the Court had already noticed the existence of the PEZA Certification in view of the marking, identification and formal offer, petitioner avers that it would serve the interest of justice if the Court takes judicial notice of the said document. Moreover, petitioner filed several tax refund cases covering different taxable years, thus, it had presented the very same documentary and testimonial evidence to prove its claims for refund. For petitioner, the rules of procedure may be relaxed if the cause of justice may be served better. It also seeks for the Court's understanding as its counsel had unwittingly slipped in its function to move for the reconsideration of the denial of the PEZA Certification.

RULING OF THE COURT IN DIVISION

The Special First Division ruled that petitioner is not entitled to tax refund as it was unable to prove that its sales were zero-rated or effectively zero-rated. The Special First Division held that, while petitioner claims that its goods and services were sold to PSC, a PEZA-registered enterprise, and that its transactions with its client are zero-rated, the PEZA Certification of PSC, marked as Exhibit "P-2", was denied admission for failure to submit the duly marked document. Moreover, the Special First Division found that petitioner failed to move for reconsideration of the denial of Exhibit "P-2" and did not even bother to submit the duly marked exhibit. Hence, what appears on record is a mere photocopy of Exhibit "P-2".

RULING OF THE COURT *EN BANC*

The Court denies the instant *Petition for Review*.

Timeliness of the Petition for Review

Records show that petitioner received the assailed Resolution on November 28, 2023.[12] Counting 15 days therefrom, petitioner had until December 13, 2023 within which to file his Petition for Review before the Court *En Banc*. On December 13, 2023, petitioner filed a *Motion for Extension of Time to File a Petition for Review Under Section 3, Rule 8 of the Revised Rules of the Court of Tax Appeals in relation to Rule 43 of the Rules of Court*[13] requesting for an additional period of 15 days within which to file its Petition for Review, which was granted by this Court in a Minute Resolution dated December 15, 2023.[14] On December 28, 2023, petitioner timely filed its *Petition for Review*.

The denial of the admission of the PEZA Certificate of Registration marked as Exhibit "P-2" is proper.

In the assailed Decision, the Special First Division found that petitioner failed to establish that its sole client is a PEZA-registered entity in view of the Court's denial of the admission of PSC's PEZA Certification, marked as Exhibit "P-2". The Special First Division held that the burden of evidence lies with the party who asserts the affirmative allegation; thus, petitioner's bare assertion, without any documentary evidence, is not sufficient to prove that PSC is indeed a PEZA-registered export enterprise. As a consequence, the Court did not belabor on the other requisites for refund.

In its *Motion for Reconsideration* before the Special First Division, petitioner posited that the Court may allow the submission of documents not attached to the Formal Offer of Evidence but were previously compared with

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[12] *Rollo*, p. 72.
[13] *Rollo*, pp. 1 to 4.
[14] *Rollo*, p. 7.

the originals and marked during the commissioner's hearing held on May 31, 2022. According to petitioner, its inadvertent failure to submit the duly marked exhibit was due to extraordinary workload as it had filed several *Petitions for Review* for VAT refund and/or issuance of Tax Credit Certificate (TCC) covering different quarters of TYs 2018 to 2019 and that, upon checking, it discovered that the one certified true copy of the Exhibit "P-2" was marked twice for the present case and for CTA Case No. 10313. Petitioner avers that its counsel failed to notice that the document attached to its *Formal Offer of Evidence* was not the marked document originally marked and upon tracing, the originally marked document was submitted to the Court as part of its *Formal Offer of Evidence* in CTA Case No. 10313. Lastly, it argued that it did not notice the denial of the admission of Exhibit "P-2" in the Resolution dated January 12, 2023 due to the location of the paragraph ruling on the said exhibit in the Resolution. Thus, it attached its *Motion for Reconsideration* before the Special First Division a certified machine copy of Exhibit "P-2" accompanied by its urgent request for a certified true copy from the Court.

In the assailed Resolution, the Court reiterated its denial of Exhibit "P-2", considering that petitioner failed to move for reconsideration of the said denial within the prescribed period. The fact that it did not notice the denial of Exhibit "P-2" in the Resolution dated January 12, 2023 only highlights its counsel's negligence in not giving due regard to the Resolution issued by the Court.

In the instant *Petition for Review*, petitioner maintains that Exhibit "P-2" was pre-marked, identified and attested as to the authenticity and veracity of its contents, compared and marked before the commissioner and without any objection from respondent's counsel. A copy of Exhibit "P-2" was formally offered as evidence. It reiterated its explanation as to why the duly marked Exhibit "P-2" was not submitted to the Court.

Petitioner also asseverates that the Court may take judicial notice of the existence of the PEZA Certification of PSC, without the need of actual proof, especially those facts which are already evidenced by public records, acts of notoriety and those within the knowledge of the Court by reason of their office.

