REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

PHILIPPINE NATIONAL BANK, Petitioner,	**CTA EB No. 1129** **(CTA Case No. 8077)**
-versus-	**Present:** Del Rosario, *PJ,* Castañeda, Jr., Bautista, Uy, Casanova, Fabon-Victorino, Mindaro-Grulla, Cotangco-Manalastas, and Ringpis-Liban, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: AUG 2 4 2015 11:37 a.m.

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DECISION

CASTAÑEDA, JR., *J.* :

Before the CTA *En Banc* is the Petition for Review of petitioner Philippine National Bank ("PNB") filed on March 13, 2014 seeking to reverse and set aside the Decision and the Resolution promulgated on November 19, 2013 and February 6, 2014, respectively, by the CTA Special Third Division in the case entitled *"Philippine National Bank v. Commissioner of Internal Revenue"* docketed as CTA Case No. 8077. [1]

PNB prays that this Court issue an Order instructing respondent Commissioner of Internal Revenue ("CIR") to refund or issue a tax credit certificate (TCC) in the amount of P114,051,845.28, representing PNB's

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[1] Penned by Associate Justice Lovell R. Bautista and concurred in by Associate Justice Amelia R. Cotangco-Manalastas; Assailed Decision, *Rollo*, pp. 39-55; Asssailed Resolution, *Rollo*, pp. 57-60.

excess and unutilized creditable withholding taxes (CWT) for calendar year (CY) 2007; or in the alternative, remand the case to the CTA Division for the reception of PNB's supplemental evidence and recall of the Court-commissioned Independent Certified Public Accountant ("ICPA) to supplement his report and identify documents examined in the course of his verification. Other reliefs just or equitable in the premises are likewise prayed for.

The dispositive portion of the assailed Decision states:

> **WHEREFORE,** the Petition for Review is hereby **DENIED** for insufficiency of evidence.
>
> **SO ORDERED.**

The dispositive portion of the assailed Resolution reads:

> **WHEREFORE,** petitioner's "Motion for Reconsideration (With Motion to Reopen Trial and Request for Leave to Submit Supplemental Evidence)" is hereby **DENIED** for lack of merit.
>
> **SO ORDERED.**

THE FACTS

The facts of the case as found by the CTA Special Third Division as stated in the assailed Decision:[2]

> "Petitioner, Philippine National Bank, is a corporation duly organized and existing under the laws of the Republic of the Philippines, with principal office at the PNB Financial Center, President Diosdado Macapagal Boulevard, Pasay City. It is engaged in commercial banking, among others, and is a registered taxpayer in the Large Taxpayers Service of the Bureau of Internal Revenue ("BIR"), with Taxpayer Identification Number[ ] 000-188-209-000.
>
> On the other hand, respondent is the duly appointed Commissioner of Internal Revenue vested with the authority to carry out all the functions, duties, and responsibilities of said

[2] *Rollo*, pp. 40-43.

office, including, *inter alia*, the power to decide, approve, and grant refunds and/or tax credits of overpaid and erroneously paid or collected national revenue taxes, with office address at the 5th Floor, BIR National Office Building, BIR Road, Diliman, Quezon City.

On April 15, 2008, petitioner manually filed its Annual Income Tax Return for the calendar year ending December 31, 2007; while on April 22, 2008, it electronically filed through the BIR's Electronic Filing and Payment System ("EFPS") the same Annual Income Tax Return.

On July 4, 2008, petitioner filed an Amended Annual Income Tax Return for the calendar year 2007; and on October 8, 2009, filed another Amended Annual Income Tax Return for the calendar year ending December 31, 2007.

Petitioner filed its Quarterly Income Tax Returns for the calendar year 2008 on the following dates: (a) May 29, 2008, for the first (1st) quarter; (b) August 29, 2008, for the second (2nd) quarter; and (c) November 28, 2008, for the third (3rd) quarter.

On April 15, 2009, petitioner manually filed its Annual Income Tax Return for the calendar year 2008; while on April 30, 2009 and June 1, 2009, filed its Amended Income Tax Returns for the calendar year 2008 through the BIR's EFPS.

On November 12, 2009, petitioner filed with the BIR an administrative claim for the issuance of a tax credit certificate for its excess and unutilized creditable withholding tax for calendar year 2007, in the amount of P114,051,845.00.

