REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC
****

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**CTA EB No. 2059** (CTA Case No. 9442)
	Present:
- versus -	**DEL ROSARIO,** *P.J.*, **CASTAÑEDA, JR., UY, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA,** and **MODESTO-SAN PEDRO,** *JJ.*
ONCHO PHILIPPINES INCORPORATED, Respondent.	***Promulgated:*** OCT 30 2020 11:00 a.m.

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DECISION

UY, *J.*:

Before the Court *En Banc* is a *Petition for Review* filed on May 21, 2019[1] by the Commissioner of Internal Revenue against Oncho Philippines Incorporated, praying for the reversal and setting aside of the Decision dated January 14, 2019 and Resolution dated April 5, 2019[2], both rendered by the Special Second Division of this Court (Court in Division) in CTA Case No. 9442, entitled *"Oncho Philippines Incorporated, Petitioner, vs. Commissioner of Internal Revenue, Respondent"*. The dispositive portions thereof respectively read:

Decision dated January 14, 2019:

> "**WHEREFORE,** premises considered, the instant Petition for Review is **PARTIALLY GRANTED**.

[1] EB Docket, pp. 6 to 12
[2] Penned by Associate Justice Juanito C. Castañeda, and concurred by Associate Justice Catherine T. Manahan, EB Docket, pp. 16 to 41; and pp. 43-49, respectively.

Accordingly, respondent is **ORDERED TO REFUND** to petitioner the amount of **₱2,563,990.68**, representing its excess and unutilized input VAT attributable to zero-rated sales for the four quarters of CY 2014.

SO ORDERED."

<u>Resolution April 5, 2019</u>:

"**WHEREFORE**, finding no cogent reason to reverse the ruling in the assailed Decision, respondent's **Motion for Partial Reconsideration** is **DENIED** for lack of merit.

SO ORDERED."

THE FACTS

Petitioner is the duly appointed Commissioner of the Bureau of Internal Revenue (or Commissioner) who has the power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto or other matters arising under the National Internal Revenue Code (NIRC) or other laws or portions thereof administered by the Bureau of Internal Revenue (BIR). He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

On the other hand, respondent Oncho Philippines Incorporated (or Oncho) is a corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with principal office address at 4th Floor G.A. Yupangco Building, 339 Gil Puyat Ave. corner N. Garcia St., Makati City. It is a value-added tax (VAT)-registered entity with Taxpayer Identification No. 003-982-227-000, as evidenced by its Bureau of Internal Revenue (BIR) Certificate of Registration No. OCN9RC0000371397 dated July 22, 2013.

In its Amended Articles of Incorporation, Oncho's primary purposes are as follows:

"To the extent permitted by law, to carry on and conduct general as well as specialty (including but not limited to air-condition, fire-protection, and plumbing systems) construction business except locally funded government projects, including the provision of structural mechanical, electrical and other construction, erection, installation, repair, and related services or otherwise engage in any related work or residential, industrial, and commercial buildings; to manufacture or otherwise acquire and furnish such buildings with tools and equipment connected therewith or required therefore; to manufacture, produce, adapt and prepare and deal in or with any materials, articles or things incidental to or required for or useful in connection with any of such activity; and generally to carry on any other business which can be advantageously pursued in conjunction with or incidental to any of the above purposes."

For calendar year (CY) 2014, Oncho filed with the BIR its Monthly VAT Declarations, as follows:

MONTHLY VAT DECLARATION (2014)	DATE FILED
January	February 12, 2014
February	March 13, 2014
March	April 15, 2014
April	May 15, 2014
May	June 16, 2014
June	July, 14, 2014
July	August 14, 2014
August	September 17, 2014
September	October 15, 2014
October	November 17, 2014
November	December 17, 2014
December	January 26, 2015

Oncho also filed its Quarterly VAT Returns for CY 2014 with the BIR on the following dates:

QUARTERLY VAT RETURN (2014)	DATE FILED
First Quarter	April 15, 2014[3]
Second Quarter	July 14, 2014[4] (Amended)
Third Quarter	October 15, 2014[5]
Fourth Quarter	January 26, 2015 (Amended)[6]

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[3] Exhibit "P-8", Division Docket (CTA Case No. 9442) – Vol. III, pp. 1169 to 1170.
[4] Exhibit "P-11", Division Docket (CTA Case No. 9442) – Vol. III, pp. 1175 to 1176.
[5] Exhibit "P-14", Division Docket (CTA Case No. 9442) – Vol. III, pp. 1183 to 1184.
[6] Exhibit "P-17", Division Docket (CTA Case No. 9442) – Vol. III, pp. 1191 to 1192.