Finally, petitioner contends that it had instituted various claims for refunds before the CTA covering different taxable quarters and taxable years, with the same parties, raised interrelated issues and are supported by essentially the same testimonial and documentary evidence; thus, the Court should take judicial notice.

This Court disagrees with petitioner.

Since it failed to move for the reconsideration of the denial of the admission of Exhibit "P-2" within the prescribed period, its right to question the denial has already lapsed.

Judicial notice is the cognizance of certain facts that judges may properly take and act on without proof because these facts are already known to them. Put differently, it is the assumption by a court of a fact without need of further traditional evidentiary support. The principle is based on convenience and expediency in securing and introducing evidence on matters which are not ordinarily capable of dispute and are not bona fide disputed.[15]

In the case of *Expertravel & Tours Inc. v. Court of Appeals*,[16] the Supreme Court discussed the requisites for the Court to take judicial notice, *viz*:

> Generally speaking, matters of judicial notice have three material requisites: (1) the matter must be one of common and general knowledge; (2) it must be well and authoritatively settled and not doubtful or uncertain; and (3) it must be known to be within the limits of the jurisdiction of the court. The principal guide in determining what facts may be assumed to be judicially known is that of notoriety. Hence, it can be said that judicial notice is limited to facts evidenced by public records and facts of general notoriety. Moreover, a judicially noticed fact must be one not subject to a reasonable dispute in that it is either: (1) generally known within the territorial jurisdiction of the trial court; or (2) capable of accurate and ready determination by resorting to sources whose accuracy cannot reasonably be questionable.

Applying the foregoing, before the Court *En Banc* may take judicial notice of the PEZA Certification of PSC which was offered and admitted in the Third Division, it must be: (1) one of common and general knowledge; (2) must be well and authoritatively settled and not doubtful or uncertain; and, (3) must be known within the limits of the jurisdiction of the Court.

Clearly, it does not fall within the foregoing requirements. PSC's PEZA Certification is definitely not one to be considered of common and general knowledge as it is specifically issued to the registrant. It cannot be considered well and authoritatively settled and not doubtful or uncertain considering that the PEZA Certification indicates a period for its validity and the possibility of cancellation of registration. Finally, the existence of the PEZA Certification issued in favor or PSC is not known within the limits of the jurisdiction of the Court *En Banc* as it is an appellate body and not a trier

[15] *Juan v. Juan*, G.R. No. 221732, August 23, 2017.
[16] G.R. No. 152392, May 26, 2005.

of facts that would normally be familiar with all evidence presented before any of its Division.

The general rule is that courts are not authorized to take judicial notice of the contents of the records of other cases, even when such cases have been tried or are pending in the same court, and notwithstanding the fact that both cases may have been tried or are actually pending before the same judge. However, this rule is subject to the exception that in the absence of objection and as a matter of convenience to all parties, a court may properly treat all or any part of the original record of the case filed in its archives as read into the records of a case pending before it, when with the knowledge of the opposing party, reference is made to it, by name and number or in some other manner by which it is sufficiently designated. Thus, for said exception to apply, the party concerned must be given an opportunity to object before the court could take judicial notice of any record pertaining to other cases pending before it.[17]

Respondent should have been given an opportunity to object before the Court *En Banc* take judicial notice of the PEZA Certification that was offered and admitted in the Court in Division. In this case, however, petitioner only raised its argument after the case was submitted for decision and during the motion for reconsideration of the assailed Decision.

Clearly, the denial of Exhibit "P-2" is proper.

Petitioner failed to establish its entitlement to refund.

Petitioner claims that it was able to prove its zero-rated sales by presenting sufficient evidence. Other than PSC's PEZA Certification, petitioner maintains that it offered other documentary exhibits such as Sworn Certification, accompanied by a breakdown schedule outlining taxable and zero-rated transactions, photocopies of invoices and receipts, which show the date of transactions with PSC, invoice numbers, amounts of sales and the zero-rated sales, and original and amended Quarterly VAT Return for the third quarter of TY 2018 to show that it consistently reported zero-rated sales amounting to ₱15,540,000.00. These exhibits were admitted by the Special First Division and consitute sufficient evidence to establish its zero-rated sales.

We do not agree.

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[17] *Pilipinas Shell Petroleum Corporation v. Commissioner of Customs,* G.R. No. 195876, 05 December 2016.

As aptly found by the Special First Division, the sale of services to a PEZA-registered entity is subject to VAT at zero percent, and it is imperative upon petitioner to prove that its sales to its sole client is zero-rated. Thus, absent any proof that PSC is indeed PEZA-registered, which is clearly evidenced by its PEZA Certification that was denied admission by the Special First Division, there is no sufficient proof to show that sales to PSC by petitioner is indeed zero-rated.