And on April 14, 2010, alleging inaction on the part of respondent, petitioner filed the present Petition for Review.

On June 28, 2010, respondent filed her Answer, interposing the following:

4. Petitioner's alleged claim for refund is subject to administrative routinary investigation/examination by the Bureau of Internal Revenue;

5. The amount of P114,051,845.00 being claimed by petitioner as alleged excess and unutilized Creditable Withholding Tax (CWT) for CY 2007 is not properly documented;

6. Petitioner must prove that it has complied with the provisions of Sections 204 and 229 of the National Internal Revenue Code of 1997 (1997 Tax Code), as amended, on the prescriptive period for claims for refund/credit of erroneously paid taxes;

7. Petitioner must prove compliance with the prescribed checklist of requirements to be submitted involving claims for refund pursuant to Revenue Memorandum Order No. 53-98, otherwise there would be no sufficient compliance with the filing of administrative claim for refund, the administrative claim thereof being pro-forma. Hence, petitioner's failure to submit proof of compliance with the above-stated requirements warrants immediate dismissal of the Petition for Review;

8. Taxes paid and collected are presumed to have been paid in accordance with law; hence, not refundable;

9. Petitioner must likewise prove that it has fully complied with the requisites to sustain a claim for refund or tax credit of unutilized creditable withholding tax as ruled by the Supreme Court *in **F. Jacinto Group, Inc. vs. CIR (CTA Case No. 4971, April 5, 1995)*** and ***Citibank, N.A. vs. Court of Appeals, et al., 345 Phil. 695 (1997)***, which are as follows:

a) that the claim for refund was filed within the two-year period;

b) that the fact of withholding is established by a copy of a statement duly issued by the payor (withholding agent) to the payee showing the amount paid and the amount of tax withheld therefrom; and

c) that the income upon which the taxes were withheld is shown in the return of the recipient.

10. In an action for refund/tax credit, the ***onus probandi*** is on the taxpayer to establish its right to

refund/tax credit, and failure to sustain the burden is fatal to its claim for refund/tax credit (**ASIATIC PETROLEUM CO. VS. LLANES, 49 PHIL. 466, cited in COLLECTOR OF INTERNAL REVENUE VS. MANILA JOCKEY CLUB, INC., 98 PHIL. 670**); and

11. Claims for refund are construed in ***strictissimi juris*** against the claimant for the same partake the nature of exemption from taxation (**COMMISSIONER OF INTERNAL REVENUE VS. LEDESMA, 31 SCRA 95**) and as such, they are looked upon with disfavor (**WESTERN MINOLCO CO[RP]. VS. COMMISSIONER OF INTERNAL REVENUE, 124 SCRA 1211**). Corollary to this principle, therefore, he who alleges must prove and not he who denies ***(Ei incumbit probation qui dicit, non qui negat)***.

On February 21, 2011, the parties filed their Joint Stipulation of Facts and Issues.

Trial ensued. Petitioner presented and offered its documentary and testimonial evidence; while respondent submitted the case for decision without presenting any evidence.

On January 31, 2013, the case was submitted for decision, taking into consideration the Memoranda filed by petitioner and respondent."

On November 19, 2013, the CTA Third Division rendered the assailed decision denying the Petition for Review for insufficiency of evidence.

On December 5, 2013, PNB filed its "Motion for Reconsideration (With Motion to Reopen Trial and Request for Leave to Submit Supplemental Evidence)".

On January 20, 2014, CIR filed her "Comment (Re: Motion for Reconsideration with Motion to Reopen Trial and Request for Leave to Submit Supplemental Evidence)". *fr*

On February 6, 2014, the CTA Third Division denied for lack of merit PNB's "Motion for Reconsideration (With Motion to Reopen Trial and Request for Leave to Submit Supplemental Evidence)".

On February 28, 2014, the CTA *En Banc* granted PNB's "Motion for Extension of Time to File Petition for Review". Within the period given, PNB filed its Petition for Review *En Banc* on March 13, 2014.

On April 29, 2014, this Court noted CIR's "Manifestation" filed on April 29, 2014 and granted her "Motion for Extension of Time to File Comment" filed on April 21, 2014.