Oncho's VAT Returns showed excess input VAT payments on its importation and domestic purchases of goods and services in the aggregate amount of ₱7,486,676.34.

Thus, it filed its administrative claim for refund, together with all the supporting documents, with BIR Revenue District Office No. 49 on March 31, 2016.

Subsequently, Oncho filed a *Petition for Review* before the Court in Division on August 25, 2016 docketed as CTA Case No. 9442.

On October 28, 2016, the Commissioner filed his *Answer* in said case, interposing special and affirmative defenses. According to the Commissioner, it is incumbent upon Oncho to show that it has complied with the provision of Section 204 (C) in relation to Section 229 of the NIRC of 1997, as amended. Allegedly, Oncho's claim for refund or issuance of tax credit certificate was not fully substantiated by proper documents, such as sales invoices, official receipts and other supporting documents.

On November 16, 2016, Oncho filed its *Reply*, alleging that the subject claim was fully substantiated and properly documented; and that it has complied with the provisions of Sections 112 (A) and (C) of the NIRC of 1997, as amended, and existing rules.

Thereafter, the Commissioner filed his *Pre-Trial Brief* on January 4, 2017, while Oncho filed its *Pre-Trial Brief* on January 13, 2017.

After the Pre-Trial Conference held on February 16, 2017[7], the parties filed their *Joint Stipulation of Facts and Issues* on March 8, 2017[8]. The Court in Division issued a *Pre-Trial Order* on March 15, 2017 and terminated the pre-trial[9].

During trial, Oncho presented Flordeliza J. Bondad, its Accounting Manager and Michael L. Aguirre, the Court-commissioned Independent Certified Public Accountant (ICPA), as its witnesses.

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[7] Minutes of Hearing on February 16, 2017, Division Docket (CTA Case No. 9442) – Vol. II, p. 844
[8] Division Docket (CTA Case No. 9442) – Vol. II, pp. 853-858
[9] Division Docket (CTA Case No. 9442) – Vol. II, pp.860-865

On July 14, 2017, Oncho filed its *Formal Offer of Evidence*[10].

In the Resolution[11] dated September 15, 2017, the Court in Division admitted some of the evidence, but denied the others for failure to submit the duly-marked exhibits; and for not being found in the records.

Subsequently, Oncho filed a *Motion for Reconsideration (of September 15, 2017 Resolution)*[12] on October 2, 2017, stating that the non-submission of the duly marked exhibits was an honest inadvertence in the preparation of the formal offer of evidence; and that it has no intention to delay the proceedings.

In the Resolution dated November 24, 2017, the Court admitted all the exhibits, except Exhibit "P-38" for failure to submit the duly marked document.

On the part of the Commissioner, his counsel manifested during the hearing held on September 18, 2017[13] that he will not present any witness.

The Court in Division submitted the case for decision on January 22, 2018, after the filing of Oncho's *Memorandum* on October 18, 2017, and the Commissioner's *Memorandum* on December 27, 2017.

In the assailed Decision dated January 14, 2019[14], the Court in Division partially granted the *Petition for Review* in CTA Case No. 9442 and ruled that Oncho is entitled to the refund of its excess and unutilized input VAT attributable to zero-rated sales for the four quarters of CY 2014 amounting to ₱2,563,990.68.