Upon review the records of the case, the Court also finds that the *Petition for Review* filed before the Court in Division should have been dismissed for lack of jurisdiction. Petitioner appealed before the Court in Division the BIR Letter dated January 20, 2021, which it received on January 22, 2021, issued by Revenue District Office (RDO) No. 98 – Cagayan De Oro City, informing petitioner of the denial of its claim for refund.

Sections 7 (a) (1) and (2), and 11 of Republic Act (RA) No. 1125,[18] as amended by RA No. 9282,[19] confers jurisdiction on this Court relative to decisions and inactions of respondent, and states the manner of appealing the same, to wit:

> SEC. 7. Jurisdiction. — The CTA shall exercise:
>
> (a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
>
> (1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue;
>
> (2) Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code provides a specific period for action, in which case the inaction shall be deemed a denial;" (Emphases added)
>
> SEC. 11. Who May Appeal; Mode of Appeal; Effect of Appeal. — Any party adversely affected by a decision, ruling or inaction of the Commissioner of Internal Revenue . . . may file an appeal with the CTA within thirty (30) days after the receipt of such decision or ruling or after

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18 AN ACT CREATING THE COURT OF TAX APPEALS.

19 AN ACT EXPANDING THE JURISDICTION OF THE COURT OF TAX APPEALS (CTA), ELEVATING ITS RANK TO THE LEVEL OF A COLLEGIATE COURT WITH SPECIAL JURISDICTION AND ENLARGING ITS MEMBERSHIP, AMENDING FOR THE PURPOSE CERTAIN SECTIONS OR REPUBLIC ACT NO. 1125, AS AMENDED, OTHERWISE KNOWN AS THE LAW CREATING THE COURT OF TAX APPEALS, AND FOR OTHER PURPOSES.

> the expiration of the period fixed by law for action as referred to in Section 7(a)(2) herein.
>
> xxx xxx xxx.

Relative thereto is Section 112 of the NIRC of 1997, as amended, which provides:

> SEC. 112. Refunds or Tax Credits of Input Tax. —
>
> xxx xxx xxx
>
> (C) Period within which Refund of Input Taxes shall be Made. — In proper cases, **the Commissioner shall grant a refund for creditable input taxes within ninety (90) days from the date of submission of the official receipts or invoices and other documents in support of the application filed** in accordance with Subsections (A) and (B) hereof: Provided, That should the Commissioner find that the grant of refund is not proper, the Commissioner must state in writing the legal and factual basis for the denial.
>
> In case of full or partial denial of the claim for tax refund, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim, appeal the decision with the Court of Tax Appeals: Provided, however, That failure on the part of any official, agent, or employee of the BIR to act on the application within the ninety (90)-day period shall be punishable under Section 269 of this Code.

Based on the foregoing provision, this Court has appellate jurisdiction over decisions, rulings, or inactions of respondent. A taxpayer may appeal the decision of respondent fully or partially denying its claim for refund within 30 days from receipt of his decision.

It must be noted, however, that the denial letter should be signed by the Commissioner of Internal Revenue (CIR), Deputy Commissioner-Operations Group (DCIR-OG)/Assistant Commissioner (ACIR)/Regional Director, as the case may be, pursuant to I (A)(5) of Revenue Memorandum Circular (RMC) No. 17-2018,[20] viz:

> 5. Any findings in the course of the verification/review of the VAT claims that may lead to a deficiency in internal revenue taxes, other than VAT, shall be communicated by the processing/reviewing office to the concerned investigating office having jurisdiction over the taxpayer-claimant. However, if the findings involve VAT, these may result to

[20] Amending Revenue Memorandum Circular (RMC) No. 89-2017 and Certain Provisions of RMC No. 54-2014 Regarding the Processing of Claims for Issuance of Tax Refund/Tax Credit Certificate (TCC) in Relation to Amendments Made in the National Internal Revenue Code (NIRC) of 1997, as amended by Republic Act No. 10963, known as the Tax Reform for Acceleration and Inclusion (TRAIN), dated February 27, 2018.

> disallowance or denial of the claim, or if the case warrants, for possible assessment of VAT liability.
>
> Should the claim be for denial, such fact should be communicated in writing to the taxpayer within the 90-day period. **The denial letter shall be signed by the Commissioner (CIR)/Deputy Commissioner-Operations Group (DCIR-OG)/Assistant Commissioner (ACIR)/Regional Director, as the case may be**. (Emphasis supplied)

Moreover, the same RMC provides that the claims for VAT refund are to be filed with and processed by the concerned RDO and shall be subject to the approval/disapproval by the Regional Director, viz:

> C. Claims for VAT refund by other zero-rated taxpayers, indirect exporters and claims filed in accordance with Sec. 112 (B) of Tax Code, as amended by R.A. No. 10963
>
> 1. All claims for VAT refund by other zero-rated taxpayers, indirect exporters and claims filed in accordance with Sec. 112 (B) of the Tax Code, as amended, shall be filed with and processed by the concerned Revenue District Office and LT Audit Division having jurisdiction over the taxpayer-claimant.
>
> 2. The docket with report on said claims shall be reviewed by the Assessment Division/Office of the Head Revenue Executive Assistant (HREA), and shall be subject to approval/disapproval by the Regional Director/ACIR-LTS, as the case may be, irrespective of amount.