On May 2, 2014, CIR filed a "Second Motion for Extension of Time to File Comment". In the June 26, 2014 Resolution, in the interest of substantial justice, this Court granted the said motion and admitted CIR's "Comment (Re: Petition for Review dated March 4, 2014)" filed on May 12, 2014. The parties were required to submit their Memoranda within 30 days from receipt of the said Resolution.

On August 13, 2014, this Court granted the "Motions for Extension of Time to File Memorandum" of PNB and of CIR which were filed on August 8, 2014.

On October 1, 2014, in the interest of justice, this Court granted the "Motion to Admit Memorandum" filed by PNB on September 8, 2014 and admitted the attached "Memorandum" as part of the records of the case. This Court also granted CIR's "Urgent Motion for Extension of Time to File Memorandum" filed on September 8, 2014.

CIR's "Memorandum" was filed on September 17, 2014.

This case was submitted for decision on October 23, 2014. Hence, this decision.

ISSUE

PNB submits that the CTA Division erred in holding that the supporting documents submitted by PNB are insufficient to prove that the Related Income was included in the gross taxable income reported in PNB's Annual ITR for CY 2007. The following are the grounds of PNB:

1. The journal vouchers (called transaction tickets and/or input sheets) and other supporting documents, submitted by PNB

sufficiently prove that the Related Income was reported as part of PNB's gross taxable income. Contrary to the CTA Division's ruling, these journal vouchers are the source documents which prove the reporting of the Related Income in PNB's books of accounts;

2. In CTA Case No. 7444, entitled *Philippine National Bank v. CIR,*[3] PNB's claim for refund of excess and unutilized CWT for CY 2003 was granted on the basis of the same set of documents that were presented by PNB in the case *a quo*;

3. The higher interest of substantial justice dictates that the CTA Division should have allowed the reopening of trial and the recall of the Court-commissioned independent `certified public accountant (ICPA) for the admission of additional documents that would have enabled the CTA Division to trace and determine with certainty that the Related Income was reported as part of PNB's gross taxable income for CY 2007; and

4. Claims for refund of erroneously paid taxes, like any ordinary civil case, necessitate only preponderance of evidence for its approbation.

Based on the foregoing, the issue in this case is whether the CTA Division erred in denying petitioner's claim for excess and unutilized CWT for CY 2007 on the ground that PNB failed to prove that the related income (upon which the CWTs being claimed were withheld) was included as part of the gross taxable income declared in PNB's Income Tax Return (ITR) for CY 2007.

THIS COURT'S RULING

The petition is denied.

After a careful review of the issue in this case as well as the arguments of both parties, this Court finds that petitioner's arguments are mere reiterations, thus, these are already considered and discussed by the CTA Special Third Division in its assailed Decision and Resolution.

We agree with the CTA Special Third Division citing *Citibank, N.A. v. Court of Appeals and Commissioner of Internal Revenue,*[4] that there are

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[3] Decision dated April 23, 2009 and Amended Decision dated February 18, 2010, wherein the CTA Second Division granted PNB's claim in the reduced amount of ₱39,288,331.09, out of the total claim of ₱40,525,786.04.
[4] G.R. No. 107434, October 10, 1997, 280 SCRA 459.

requisites in order to be entitled to a refund of excess creditable withholding tax, as follows:

1. The claim for refund was filed within the two (2)-year prescriptive period provided under Section 204 (C), in relation to Section 229 of the 1997 National Internal Revenue Code, as amended;

2. The fact of withholding is established by a copy of a statement issued by the payor (withholding agent) to the payee, showing the amount paid and the amount of tax withheld therefrom; and

3. The income upon which the taxes had been withheld were included in the return of the recipient.[5]

The Court cannot verify with certainty that the income related to CWT indeed formed part of 2007 ITR

The crux of this appeal is the third requisite. Pertinent to this case is the finding of the CTA Special Third Division as stated in the assailed Decision,[6] which states:

> "However, while the Court-commissioned Independent CPA had ascertained that the income from which the creditable withholding tax in the amount of ₱101,109,876.61 had been withheld were included as part of the gross income of petitioner by tracing them in the Transaction Tickets/Input Sheets to the Audited Financial Statements and Annual Income Tax Return,[7] petitioner failed to submit a breakdown or detailed schedules[*sic*] of its revenue with the corresponding creditable withholding taxes it reported in its Audited Financial Statements and Annual Income Tax Return for the year 2007. Petitioner should have presented its detailed general ledger or any other supporting documents whereby the Court can trace and determine with certainty that the income payments related to the claimed creditable withholding taxes indeed formed part of its gross taxable income in its 2007 Annual ITR. Failure to do so is fatal [to] its claim."