On January 31, 2019, the Commissioner filed a *Motion for Partial Reconsideration*[15] arguing that Oncho's sales to BeltonTotoku Philippines, Inc. and Hadoron Studio, Inc. should not be considered as zero-rated sales since their Philippine Economic Zone Authority

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[10] Division Docket (CTA Case No. 9442) – Vol. III, pp. 1025 to 1037.
[11] Division Docket (CTA Case No. 9442) – Vol. III, pp. 1152 to 1153.
[12] Division Docket (CTA Case No. 9442) – Vol. III, pp. 1160 to 1164.
[13] Division Docket (CTA Case No. 9442) – Vol. III, pp. 1154 to 1155
[14] Division Docket (CTA Case No. 9442) – Vol. III, pp. 1314 to 1339.
[15] Division Docket (CTA Case No. 9442) – Vol. III, pp. 1340 to 1345.

(PEZA) Certificates of Registration, were not properly identified and marked; that Oncho failed to prove or substantiate with proper documentary evidence its claim for refund or tax credit of input VAT on its domestic purchases of services with official receipts and input VAT on its domestic purchases of goods with invoices; and that taxes paid and collected are presumed to be made in accordance with the laws and regulations, hence, not creditable or refundable.

Oncho filed its *Comment/Opposition*[16] stating that all the documentary exhibits that were formally offered were duly marked, presented, shown and identified during the proceedings in this instant case; and that documents submitted, or the lack thereof, at the administrative level of a claim for refund of unutilized input VAT is irrelevant when the claim has already reached the Court after inaction on the part of the Commissioner.

On April 5, 2019, the Court in Division issued the assailed Resolution[17], denying the Commissioner's *Motion for Partial Reconsideration* for lack of merit.

On May 6, 2019, the Commissioner filed before this Court *En Banc* a *Motion for Extension of Time to File Petition for Review,*[18] praying for an extension of fifteen (15) days from May 7, 2019, or until May 22, 2019, within which to file his *Petition for Review.* The same was granted and the Commissioner was given a final and non-extendible period of fifteen (15) days from May 7, 2019, or until May 22, 2019, within which to file the said *Petition for Review.*[19]

On May 21, 2019, the Commissioner filed the instant *Petition for Review*[20]*.* On June 14, 2019, Oncho filed its *Comment/Opposition (To; Petitioner's Petition for Review dated 21 May 2019)*[21].

In the Resolution[22] dated September 3, 2019, the Court *En Banc* gave due course to the instant *Petition for Review* and ordered the parties to file their respective memoranda. Oncho filed its *Memorandum*[23] on October 11, 2019, while the Commissioner,

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[16] Division Docket (CTA Case No. 9442) – Vol. III, pp. 1349 to 1358.
[17] Division Docket (CTA Case No. 9442) – Vol. III, pp. 1361 to 1367.
[18] EB Docket, pp. 1 to 3.
[19] Minute Resolution dated May 14, 2019, EB Docket, p. 5.
[20] EB Docket, pp. 6 to 12.
[21] EB Docket, pp. 55 to 69.
[22] EB Docket, pp. 71 to 72.
[23] EB Docket, pp. 73 to 91.

through his counsel, filed a *Manifestation (In Lieu of Submission of Memorandum)*[24] on October 16, 2019, stating that he is adopting all the arguments and defenses stated in his *Petition for Review* as his *Memorandum*.

Thereafter, this case was submitted for decision in the Resolution[25] dated November 27, 2019.

Hence, this Decision.

GROUNDS FOR THE PETITION

The Commissioner raises the following sole issue in the instant *Petition for Review*, to wit:

> "WHETHER OR NOT THE HONORABLE SPECIAL SECOND DIVISION OF THE CTA ERRED IN PARTIALLY GRANTING RESPONDENT'S PETITION FOR REVIEW AND ORDERING THE REFUND IN THE AMOUNT OF ₱7,486,676.34 REPRESENTING RESPONDENT'S ALLEGED UNUTILIZED EXCESS INPUT VAT ON ITS LOCAL PURCHASES OF GOODS AND SERVICES ATTRIBUTABLE TO ZERO-RATED SALES FOR THE PERIOD 01 JANUARY 2017 TO 31[26] DECEMBER 2014."[27]

Commissioner's arguments:

The Commissioner argues that the Court in Division erred in ordering the refund of Oncho's unutilized input VAT on its local purchases of goods and services attributable to zero-rated sales in the amount of ₱7,486,676.34.