Logically, after the processing of the claim for refund filed before the RDO, it shall be approved by the Regional Director, who is authorized to sign the denial letter.

Here, the subject of the *Petition for Review* filed before the Court in Division was issued by RDO No. 98 – Cagayan De Oro City. Thus, it is not the decision contemplated under Revised Rules of the Court of Tax Appeals (RRCTA) appealable to the Court in Division.

Consequently, this Court finds no reason to grant the instant *Petition for Review*.

WHEREFORE, in view of the foregoing, the **Petition for Review** filed on December 28, 2023 is **DENIED** for lack of merit.

SO ORDERED.

CORAZON G. FERRER-FLORES
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

With due respect, please see Dissenting Opinion
JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

Marian Ivy F. Reyes-Fajardo
MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

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 case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

EN BANC

SANKYU-ATS CONSORTIUM-B,
Petitioner,

CTA EB No. 2840
(CTA Case No. 10471)

- versus -

Present:

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

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
JUL 31 2025 3:30pm

x - x

DISSENTING OPINION

BACORRO-VILLENA, J.:

With due respect, I am constrained to withhold my concurrence from the *ponencia*'s pronouncements that: (1) the denial of the admission of petitioner's Exhibit "P-2", the Philippine Economic Zone Authority (**PEZA**) Certificate of Registration (**COR**), was proper; and (2) that the Court in Division lacked jurisdiction over the Petition for Review *ab initio*.

Respectfully, I am forwarding below the reasons for this dissent.

The *ponencia* affirms the Court in Division's denial of admission of Exhibit "P-2" on the following grounds: (1) petitioner's omission to physically submit the duly marked document with its Formal Offer of Evidence (**FOE**); and (2) its subsequent failure to move for reconsideration of the adverse ruling, *i.e.*, denial of the admission of Exhibit "P-2."

I, respectfully, disagree.

A formal offer is necessary because judges are mandated to rest their findings of facts and their judgment only upon the evidence offered by the parties during the trial.[1] It enables the trial judge to know the purpose for which the party is presenting the evidence; on the other hand, it also allows opposing parties to examine the evidence and object to its admissibility.[2]

Nonetheless, the Supreme Court, citing the case of *Martin Peñoso and Elizabeth Peñoso v. Macrosman Dona*[3], reminds us in *Spouses Benjamin and Teofila Bautista v. Luisa Del Valle*[4] that litigation is not a game of technicalities, and the discretion to apply procedural rules strictly or liberally must be exercised in accordance with the tenets of justice and fair play, taking into consideration the circumstances of each case. Thus, even evidence not formally offered may still be admitted in evidence as long as (**a**) the evidence was duly identified by testimony duly recorded; and (**b**) the evidence was incorporated in the records of the case.[5] The Supreme Court had, in several instances, relaxed the rule on FOE with the presence of the aforesaid two requirements.[6]

Both requirements are clearly satisfied in this case, thus justifying a relaxation of the rule on FOE. The PEZA COR was not a belated or surreptitious exhibit intended to catch respondent off-guard. It was properly pre-marked as Exhibit "P-2" and compared with a certified true copy (**CTC**) during the pre-trial proceedings.[7] The records of the case further bear that it was duly identified by petitioner's witness, Yvonne Karla M. Telan (**Telan**), in the course of her direct testimony.[8] From the outset, both respondent and the Court in Division were aware of the existence, nature and relevance of the document to petitioner's claim for refund.

Additionally, same exact copy of the exhibit was attested by Dorothy L. Maano (**Maano**), respondent's Assistant Chief, as certified true copy (**CTC**) of the document submitted to her office.[9] Moreover, a certified machine copy of the document, issued by the Court's Record Officer, Maria Anna E. Cada (**Cada**), reflecting that the same document was also submitted and admitted in another case[10] involving the same parties pending before the Court of Tax Appeals (**CTA**) Third Division.[11] Taken as a whole, the circumstances clearly

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[1] *Platinum Group Metals Corporation v. The Mercantile Insurance Co., Inc.*, G.R. No. 253716, 10 July 2023.
[2] Id.
[3] G.R. No. 154018, 03 April 2007.
[4] G.R. No. 209621 (Notice), 12 March 2018.
[5] Id.
[6] Id.
[7] Commissioner's Report on 31 May 2022, Division Docket, Volume II, p. 490.
[8] Minutes of the Hearing dated 21 July 2022, id., p. 529.
[9] BIR Records, Folder I, p. 830.
[10] CTA Case No. 10313.
[11] Division Docket, Volume II, p. 1018.

establish that Exhibit "P-2" has been duly incorporated into the records of the case.