[5] Section 2.58.3(B) of Revenue Regulations No. 2-98.
[6] Assailed Decision, p. 15; *Rollo*, p. 53.
[7] Exhibits "AA," p. 5; and "MM," p.3.

With regard to the third requisite, PNB declared ₱4,929,053,636.00[8] as Sales/Revenues/Receipts/Fees per its Amended Annual Income Tax Return for the taxable year 2007.[9] On the other hand, re-examination of the Certificates of Creditable Tax Withheld at Source (BIR Form No. 2307) shows that the income from which the ₱114,051,845.28 claimed excess creditable withholding taxes were withheld amounted to ₱2,492,776,691.28, as shown below:

Findings	Exhibit	CWT	Income Payments
a) CWT supported with original CWTs, Transaction Tickets/Input Sheets and Deed of Sale dated 2007 with income reported in 2007	JJ-1 to JJ-6672 and ZZ-1 to ZZ-1297	₱ 82,596,964.51	₱1,994,812,674.36
b) CWT supported with original CWTs, Transaction Tickets/Input Sheets and Deed of Sale dated 2007 with loss or no income recognized in 2007	KK-1 to KK-162, AAA-1, AAA-14 and AAA-24	2,894,519.70	35,993,347.00
c) CWT supported with original CWTs, Transaction Tickets/Input Sheets and certified true copy of Deed of Sale dated 2007 with income reported in 2007	LL-1, LL-8, LL-16, LL-24, LL-31, LL-38, BBB-1, BBB-10, BBB-16, BBB-25, BBB-33, BBB-40 and BBB-49	1,508,549.40	23,569,500.00
d) CWT supported with original CWT and original/certified true copy of Deed of Sale dated 2007 and original/certified true copy of Transaction Tickets/Input Sheets dated outside 2007 with income reported outside 2007	CCC-1 to CCC-2233	24,120,831.21	391,385,906.88
e) CWT supported with original CWT and Transaction Tickets/Input Sheets dated outside 2007 and original Deed of Sale dated 2007 with income reported outside 2007	DDD-1	31,800.00	530,000.00
f) CWT supported with original CWT and Transaction Tickets/Input Sheets dated outside 2007 and certified true copy of Deed of Sale dated outside 2007 with income reported outside 2007	EEE-1	1,860,000.00	31,000.000.00
g) CWT supported with original/photocopy CWTs, Transaction Tickets/Input Sheets and Deed of Sale were not yet provided for verification	FFF-1 to FFF-16	1,039,180.46	15,485,263.04
TOTAL		**₱114,051,845.28**	**₱2,492,776,691.28**

It is noted that the amount of sales/revenues declared per income tax return exceeds the amount of the corresponding income payments for the claimed excess creditable withholding taxes. However, the Court cannot just conclude without verification that income payments of ₱2,492,776,691.28 forms part of the total sales/revenues of ₱4,929,053,636.00.

[8] Exhibit "F-1".
[9] Exhibit "F".

The ICPA reported that the income from which the taxes were withheld were included as part of the gross income of PNB for the period wherein the claim was made by tracing them in the Transaction Tickets/Input Sheets to the audited financial statements and annual income tax return.[10]

Scrutiny of the Transaction Tickets/Input Sheets reveals that these documents show, among others, PNB's customer name, transaction details, GL/SL account number and the amount to be debited and credited, as shown in the following samples:[11]

BATCH INPUT SHEET

GL/SL Account No.	Account Name	Amount Debit	Amount Credit	Transaction Description
14021227	VS CLEARING DIV.	285,000.00		XXX XXX* corp.-rental payment
460602	INCOME FROM A/A		300,000.00	XXX XXX* corp.-rental payment
14021227	VS ACCTG. DIV.	15,000.00		TEC-CTMARD 5% tax w/held from rental payment for December 2006 by XXX XXX* Corp.