Allegedly, the PEZA certificates of BeltonTotoku Philippines, Inc. and Hadoron Studio, Inc., which are clients of Oncho, were not properly identified and marked and that consequently the Commissioner was not able to check and verify these certificates with the original documents. Allegedly, said documents were not

[24] EB Docket, pp. 92 to 94.
[25] EB Docket, pp. 97 to 98.
[26] Should be 2014.
[27] *Petition for Review*, EB Docket, p. 8.

submitted at the administrative level. As such, the sales made by Oncho to said clients should not be considered as zero-rated sales and that the input VAT attributable to such sales should be disallowed.

Further, the Commissioner insists that Oncho failed to prove or substantiate its claim for refund or tax credit of input VAT on its domestic purchases of services with official receipts and input VAT on its domestic purchases of goods with invoices, thus the same should also be disallowed.

Finally, the Commissioner asserts that taxes paid and collected are presumed to be made in accordance will laws and regulations, hence, not refundable or creditable. It is an established principle that refunds and tax credits are in the nature of tax exemptions and thus, must be construed strictly against the taxpayer.

Oncho's counter-arguments:

Oncho's argues that the instant *Petition for Review* should denied outright for having no factual and legal merit.

Contrary to the allegation of the Commissioner, only the amount of ₱2,563,990.68 was ordered by the Curt in Division to be refunded and not ₱7,486,676.34. According to Oncho, the Court in Division correctly held that it is entitled to its claim for VAT refund, albeit in a reduced amount.

As regards the Commissioner's contention that he was not able to check and verify the original of the PEZA certificates as these were not submitted during the administrative claim nor pre-marked during the Commissioner's Hearing, Oncho points out that all documentary exhibits that were formally offered were duly marked, presented, shown and identified during the proceedings in the instant case.

Oncho maintains that the Commissioner had all the opportunity to question or raises an issue the documentary evidence presented and/or submitted, including the PEZA certificates, invoices and official receipts; and that the Commissioner deliberately failed to do so despite its active participation in all the proceedings.

Further, Oncho asserts that the amount being claimed as unutilized input VAT on domestic purchases of goods and services for the period January 1, 2014 to December 31, 2014 were properly documented.

THE COURT *EN BANC*'S RULING

The instant *Petition for Review* is without merit.

After a careful review of the issues and arguments raised by the Commissioner, this Court notes that these are mere reiterations of what have been considered and passed upon by the Court Division in the assailed Decision dated January 14, 2019, and Resolution dated April 5, 2019.

At the outset, the Court *En Banc* finds erroneous, the Commissioner's claim that the amount of unutilized excess input VAT ordered by the Court in Division to be refunded to Oncho is ₱7,486,676.34. A perusal of the assailed Decision shows that only input VAT amounting to **₱2,563,990.68** and not ₱7,486,676.34, was ordered refunded to Oncho.

The Court in Division correctly found the sales by Oncho to BeltonTotoku Philippines, Inc. and Hadoron Studio, Inc. as zero-rated sales.

The Commissioner insists that Oncho's sales to BeltonTotoku Philippines, Inc. and Hadoron Studio, Inc. should not be considered as zero-rated sales, since the PEZA certificates of these entities were not properly identified and marked during the Commissioner's Hearing and that these certificates were not submitted during the administrative claim. Consequently, the corresponding input VAT attributable to said sales should allegedly be disallowed.

We are not persuaded.