Given that both requirements are present in this case, Exhibit "P-2" should be deemed part of the evidence on record and accorded due probative value, notwithstanding the prior denial of its admission. In effect, Exhibit "P-2" stands as if it had never been denied admission, consistent with prevailing jurisprudence allowing the consideration of evidence not formally offered under these circumstances.

Petitioner's subsequent failure to move for reconsideration of the denial of the admission of Exhibit "P-2" is of no moment. Jurisprudence has long recognized that interlocutory orders, including resolutions on FOE, may be reviewed as part of an appeal from the final judgment rendered in the case.[12]

Here, petitioner assigned as one of the errors committed by the Court in Division the issue of the admissibility of Exhibit "P-2".[13] Thus, the Court *En Banc* may still modify the subject interlocutory order notwithstanding petitioner's failure to move for its reconsideration before the Court in Division.

It bears emphasis that the law creating the CTA specifically provides that proceedings before it shall not be governed strictly by the technical rules of evidence and that the paramount consideration remains the ascertainment of truth.[14] Rules of procedure should not preclude courts from considering undisputed facts to arrive at a just ruling.[15]

Based on the foregoing, I respectfully submit that the denial of the admission of Exhibit "P-2" was *not* proper.

As to the *ponencia*'s discussion on jurisdiction, the majority's sudden invocation of a jurisdictional infirmity, premised on the assertion that the letter dated 20 January 2021[16] (**denial letter**) issued by Revenue District Officer (**RDOr**) Gledonio B. Teope, Jr. (**Teope**), is not appealable before the Court in Division, as it was not issued by a regional director (**RD**), in

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12 See *Catherine A. Yee v. Hon. Estrellita P. Bernabe*, G.R. No. 141393, 19 April 2006.
13 Issues, par. 17.1, *Rollo*, p. 13.
14 *Tullett Prebon (Philippines), Inc., v. Commissioner of Internal Revenue*, G.R. No. 257219 (Formerly UDK No. 16941), 15 July 2024.
15 Id.
16 Exhibit "P-19", Division Docket, Volume II, pp. 917-918.

accordance with Revenue Memorandum Circular (**RMC**) No. 17-2018.[17] At the threshold, it bears emphasis that the very issue of jurisdiction was already squarely passed upon by the Court in Division, in this wise:[18]

> ...
> **The CTA has jurisdiction over the present Petition.**
>
> Section 112(A) and (C) of the NIRC of 1997, as amended, provides the legal basis to claim for refund or issuance of a TCC of input VAT, including the taxpayer's remedy to appeal to the CTA the adverse decision or the inaction of the Commissioner of Internal Revenue (CIR), *viz.*:
>
> > "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: x x x
> >
> > xxx xxx xxx
> >
> > (C) *Period within which **Refund** of Input Taxes shall be Made.* — In proper cases, the Commissioner shall grant a **refund** for creditable input taxes within **ninety (90) days** from the date of submission of the **official receipts or invoices and other** documents in support of the application filed in accordance with Subsections (A) **and (B) hereof**; ***Provided***, **That, should the Commissioner find that the grant of refund is not proper, the Commissioner must state in writing the legal and factual basis for the denial.**
> >
> > <u>In case of full or partial denial of the claim for refund, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim, appeal the decision with the Court of Tax Appeals</u>: ***Provided, however***, **That failure on the part of any official, agent, or employee of the BIR to act on the application within the ninety (90)-day period shall be punishable under Section 269 of this Code.**"
>
> Complementing the aforementioned provision are Sections 7 and 11 of Republic Act (RA) No. 1125, as amended, conferring exclusive

[17] Amending Revenue Memorandum Circular (RMC) No. 89-2017 and Certain Provisions of RMC No. 54-2014 Regarding the Processing of Claims for Issuance of Tax Refund/Tax Credit Certificate (TCC) in Relation to Amendments Made in the National Internal Revenue Code of 1997, as Amended by Republic Act No. 10963, Known as the Tax Reform for Acceleration and Inclusion (TRAIN)

[18] Citations omitted, italics, underscoring and emphasis in the original text.

appellate jurisdiction upon CTA to review on appeal decision or inaction of the CIR in cases involving refunds of internal revenue taxes, *viz.*:

> "Sec. 7. Jurisdiction. — The CTA shall exercise:
>
> a. Exclusive appellate jurisdiction to review by appeal, as herein provided:
>
> **1. Decisions of the Commissioner of Internal Revenue in cases involving** disputed assessments, **refunds of internal revenue taxes**, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue; x x x
>
> x x x
>
> "SEC. 11. Who May Appeal; Mode of Appeal; Effect of Appeal. — Any party adversely affected by a decision, ruling or inaction of the Commissioner of Internal Revenue x x x may file an appeal with the CTA within thirty (30) days after the receipt of such decision or ruling or after the expiration of the period fixed by law for action as referred to in Section 7(a)(2) herein. x x x"

In this case, petitioner received the Denial Letter on January 22, 2021. Thus, petitioner had thirty (30) days, or until February 22, 2021, to appeal before the CTA. Clearly, petitioner timely filed its Petition for Review on February 22, 2021 and the Court can take cognizance of the case.

Anent respondent's claim that this Court has no jurisdiction over the petition due to petitioner's **alleged failure to submit the complete documentary requirements to support its application for refund**, which is tantamount to non-filing [of its administrative claim], the same is bereft of merit.

To be sure, the failure to submit documentary requirements is one thing; the failure to file an administrative claim is another. In this case, there is no denying that an administrative claim was indeed filed, and that a decision had in fact been issued by the BIR thru its Letter Denial dated January 20, 2021. As afore-discussed, a decision of the CIR is subject to review by this Court pursuant to Section 7 (a) (1) of RA 1125, as amended.

More importantly, SEC. 4.112-1 of RR 26-2018 provides:

> **SEC. 4.112-1. <u>Claims for Refund/Credit of Input Tax.</u>** —
>
> xxx xxx xxx

> **(d) Period within which refund/credit of input taxes shall be made**
>
> In proper cases, the Commissioner of Internal Revenue shall grant refund for creditable input taxes within **ninety (90) days** from the date of submission of the **official receipts or invoices and other documents** in support of the application filed in accordance with subsections (a) and (b) hereof; ***Provided, That*, should the Commissioner find that the grant of refund is not proper, the Commissioner must state in writing the legal and factual basis of the denial.**
>
> **The 90-day period to process and decide shall start from the filing of the claim up to the release of the payment of the VAT refund. *Provided, That*, the claim/application is considered to have been filed only upon submission of the official receipts or invoices and other documents in support of the application as prescribed under pertinent revenue issuances.**

The pertinent portions of [RMC] 47-2019, on the other hand, read:

> I. GENERAL POLICIES
>
> xxx
>
> 5. The taxpayer-claimant shall ensure the completeness and authenticity of the documentary requirements upon filing of the application for VAT refund. **Failure on the part of the taxpayer-claimant to submit the complete documents in support of the claim shall result in non-acceptance of the applications.** Due to the very limited time for processing the VAT refunds, no additional document/s shall be subsequently requested/required from the taxpayer-claimant. **Any unsupported claim shall be outrightly disallowed, resulting in full/partial denial of the claim.**
>
> xxx xxx xxx
>
> II. DOCUMENTS TO BE SUBMITTED BY THE TAXPAYER-CLAIMANTS UPON FILING OF THE APPLICATIONS FOR VAT REFUND
>
> 1. The application/s must be **accompanied with complete supporting documents enumerated in the Revised Checklist of Mandatory Requirements (Annex "A.1")** for claims filed pursuant to Sec. 112(A) of the Tax Code, as amended, or Checklist of Documentary

> Requirements (Annex "A.2") for claims filed under Sec. 112(B) of the same Tax Code. x x x

> Based on the foregoing, it is clear that the complete supporting documents must be submitted upon application for refund, and the taxpayer-claimant's failure to do so shall result in non-acceptance of the application. It is also categorical that no additional documents shall be requested from the taxpayer-claimant and that any unsupported claim shall be disallowed/denied.
>
> Indubitably, there are two (2) possible actions of the BIR on taxpayer-claimant's claim for refund of input VAT, *viz*:
>
> (1) Non-acceptance of the application for refund for taxpayer-claimant's failure to submit complete documents at the time of the filing of the administrative claim; or,
>
> (2) Deny the unsupported claim.
>
> In this case, records reveal that petitioner's administrative claim as well as the supporting documents were received by the BIR on September 30, 2020. The BIR necessarily found petitioner's submission complete; otherwise, it would not have received the administrative claim and the supporting documents.
>
> After evaluating the documents submitted by petitioner, the BIR issued the Letter Denial dated January 20, 2021, which states:
>
> ...
>
> Plainly, petitioner's claim was denied in view of the afore-quoted observations of the BIR on the submissions made by petitioner.
>
> ...

The clear wording of the denial letter states that "we regret to inform you that your application for VAT refund is **denied**" and nowhere does it suggest that the application was merely "not accepted" or held in abeyance. The unmistakable tenor of the communication conveys a definitive ruling on the part of respondent, which reasonably led petitioner to believe that it had received an appealable decision.

In this regard, the Supreme Court's pronouncement in *Oceanic Wireless Network, Inc. v. Commissioner of Internal Revenue, et al.*[19] is particularly instructive:

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[19] G.R. No. 148380, 09 December 2005.

> ...
>
> [W]e deem it appropriate to state **that the Commissioner of Internal Revenue should always indicate to the taxpayer in clear and unequivocal language whenever his action on an assessment questioned by a taxpayer constitutes his final determination on the disputed assessment**, as contemplated by Sections 7 and 11 of Republic Act No. 1125, as amended. On the basis of his statement indubitably showing that the Commissioner's communicated action is his final decision on the contested assessment, the aggrieved taxpayer would then be able to take recourse to the tax court at the opportune time. Without needless difficulty, the taxpayer would be able to determine when his right to appeal to the tax court accrues.
>
> The rule of conduct would also obviate all desire and opportunity on the part of the taxpayer to continually delay the finality of the assessment — and, consequently, the collection of the amount demanded as taxes — by repeated requests for recomputation and reconsideration. On the part of the Commissioner, this would encourage his office to conduct a careful and thorough study of every questioned assessment and render a correct and definite decision thereon in the first instance. **This would also deter the Commissioner from unfairly making the taxpayer grope in the dark and speculate as to which action constitutes the decision appealable to the tax court. Of greater import, this rule of conduct would meet a pressing need for fair play, regularity, and orderliness in administrative action.**[20]
>
> ...

The Supreme Court emphasized the importance for the Bureau of Internal Revenue (**BIR**) to indicate in "clear and unequivocal language" when its action constitutes a final determination appealable to this Court. The rationale is to prevent unnecessary speculation by the taxpayer as to the finality of an adverse action and to allow the timely availment of judicial remedies.

The foregoing judicial precept finds further affirmation in *Allied Banking Corporation v. Commissioner of Internal Revenue*[21], where the Supreme Court held that the confusion caused by the CIR by using the words "final decision" and "appeal", which connote that the only remedy available to the taxpayer is to bring the matter directly to this Court, estopped the CIR from claiming that he did not intend the Formal Letter of Demand (**FLD**) with Assessment Notices (**ANs**) to be a final decision, thus:

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[20] Emphasis supplied.
[21] G.R. No. 175097, 05 February 2010.

> ...
>
> Moreover, we cannot ignore the fact that in the Formal Letter of Demand with Assessment Notices, respondent used the word "appeal" instead of "protest", "reinvestigation", or "reconsideration". Although there was no direct reference for petitioner to bring the matter directly to the CTA, it cannot be denied that the word "appeal" under prevailing tax laws refers to the filing of a Petition for Review with the CTA. As aptly pointed out by petitioner, under Section 228 of the NIRC, the terms "protest", "reinvestigation" and "reconsideration" refer to the administrative remedies a taxpayer may take before the CIR, while the term "appeal" refers to the remedy available to the taxpayer before the CTA. Section 9 of RA 9282, amending Section 11 of RA 1125, likewise uses the term "appeal" when referring to the action a taxpayer must take when adversely affected by a decision, ruling, or inaction of the CIR. As we see it then, petitioner in appealing the Formal Letter of Demand with Assessment Notices to the CTA merely took the cue from respondent. Besides, any **doubt in the interpretation or use of the word "appeal" in the Formal Letter of Demand with Assessment Notices should be resolved in favor of petitioner, and not the respondent who caused the confusion.**[22]
>
> ...

By analogy, the wording of the denial letter issued by RDOr Teope, couched in definitive terms, reasonably gave petitioner the impression that it was a final disposition—thus triggering the appeal before this Court.

To now require petitioner to await another denial from an RD—after its claim had already been expressly denied and its supporting documents returned—would unjustly place petitioner in procedural *limbo*. **It bears emphasis that by the time petitioner received the denial letter from RDOr Teope on <u>22 January 2021</u>, the two (2)-year reglementary period for filing an administrative claim for refund of its excess input VAT attributable to its zero-rated sales in the third (3rd) quarter of taxable year (TY) 2018 had already lapsed.[23] Consequently, <u>petitioner could no longer refile the same claim with respondent</u>.** To insist that petitioner should wait for another denial from an RD who, in all likelihood, would not act—given that the BIR had already returned petitioner's supporting documents—would foster uncertainty, undermine administrative fairness and **effectively nullify petitioner's claim for refund without the benefit of a formal decision. Such procedural rigidity would defeat, rather than promote, the ends of justice.**

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22 Citation omitted and emphasis supplied.

23 Under Revenue Regulations (RR) No. 27-2020, for VAT refund claims covering the calendar quarter ending 30 September 2018, the deadline was extended until **<u>31 December 2020</u>**.

Moreover, even assuming *arguendo* that RDOr Teope lacked the authority to issue a final denial, any defect arising therefrom was nonetheless cured by the RD's subsequent ratification.

In a letter dated 09 February 2021[24], which preceded petitioner's filing of the instant Petition for Review before the Court in Division on 22 February 2021[25], RD Esmeralda M. Tabule (**Tabule**) was apprised of by the denial issued by RDOr Teope and, notably, gave her express approval of the same, to wit:[26]

> ...
>
> Results of the verification were communicated by the aforementioned revenue officers thru an unnumbered memorandum dated *December 22, 2020* which was received by the Assessment Division on *January 5, 2021* and ultimately charged to the undersigned reviewer on *January 14, 2021*. Review of the report of investigation revealed that the administrative claim was **denied** due to *incomplete invoicing requirements* per Section 237 of the Tax Code, as amended and there are *lacking documents in connection with the Revised Checklist of Mandatory Requirements on Claims for VAT Refund* enumerated in Annex A.1 of Revenue Memorandum Circular No. 47-2019 dated April 16, 2019. However, the undersigned reviewer returned the entire docket of investigation on *January 15, 2021* on the ground of their failure to communicate the said denial to the taxpayer/claimant as part of the due process requirement under the clarificatory provisions of RMC No. 17-2018 and Section II of RMC 54-2014. In compliance thereof, **a denial letter dated January 20, 2021 was sent and received by Cherry Cantano, the authorized representative of the taxpayer-claimant on January 22, 2021 at the abovementioned registered address**.
>
> *Recommendation:*
>
> Inasmuch as the administrative claim for VAT Refund has been verified and acted by the aforementioned revenue officers and that the denial of such claim was effectively communicated to the taxpayer/ claimant, it is respectfully recommended that this case ***be filed for future reference***.
>
> [Signed]
> **KING CHRISTOPHER R. LAGANAO**
> Revenue Officer I

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[24] BIR Records, Folder I, p. 1116.
[25] Petition for Review, Division Docket, Volume I, p. 6.
[26] Italics and emphasis in the original text and supplied, and underscoring supplied.

Recommending Approval:

[Signed]
ADORA L. SIJO
Chief, Assessment Division

Approved/~~Disapproved~~:

[Signed]
ESMERALDA M. TABULE, CESO V
Regional Director

...

Moreover, in respondent's Answer[27], the CIR, himself or herself, did not repudiate RDOr Teope's action for lack of authority. Rather, respondent echoed the same rationale as the RDOr, *i.e.*, petitioner purportedly failed to submit complete documentary requirements, and did not assert that the denial was void for want of authority. Jurisprudence holds that unauthorized acts of an agent or subordinate may bind the principal when subsequently ratified, either expressly or impliedly, or when the principal holds out the agent as having authority.[28]

Here, through the express approval of RD Tabule, who adopted and affirmed RDOr Teope's ground for denial, and the subsequent adoption thereof by the CIR in his or her Answer, it is beyond doubt that RDOr Teope's unauthorized act was effectively ratified, thereby rendering it binding upon the BIR. It is thus inequitable to penalize petitioner for relying on a denial that respondent, himself or herself, by subsequent confirmation and conduct, treated as valid and operative.

In sum, the categorical language of the denial letter, the jurisprudential standard requiring clarity and finality in administrative action and the respondent's own acts of ratification all coalesce to justify petitioner's recourse to the Court in Division. The denial is properly appealable and the jurisdiction of the Court in Division is lawfully invoked.

It bears stressing that the rules of procedure are merely tools designed to facilitate the attainment of justice.[29] They were conceived and promulgated to effectively aid the court in the dispensation of justice. Courts are not slaves to or robots of technical rules, shorn of judicial discretion.[30] In rendering justice, courts have always been, as they ought to be, conscientiously guided

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[27] Division Docket, Volume I, pp. 372-389.
[28] See *University of Mindanao, Inc. v. Bangko Sentral Pilipinas, et al.*, G.R. Nos. 194964-65, 11 January 2016.
[29] *Santiago Cua, Jr., et. al. v. Miguel Ocampo Tan, et. al.*, G.R. Nos. 181455-56 & 182008, 04 December 2009.
[30] Id.

by the norm that, on the balance, technicalities take a backseat against substantive rights, and not the other way around. Thus, if the application of the Rules would tend to frustrate rather than promote justice, it is always within the power of the Court to suspend the Rules, or except a particular case from its operation.[31]

All told, I vote to **GRANT** the Petition for Review, **REVERSE AND SET ASIDE** the Decision dated 01 August 2023 and the Resolution dated 22 November 2023, of the Special First Division in CTA Case No. 10471. Consequently, the Court *En Banc* should **PROCEED** to make a determination of petitioner's compliance with the other requisites for VAT refund.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

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[31] Id.