Prepared by: Check by: Approved by: Tpentered by:

LOAN TRANSACTION PROCESSING SHEET

CUSTOMER NAME: **XXX XXX* LEASING & FINANCE CORP.** TRANS. DATE: **17-Jan-2007**
ACCOUNTING ENTRIES: [X] RBU [ ] FCDU RESP. CENTER: **CBD IV 1254**
LOAN ACCOUNT NO. **xxx xxx xxx** BATCH TOTAL: **4,088,888.89**
CURRENCY **PHP**
TRANSACTION DESCRIPTION: **CBD 4-STL-XXX XXX* LEASING amort 101906-011907 @ 8.00%**

COMPUTATION:

Principal		PN NO.	Due Date		Amount Due
200,000,000.00		Xxx xxx xxxx	19-Apr-07		
Interest: (/360)					
92	8.0000%	200,000,000.00	19-Oct-06	19-Jan-07	4,088,888.89
					4,088,888.89

[X] **DEBIT**

APPLICATION CODE	21
ACCOUNT NO.	14021324
ACCOUNT TITLE	DI vs DI
TC CODE NO.	60
AMOUNT	4,007,111.11
EFFECTIVE DATE	17-Jan-07
Foreign Branch	1136
RECON NO.	**136 254 7 017**

[X] **CREDIT**

APPLICATION CODE	15
ACCOUNT NO.	Xxx xxx xxx
ACCOUNT TITLE	Scheduled pymnt
TC CODE NO.	12
AMOUNT	4,088,888.89
EFFECTIVE DATE	17-Jan-07
	(INTEREST)

[X] **DEBIT**

APPLICATION CODE	21
ACCOUNT NO.	14021324
ACCOUNT TITLE	DI vs DI
TC CODE NO.	60

[10] Exhibits "AA", page 5 and "MM", page 3.
[11] Exhibits "JJ-2" and "JJ-10".

AMOUNT	81,777.78
EFFECTIVE DATE	17-Jan-07
Foreign Branch	1136
RECON NO.	**136 254 7 017**

Prepared by:	Checked by:	Approved by:	Approved by:

**Names and other details not shown for confidentiality.*

However, the Court could not verify whether the transactions in the Transaction Tickets/Input Sheets were indeed recorded in PNB's books and reported in its income tax return for the taxable year 2007 for PNB's failure to submit a breakdown and/or a reconciliation of the revenue it reported in the audited financial statements and annual income tax return for the same period.

In the case of *First Lepanto Taisho Insurance Corporation v. Commissioner of Internal Revenue*,[12] the CTA *En Banc* explained that "[t]he report submitted by the ICPA is but a tool or guide to aid the Court in the resolution of the case. The determination of the merit or the probative value of such report is still within the province of the Court. Secondly, the Court is free to adapt or disregard, completely or partially, the findings of the ICPA. It can even make its own audit and evaluation of the documents pertinent to the case presented during the trial in order to intelligently resolve the conflict brought before it."

At this juncture, We echo the ruling of the Supreme Court that "it is fundamental that the findings of fact by the CTA 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."[13]

Based on the foregoing discussions, this Court quotes with approval pertinent portions of the assailed Resolution,[14] as follows:

> "A reading of the foregoing clearly requires petitioner to present its 'detailed general ledger or any other supporting documents' for the Court to verify 'with certainty that the income payments related to the claimed creditable withholding taxes indeed formed part of its gross taxable income in its 2007 Annual ITR.' However, even a simple perusal of petitioner's motion, with its attachments, failed to comply with the above

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[12] CTA EB No. 563, March 1, 2011.

[13] *Republic of the Philippines, represented by the Commissioner of Internal Revenue v. 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.

[14] Assailed Resolution, p. 3; *Rollo*, p. 59.

requisites. Petitioner merely presented and offered the same set of documents that had already been considered by this Court in the assailed Decision.

Further, **while petitioner attached an Amended Report dated December 5, 2013, with additional documents to support its claim, the Court still finds the same to be insufficient in order to reverse the assailed Decision; the attached evidence merely shows the reconciliation between the income declared in its Financial Statement as against its Annual Income Tax Return for the subject year.**" *(Emphasis Supplied)*

Moreover, in *Commissioner of Internal Revenue v. Philippine National Bank*,[15] the Supreme Court reiterated that cases filed in the Court of Tax Appeals (CTA) are litigated *de novo* and that the claimant should prove every minute aspect of its case by presenting, formally offering and submitting to the CTA all evidence required for the successful prosecution of its administrative claim. Pertinent portions of the said case provide:

"More importantly, the Court of Tax Appeals is not precluded from accepting respondent's evidence assuming these were not presented at the administrative level. Cases filed in the Court of Tax Appeals are litigated *de novo*.[16] Thus, respondent 'should prove every minute aspect of its case by presenting, formally offering and submitting . . . to the Court of Tax Appeals [all evidence] . . . required for the successful prosecution of [its] administrative claim.'[17]"

Hence, for failure to comply with the third requirement, PNB is not entitled to a refund of its excess and unutilized creditable withholding taxes for the year 2007.