A careful examination of the records of the case shows that the PEZA certificates of BeltonTotoku Philippines, Inc. and Hadoron

Studio, Inc., were clearly identified by the Court-commissioned ICPA, Michael L. Aguirre, in his Judicial Affidavit[28] as follows:

> "13. Question: In your verification of Petitioner's zero-rated sales for the calendar year 2014, what were your findings and observations?
>
> Answer: In performing the foregoing procedures for the verification of the Petitioner's zero-rated sales for 2014, below are or findings and observations:
>
> I have reviewed the documents supporting the zero-rated transactions for services rendered to PEZA-registered entities including official receipts and PEZA certifications. Based on the result of my audit, such zero-rated receipts of ₱104,689,860.41 were properly supported by relevant documents which were compliant with the invoicing requirements of NIRC. Below is a full list of customers with copy of PEZA certificates:

Customer	TIN	Zero-rated Sales	Copy of PEZA Certificates
BeltonTotoku	**202-273-484**	**₱ 15,268,240.00**	**Exhibit P-7-A-ICPA**
Canon Business Machines (Philippines), Inc.	008-183-327	17,308,584.20	Exhibit P-7-B-ICPA
Epson Precision (Phils.), Inc.	004-475-592	17,268,115.00	Exhibit P-7-C-ICPA
Gotoh Philippines Corp.	003-981-506	5,636,260.25	Exhibit P-7-D-ICPA
Hadoron Studio, Inc.	**008-447-878**	**4,439,795.91**	**Exhibit P-7-E-ICPA**
Mspecialty Printing Philippines, Inc.	006-968-441	20,300,146.90	Exhibit P-7-F-ICPA
OB Kogyo (Philippines), Inc.	008-654-170	13,517,718.14	Exhibit P-7-G.1 to G.2-ICPA
Shindengen Philippines Corp.	004-509-867	7,210,000.00	Exhibit P-7-H.1 to H.3-ICPA
Siix Ems Philippines, Inc.	008-535-356	3,741,000.00	Exhibit P-7-I.1 to I.3-ICPA
Total Sales		₱104,689,860.41	

xxx xxx xxx" (*Emphasis supplied.*)

It is evident from the foregoing that contrary to the allegation of the Commissioner, the PEZA certificates of BeltonTotoku, Inc. and

[28] Exhibit "P-48", Division Docket (CTA Case No. 9442) – Vol. III, pp. 882 to 883.

Hadoron Studio, Inc., which form part of the ICPA report, were duly identified by the ICPA during his direct examination.

As regards the Commissioner's assertion that the subject PEZA certificates were not submitted during the administrative claim, and hence should not be admitted as evidence, the same deserves scant consideration.

It must be emphasized that the submission of complete supporting documents by the taxpayer-claimant in the administrative level is presumed, in the absence of contrary evidence, as held in the case of *CBK Power Company Limited vs. Commissioner of Internal Revenue*,[29] to wit:

> "Bearing in mind that the burden to prove entitlement to a tax refund is on the taxpayer, **it is presumed that in order to discharge its burden, petitioner had attached complete supporting documents necessary to prove its entitlement to a refund in its application, absent any evidence to the contrary**."

In view of this presumption and there being no evidence to the contrary, the documents attached to Oncho's administrative claim for refund filed on March 31, 2016[30] are deemed complete documents.

But even granting that We can validly ignore the said presumption and find that Oncho indeed did not present or attach the complete supporting documents in its administrative claim, the Commissioner can always immediately decide a refund claim, in view of the recognized principle that the Commissioner ought to know the records of all taxpayers.[31]

More importantly, the CTA being a court of record, the cases filed before it are litigated *de novo* and party litigants should prove every minute aspect of its case.[32] It is not precluded from accepting

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[29] G.R. Nos. 198729-30, January 15, 2014.
[30] Exhibit "P-3", Division Docket (CTA Case No. 9442) - Vol. II, pp. 503 to 519.
[31] *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.
[32] *Commissioner of Internal Revenue vs. Manila Mining Corporation*, G.R. No. 153204, August 31, 2005.

Oncho's evidence assuming these were not presented at the administrative level.[33] The question of whether the evidence submitted by a party is sufficient to warrant the granting of its prayer lies within the sound discretion and judgment of the Court.[34]

Oncho was able to substantiate its input VAT on its domestic purchases of goods and services.

The Commissioner argues that Oncho failed to substantiate with proper documentary evidence its domestic purchases of services with official receipts and its domestic purchases of goods with invoices. Further, the Commissioner asserts that those claims which do not have authority to print; claims that are not valid source of input VAT; documents which are out of period; documents which entry are unreadable and those purchases which are unsupported, should likewise be disallowed.

We are not convinced.

It bears noting that the grounds relied upon by the Commissioner for the disallowance of Oncho's claimed input VAT had already been considered by the Court in Division. A perusal of the assailed Decision shows that the following input VAT were disallowed for the reasons stated below:

Disallowances:		
Per ICPA Report		
1. Lack of Information/noncompliance with invoicing requirements of Official Receipt		
i. Quantity and unit cost not indicated	₱ 4,499.17	
ii. VAT not separately indicated	472.61	
2. No Authority to Print	212.19	
3. Not a valid source of input VAT	169,102.85	
4. Out of period documents	105,863.36	
5. Unreadable entries in the documents	170,626.14	
6. Amount per source documents not tally with schedule	56,738.52	
7. Unsupported purchases	1,795,418.90	₱2,302,933.74

[33] *Commissioner of Internal Revenue vs. Philippine National Bank,* G.R. No. 180290, September 29, 2014.
[34] *Pilipinas Total Gas, Inc. vs. Commissioner of Internal Revenue,* G.R. No. 207112, December 8, 2015.

Per Court in Division's further verification:

1. Supported by documents other than VAT official receipts	₱ 336,831.89	
2. Supported by documents other than VAT invoices	12,378.75	
3. Supported by computer-generated VAT invoices/official receipts with alterations/insertions, but without countersignature	1,838,759.28	
4. Supported by VAT invoices/official receipts with incorrect or without TIN /with correction but without countersignature	140,738.10	
5. Supported by VAT invoices/official receipts issued not in the name of Oncho	3,210.86	
6. Supported by VAT invoices/official receipts but the VAT amount was not separately indicated	98,055.15	
7. Supported by invalid sales invoices/official receipts	61,988.19	2,491,962.22
TOTAL DISALLOWANCES		**₱4,794,895.96**

Based from the foregoing, input VAT in the total amount of ₱4,794,895.96 were disallowed by the Court in Division for failure to comply with the substantiation requirements under Sections 110(A),113(A) and (B), in relation to Sections 237 and 238 of the NIRC of 1997, as amended.

Considering that the Court in Division made the foregoing factual findings, it behooves upon the Commissioner to specifically pinpoint any error, or validly argue against the said findings. The mere general averment of the Commissioner that Oncho failed to substantiate with proper documentary evidence its domestic purchases of services and goods, is not sufficient to convince the Court *En Banc* that a reversible error was committed by the Court in Division as the same is unsubstantiated, too vague, highly speculative, and uncertain.

Further, it is a basic rule that he who alleges must prove what is alleged.[35] In this case, the Commissioner failed to discharge his burden of disproving the findings of facts made by the Court in Division. Findings of fact by the Court in Division are **not** to be disturbed without any showing of grave abuse of discretion considering that the members of the Division are in the best position to analyze the documents presented by the parties.[36]

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[35] *Eastern Assurance and Surety Corporation vs. Con-Field Construction and Development Corporation*, G.R. No. 159731, April 22, 2008.

[36] *Republic of the Philippines, represented by the Commissioner of Internal Revenue* vs. *Team (Phils.) Energy Corporation (formerly Mirant (Phils.) Energy Corporation)*, G.R. No. 188016, January 14, 2015 citing *Sea-Land Service, Inc.* v. *Court of Appeals*, G.R. No. 122605, April 30, 2001, 357 SCRA 441, 445-446. Refer also to *Rhombus Energy, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 206362, August 1, 2018.

Thus, the ruling of the Court in Division, that Oncho was able to substantiate its claim for VAT refund, albeit in the reduced amount of ₱2,563,990.68, must be sustained.

WHEREFORE, in light of the foregoing considerations, the *Petition for Review* is **DENIED** for lack of merit. Accordingly, the assailed Decision dated January 14, 2019 and Resolution dated April 5, 2019, both rendered by the Court in Division in CTA Case No. 9442 are **AFFIRMED**.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
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