CTA Case No. 7444 was disposed by the Supreme Court in a Minute Resolution, thus, it is not a binding precedent

With respect to PNB's second ground in this petition, this Court finds that the ruling in CTA Case No. 7444 is not a binding precedent. Je

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[15] G.R. No. 180290, September 29, 2014, 736 SCRA 609.
[16] *CIR v. Manila Mining Corporation*, 505 Phil. 650,664 (2005) [Per J. Carpio Morales, Third Division]; *C.F. Sharp & Company, Inc. v. Commissioner of Customs*, 130 Phil 777, 782 (1968) [Per J.J.P. Bengzon, En Banc].
[17] *Atlas Consolidated Mining and Development Corporation v. CIR*, 547 Phil 332 (2007) [Per J. Corona, First Division]. See also *Dizon v. Court of Tax Appeals*, 576 Phil. 110, 128 (2008) [Per J. Nachura, Third Division].

On July 18, 2012, the Supreme Court Second Division issued a Minute Resolution signed by its Division Clerk of Court in G.R. No. 201874 *(Commissioner of Internal Revenue v. Philippine National Bank)* denying "the petition for review on certiorari assailing the Decision dated 13 July 2011 and Resolution dated 6 February 2012 of the Court of Tax Appeals En Banc in CTA EB Case No. 577 (CTA Case No. 7444) and CTA EB Case No. 580 (CTA Case No. 7444) for late filing xxx xxx xxx."[18]

In *Philippine Health Care Providers, Inc. v. Commissioner of Internal Revenue,*[19] it is already settled that minute resolutions are not binding precedents. Pertinent portions of the said case provide:

> "It is true that, although contained in a minute resolution, our dismissal of the petition was a disposition of the merits of the case. When we dismissed the petition, we effectively affirmed the CA ruling being questioned. As a result, our ruling in that case has already become final. When a minute resolution denies or dismisses a petition for failure to comply with formal and substantive requirements, the challenged decision, together with its findings of fact and legal conclusions, are deemed sustained. But what is its effect on other cases?
>
> With respect to the same subject matter and the same issues concerning the same parties, it constitutes *res judicata.* However, if other parties or another subject matter (even with the same parties and issues) is involved, the minute resolution is not binding precedent. Thus, in *CIR v. Baier-Nickel*, the Court noted that a previous case, *CIR v. Baier-Nickel* **involving the same parties and the same issues**, was previously disposed of by the Court thru a minute resolution dated February 17, 2003 sustaining the ruling of the CA. Nonetheless, the Court ruled that **the previous case 'ha(d) no bearing'** on the latter case because the two cases involved different subject matters as they were concerned with the taxable income of different taxable years.
>
> Besides, there are substantial, not simply formal, distinctions between a minute resolution and a decision. The constitutional requirement under the first paragraph of Section 14, Article VIII of the Constitution that the facts and the law on which the judgment is based must be expressed clearly and distinctly applies only to decisions, not to minute resolutions. A minute resolution is signed only by the clerk of court by

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[18] *Philippine National Bank v. Commissioner of Internal Revenue*, CTA Case No. 7444, Docket III, pp. 1166- 1167.
[19] G.R. No. 167330, Resolution, September 18, 2009, 600 SCRA 413.

> authority of the justices, unlike a decision. It does not require the certification of the Chief Justice. Moreover, unlike decisions, minute resolutions are not published in the Philippine Reports. Finally, the *proviso* of Section 4(3) of Article VIII speaks of a decision. Indeed, as a rule, this Court lays down doctrines or principles of law which constitute binding precedent in a decision duly signed by the members of the Court and certified by the Chief Justice."

Based on the foregoing discussions, considering that CTA Case No. 7444 was disposed by the Supreme Court through the issuance of a minute resolution, the ruling in CTA Case No.7444 is not a binding precedent, thus, has no bearing in the instant case.

Motion to reopen case for the reception of supplemental evidence is discretionary

The Supreme Court *En Banc's* discussion in *Republic of the Philippines v. Sandiganbayan (Fourth Division), et al,*[20] on the reopening of case to introduce further evidence is enlightening, as follows:

> "The basis for a motion to reopen a case to introduce further evidence is Section 5, Rule 30 of the Rules of Court, which reads:
>
> > Sec. 5. *Order of trial.* Subject to the provisions of section 2 of Rule 31, and unless the court for special reasons otherwise directs, the trial shall be limited to the issues stated in the pre-trial order and shall proceed as follows:
> >
> > x x x x
> >
> > (f) The parties may then respectively adduce rebutting evidence only, **unless** the court, for **good reasons and in the furtherance of justice**, permits them to **adduce evidence upon their original case**[.] [emphases ours]

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[20] G.R. No. 152375, December 16, 2011, 662 SCRA 152, SC *En Banc*; Citations Omitted.

Under this rule, a party who has the burden of proof must introduce, at the first instance, all the evidence he relies upon and such evidence cannot be given piecemeal. The obvious rationale of the requirement is to avoid injurious surprises to the other party and the consequent delay in the administration of justice.

A party's declaration of the completion of the presentation of his evidence prevents him from introducing further evidence; but where the evidence is *rebuttal* in character, whose necessity, for instance, arose from the shifting of the burden of evidence from one party to the other; or where the evidence sought to be presented is in the nature of *newly discovered* evidence, the party's right to introduce further evidence must be recognized. Otherwise, the aggrieved party *may* avail of the remedy of *certiorari.*

Largely, the exercise of the courts discretion under the exception of Section 5(f), Rule 30 of the Rules of Court depends on the **attendant facts**— *i.e.*, on whether the evidence would qualify as a 'good reason' and be in furtherance of 'interest of justice.' <u>For a reviewing court to properly interfere with the lower court's exercise of discretion, the petitioner must show that the lower court's action was attended by grave abuse of discretion.</u> Settled jurisprudence has defined this term as the capricious and whimsical exercise of judgment, equivalent to lack of jurisdiction; or, the exercise of power in an arbitrary manner by reason of passion, prejudice, or personal hostility, so patent or so gross as to amount to an evasion of a positive duty, to a virtual refusal to perform the mandated duty, or to act at all in contemplation of the law. Grave abuse of discretion goes beyond the bare and unsupported imputation of caprice, whimsicality or arbitrariness, and beyond allegations that merely constitute errors of judgment or mere abuse of discretion.

In *Lopez v. Liboro*, we had occasion to make the following pronouncement:

> 'After the parties have produced their respective direct proofs, they are allowed to offer rebutting evidence only, but, it has been held, the court, for good reasons, in the furtherance of justice, may permit them to offer evidence upon their original case, and its ruling will not be

> disturbed in the appellate court where no abuse of discretion appears. **So, generally, additional evidence is allowed** when it is newly discovered, or **where it has been omitted through inadvertence or mistake**, or where the purpose of the evidence is to correct evidence previously offered. The omission to present evidence on the testator's knowledge of Spanish had not been deliberate. It was due to a misapprehension or oversight.' (citations omitted; emphases ours)" (Underlines Supplied)

Based on the foregoing, the reopening of the case to receive further proof is discretionary on the trial court and cannot be reviewed unless there is grave abuse of discretion.

In this case, this Court finds that there is no grave abuse of discretion on the part of the Court in Division in denying the motion to reopen trial for the reception of supplemental evidence; thus, We will not disturb such denial in this appeal case.

Based on the foregoing, there is no reason to set aside the findings and conclusions of the CTA Special Third Division in the assailed Decision and Resolution.

WHEREFORE, premises considered, the Petition for Review is **DENIED** for lack of merit. Accordingly, the November 19, 2013 Decision and the February 6, 2014 Resolution of the CTA Special Third Division are **AFFIRMED.**

SO ORDERED.

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

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

Ma. Belen
MA. BELEN RINGPIS-LIBAN
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the above Decision has been reached in consultation with the members of the Court *en banc* before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice