REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

SYCAMORE GLOBAL SHIPPING CORPORATION, *Petitioner,*	**CTA CASE NO. 10070**
	Members:
- versus -	**DEL ROSARIO,** *P.J., Chairperson,* and **MANAHAN,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: NOV 19 2020 1:51 pm

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DECISION

DEL ROSARIO, P.J.:

This is a Petition for Review[1] filed on April 12, 2019 by Sycamore Global Shipping Corporation (*petitioner*) against the Commissioner of Internal Revenue (*respondent*), praying that judgment be rendered ordering respondent to grant petitioner a refund in the aggregate amount of Seven Million One Hundred Ninety Nine Thousand Nine Hundred Ninety Two Pesos (₱7,199,992.00), representing erroneously paid income tax for taxable year 2016.

THE PARTIES

Petitioner is a corporation organized and existing under the laws of the Philippines with Certificate of Incorporation issued by the Securities and Exchange Commission (SEC) on October 9, 2014.[2] Its business address is at Unit B, 14th Floor, Sagittarius I Condominium, 111 H.V. Dela Costa St., Salcedo Village, Makati City, Metro Manila.[3] It is authorized to own, purchase, and acquire vessels, barges, bulk carrier, lighters, tugboats and other mercantile vessels of whatever

[1] CTA Docket, pp. 10-91 (*inclusive of annexes*).
[2] Exhibit "P-1", CTA Docket, p. 278.
[3] Exhibit "P-2", CTA Docket, p. 282.

class and description, together with their equipment and appurtenances, to engage in the business of chartering, and to employ or operate the same in the carriage of dry bulk cargoes, goods, wares and merchandise of whatever description for domestic and international trade.[4] It is registered with the Bureau of Internal Revenue (BIR) as a taxpayer with Tax Identification Number (TIN) 007-613-356-00000 as evidenced by its BIR Certificate of Registration No. OCN 9RC0001622137E dated June 8, 2018 issued by Revenue District Office (RDO) No. 050 – South Makati, Revenue Region No. 008 – Makati.[5]

Respondent is the Commissioner of the BIR with office address at the BIR National Office Building, BIR Road, Diliman, Quezon City.[6] He is empowered to perform the duties of his office, including acting on protest cases and approving claims for refund or tax credit involving internal revenue taxes as provided by law and implementing regulations.[7]

THE FACTS

On December 19, 2016, Banyan Towage Services, Inc. (BTSI) declared cash dividend in the total amount of ₱24,000,000.00 to its stockholders of record as of December 1, 2016, including petitioner.[8] Out of said amount, BTSI paid petitioner ₱23,999,976.00 on December 27, 2016 as dividend.[9]

On April 17, 2017, petitioner filed its Annual Income Tax Return (ITR) (BIR Form No. 1702-RT) for taxable year 2016,[10] showing ₱24,053,070.00 as amount of income tax payable, which petitioner paid on even date.[11]

In a letter dated September 24, 2018 addressed to Revenue District Officer Ma. Victoria G. Reinante of RDO No. 50, petitioner requested for a cash refund representing its alleged erroneously paid

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[4] Exhibit "P-2-A", CTA Docket, p. 281.
[5] Exhibit "P-3", CTA Docket, p. 289.
[6] Par. A. 1, Joint Stipulation of Facts and Issues (JSFI), CTA Docket, p. 234.
[7] *Id.*
[8] Exhibit "P-9", CTA Docket, p. 193.
[9] Exhibit "P-10", CTA Docket, p. 194.
[10] Exhibit "P-11", CTA Docket, pp. 327 and 342-349; Exhibit "P-11-C", CTA Docket, p. 341.
[11] Exhibit "P-12", CTA Docket, pp. 204-205.

income tax to the BIR, arising from the cash dividend received from BTSI for taxable year 2016.[12]

Claiming inaction on its claim for refund, petitioner filed the present Petition for Review before the Court on April 12, 2019.[13]

On July 19, 2019, within the extended periods granted by the Court,[14] respondent filed his Answer,[15] interposing the following special and affirmative defenses:

> (i) Petitioner's alleged claim for issuance of tax credit certificate is still subject to administrative routinary investigation/examination by respondent;
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> (ii) Taxes paid and collected are presumed to have been made in accordance with law, hence, not refundable;
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> (iii) Petitioner's claim for refund in the amount of ₱7,199,992.80, allegedly representing erroneously paid income tax arising from the cash dividend it received from BTSI for the year 2016, was not substantiated by proper documents, such as sales invoices, official receipts and others, pursuant to Revenue Regulations No. 7-95 in relation to Section 113 and 237 of the National Internal Revenue Code (NIRC) of 1997, as amended;
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> (iv) Investigation on petitioner's income tax for taxable year 2016 revealed that sales not subjected to income tax amounted to ₱4,399,262.31, unsupported leasehold improvement amounted to ₱655,318.00, disallowed expenses due to non-withholding amounted to ₱115,165,254.18, disallowed salaries and wages amounted to ₱89,768.47, unsupported claimed losses amounted to ₱2,279,035.00, disallowed retirement expense amounted to ₱3,678,910.00, and disallowed expenses due to non-withholding of final tax amounted to ₱7,909,661.67;
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> (v) In an action for refund/credit, the burden of proof is on the petitioner to establish its right to claimed refund

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[12] Exhibit "P-13", CTA Docket, pp. 206-211.
[13] *Supra* note 1.
[14] Order dated June 10, 2019, CTA Docket, p. 98; Resolution dated July 8, 2019, CTA Docket, p. 104.
[15] CTA Docket, pp. 105-108.

and failure to adduce sufficient proof is fatal to the claim for tax refund/credit;

(vi) It is incumbent upon petitioner to show that it has complied with the provisions under Section 204(c) in relation to Section 229 of the NIRC of 1997, as amended; and,

(vii) Claims for refund are construed strictly against petitioner since the same partakes the nature of exemption from taxation.

The Pre-Trial Brief for the Petitioner[16] was filed on September 20, 2019, while the Pre Trial Brief (for the Respondent) was filed on September 24, 2019.[17]

During the September 26, 2019 Pre-Trial Conference, the parties were ordered to file their Joint Stipulation of Facts and Issues.[18]

On October 9, 2019, the parties filed their Joint Stipulation of Facts and Issues.[19] In the Resolution dated October 21, 2019,[20] the Court approved the parties' Joint Stipulation of Facts and Issues, terminated the Pre-Trial, and directed the issuance of a Pre-Trial Order. On November 4, 2019, the Court issued a Pre-Trial Order.[21]

During trial, petitioner presented its head of finance, Mr. Jesse V. Lava,[22] as its sole witness.

Petitioner's formally offered exhibits, as contained in its Formal Offer of Evidence[23] filed on November 19, 2019, were all admitted in the Court's Resolution dated May 27, 2020,[24] except Exhibit "P-11-C", which was denied admission for failure to present the original for comparison. In the same Resolution, the parties were given a period

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[16] CTA Docket, pp. 112-120.
[17] CTA Docket, pp. 220-222.
[18] Minutes of the Hearing dated September 26, 2019, CTA Docket, pp. 223-225; Order dated September 26, 2019, CTA Docket, pp. 227-228.
[19] CTA Docket, pp. 234-239.
[20] CTA Docket, p. 249.
[21] CTA Docket, pp. 255-261.
[22] Minutes of the Hearing dated November 5, 2019, CTA Docket, pp. 262-263; Order dated November 5, 2019, CTA Docket, pp. 264-265.
[23] CTA Docket, pp. 267-276.
[24] CTA Docket, pp. 334-335.

of thirty (30) days from receipt thereof within which to file their respective memoranda,[25] considering respondent's earlier manifestation that he would not be presenting testimonial evidence.[26]

Petitioner filed an Omnibus Motion for Partial Reconsideration and to Admit Petitioner's Exhibits[27] on June 30, 2020.

Meanwhile, on July 21, 2020, petitioner filed its Memorandum[28] while respondent posted his Memorandum on July 27, 2020.[29]

In the Resolution dated October 15, 2020, the Court admitted Exhibit "P-11-C" as evidence[30] and submitted the case for decision.[31]

THE ISSUE

The issue for consideration of the Court, as stipulated by the parties, is:

> Whether petitioner is entitled to its claim for refund in the amount of ₱7,199,992.80, representing erroneously paid income taxes on cash dividends received from BTSI for taxable year 2016.[32]

PETITIONER'S ARGUMENTS[33]

Petitioner argues that its claim for refund should be granted because all elements necessary for the grant of refund of erroneously paid income tax are present.

According to petitioner, it erroneously paid income taxes of ₱7,199,992.80, as a result of its erroneous inclusion of the cash dividend it received from BTSI amounting to ₱23,999,976.00, as part of "Other Income" in its Annual ITR for taxable year 2016. Petitioner

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[25] *Id.*
[26] *Supra* note 22.
[27] CTA Docket, pp. 336-349 (*inclusive of annexes*).
[28] CTA Docket, pp. 352-366.
[29] CTA Docket, pp. 368-377.
[30] CTA Docket, pp. 390-393.
[31] *Supra* note 29.
[32] Par. B., Joint Stipulation of Facts and Issues, CTA Docket, pp. 234-235.
[33] V. Discussions and Arguments, Memorandum, CTA Docket, pp. 359-364.

claims that by law, said cash dividend shall be treated as intercorporate dividends not subject to tax, considering that both the declarant and recipient are registered as domestic corporations under Philippine laws.

Moreover, petitioner posits that the claim for refund has been duly filed with respondent and the suit or proceeding was instituted with the Court of Tax Appeals, both within the two (2)-year prescriptive period from the date of payment of tax.

RESPONDENT'S ARGUMENTS[34]

Respondent counters that there is no erroneous or illegal collection of tax, or a penalty collected without authority, or sum excessively or wrongfully collected. According to respondent, the declaration that petitioner erroneously included as part of its "Other Income" the cash dividends it purportedly received from BTSI cannot be categorized as erroneous payment under a mistake of fact. Citing *U.S.T. Cooperative Store vs. The City of Manila, et al.*,[35] respondent claims that there is erroneous payment of taxes only when a taxpayer pays under a mistake of fact, as for the instance in a case where he is not aware of an existing exemption in his favor at the time the payment was made.

Respondent insists that petitioner only assumed that the amount of ₱23,999,976.00 was an agency fee dividend received from BTSI. Aside from the Secretary's Certificate of the Minutes of the meeting of the Board of Directors of BTSI, and a purported acknowledgement receipt dated December 27, 2016, no other proof was presented by petitioner to prove that the amount of ₱23,999,976.00 was an intercorporate cash dividend from BTSI.

Furthermore, respondent contends that tax refunds or credits, just like tax exemptions are strictly construed against the taxpayer. Thus, the burden of proving entitlement to a refund lies with the claimant. Respondent avers that petitioner has miserably failed to prove that its electronically-filed 2016 Annual ITR has been successfully submitted and received by the BIR. Petitioner also failed to prove that the amount declared as part of its "Other Income" includes the cash dividend it allegedly received from BTSI. Records show that petitioner's "Other Income" declared in the ITR was not substantiated

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[34] Arguments/Discussion, Memorandum, CTA Docket, pp. 369-376.
[35] G.R. No. L-17133, December 31, 1965.

with proper documents, such as sales invoices, official receipts, or other documents.

Moreover, respondent maintains that the amount of petitioner's tax liability should be computed and deducted from any refundable amount. According to respondent, the Reconciliation on Income Tax declarations of petitioner disclosed that based on its 2016 Annual ITR, its total Gross Income for taxable year 2016 amounted to ₱160,125,217.00, which includes "Other Income" amounting to ₱115,638,854.00. An investigation of petitioner's income tax for the year 2016, however, also revealed the following findings: (i) sales not subjected to income tax amounted to ₱4,399,262.31; (ii) unsupported leasehold improvement amounted to ₱655,318.00; (iii) disallowed expenses due to non-withholding amounted to ₱115,165,254.18; (iv) disallowed salaries and wages amounted to ₱89,768.47; (v) unsupported claimed losses amounted to ₱2,279,035.00; (vi) disallowed retirement expense amounted to ₱3,678,910.00; and, (vii) disallowed expenses due to non-withholding of final tax amounted to ₱7,909,661.67.

Finally, respondent asserts that the evidence presented by petitioner should not be given any probative value. Respondent elaborates that petitioner failed to present a credible and competent witness to testify on relevant and material matter. For lack of personal knowledge of the facts or circumstances on which his testimony in court was based, the lone witness presented by petitioner, Mr. Lava, was not competent to testify on BTSI's Certificate of Incorporation, BTSI's Articles of Incorporation, BTSI's 2016 and 2017 General Information Sheets, BTSI's Certificate of Registration, Secretary's Certificate of the Minutes of the Meeting of the Board of Directors of BTSI, and Acknowledgement Receipt dated December 27, 2015.

THE COURT'S RULING

Timeliness of the filing of the administrative and judicial claims

Before delving into the merits of petitioner's claim for refund, the Court shall make a determination on the timeliness of the filing of petitioner's administrative and judicial claims.

Sections 204(C) and 229 of the NIRC of 1997, as amended, provide for the period within which a claim for refund of internal revenue taxes which are erroneously, illegally and wrongfully collected must be filed. Section 204 applies to administrative claims for refund, while Section 229 to judicial claims for refund,[36] *viz.:*

> "**SEC. 204. *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.*** – The Commissioner may-
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> xxx xxx xxx
>
> (C) Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. **No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two (2) years after the payment of the tax or penalty: *Provided, however,* That a return filed showing an overpayment shall be considered as a written claim for credit or refund.**"
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> xxx xxx xxx
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> "**SEC. 229. *Recovery of Tax Erroneously or Illegally Collected.***- No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, **until a claim for refund or credit has been duly filed with the Commissioner**; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.
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> **In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment**: *Provided, however,* That the Commissioner may, even without a written claim therefore, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid." *(Boldfacing supplied)*

Pursuant to the aforequoted provisions, to be entitled to a refund of erroneously or illegally collected tax, it is incumbent upon the claimant to prove its compliance with the following requisites:

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[36] *Commissioner of Internal Revenue vs. Univation Motor Philippines, Inc. (formerly Nissan Motor Philippines, Inc.),* G.R. No. 231581, April 10, 2019.

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1. The tax has been erroneously or illegally collected, or the penalty has been collected without authority, and/or any sum has been excessively or in any manner wrongfully collected; and,

2. The administrative and judicial claims for refund or credit has been filed within two (2) years from the date of payment of tax, or penalty, regardless of any supervening cause that may arise after payment.

The Supreme Court has consistently ruled that a claim for refund or credit with the BIR and the subsequent appeal to this Court must be filed within two (2) years from the date of payment of the tax[37] and that the judicial claim may not be maintained until a claim for refund or credit has been duly filed with the CIR.[38] Moreover, there is nothing in Section 229 of the NIRC of 1997 which implies that respondent must first act upon the taxpayer's claim before the latter can file its judicial claim before this Court. Section 229, as worded, only requires that an administrative claim be priorly filed as it is intended primarily as a notice to respondent that unless the tax or penalty alleged to have been collected erroneously or illegally is refunded, court action will follow.[39]

In *Metropolitan Bank & Trust Company vs. The Commissioner of Internal Revenue*,[40] the Supreme Court held that in refund cases involving excessively paid corporate income taxes, in which the corporate taxpayer is required to file and pay income tax on a quarterly basis, the two (2)-year prescriptive period should be computed from the time of filing the Final Adjustment Return or the Annual ITR, *viz.*:

> "As correctly pointed out by the CIR, the cases cited by Metrobank involved corporate income taxes, in which the corporate taxpayer is required to file and pay income tax on a quarterly basis, with such payments being subject to an adjustment at the end of the taxable year. As aptly put in *CIR v. TMX Sales, Inc.*, '**payment of quarterly income tax should only be considered [as] mere installments of the annual tax due. These quarterly tax payments which are computed based on the cumulative figures of gross receipts and deductions in order to arrive at a net taxable income, should be treated as advances or portions of the annual income tax due, to be adjusted at the end of the calendar or fiscal year**. x x x Consequently, **<u>the two-year</u>**

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[37] *CBK Power Company Limited vs. Commissioner of Internal Revenue,* G.R. Nos. 193383-84, January 14, 2015 and *Commissioner of Internal Revenue vs. CBK Power Company Limited,* G.R. Nos. 193407-08, January 14, 2015.
[38] *Commissioner of Internal Revenue vs. Goodyear Philippines, Inc.,* G.R. No. 216130, August 3, 2016.
[39] *Supra* note 37, citing *P.J. Kiener Co., Ltd. vs. David*, 92 Phil. 945 (1953).
[40] G.R. No. 182582, April 17, 2017.

> **prescriptive period x x x should be computed from the time of filing of the Adjustment Return or Annual Income Tax Return and final payment of income tax.**' Verily, since quarterly income tax payments are treated as mere 'advance payments' of the annual corporate income tax, there may arise certain situations where such "advance payments" would cover more than said corporate taxpayer's entire income tax liability for a specific taxable year. Thus, it is only logical to **reckon the two (2)-year prescriptive period from the time the Final Adjustment Return or the Annual Income Tax Return was filed, since it is only at that time that it would be possible to determine whether the corporate taxpayer had paid an amount exceeding its annual income tax liability."** *(Boldfacing and underscoring supplied.)*

Applying the pronouncement in *Metropolitan Bank & Trust Company*, since petitioner filed its Annual ITR[41] and subsequently paid ₱23,053,070.00 as income taxes[42] on April 17, 2017, petitioner had until April 17, 2019 within which to file its administrative and judicial claims for refund.

Anent petitioner's administrative claim for refund, perusal of the records, shows, however, that while petitioner offered in evidence its Claim for Refund dated 24 September 2018 with Annexes,[43] said document does not show the date when it was actually filed with the BIR.

In paragraph 12 of the Petition for Review, petitioner alleges that it filed an administrative claim for refund before the BIR on September 24, 2018.[44] In his Answer, respondent states that he specifically denies the allegations contained in paragraph 12, among others, of the Petition for Review, for lack of information or knowledge sufficient to form a belief as to the veracity or mendacity thereof, the truth being those stated in the Special and Affirmative Defenses of his Answer.[45] In the Answer's Special and Affirmative Defense, respondent merely states that petitioner's alleged claim for issuance of tax credit certificate is still subject to administrative routinary investigation/examination by respondent; and that petitioner's claim for refund in the amount of ₱7,199,992.80, allegedly representing erroneously paid income tax arising from the cash dividend it received from BTSI for the year 2016, were not substantiated by proper documents.[46]

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[41] Exhibit "P-11-C", CTA Docket, p. 203 and 341.
[42] *Supra* note 11.
[43] *Supra* note 12.
[44] CTA Docket, p. 13.
[45] Par. 3, Answer, CTA Docket, p. 106.
[46] CTA Docket, pp. 106-107.

Section 10, Rule 8 of the Rules of Court, as amended, requires a defendant to **specify each material allegations of fact**, the truth of which it does not admit, and whenever practicable, to **set forth the substance of the matters upon which defendant relies to support its denial**, to wit:

> "SEC. 10. *Specific denial.*- A defendant must specify each material allegation of fact the truth of which he does not admit and, whenever practicable, shall set forth the substance of the matters upon which he relies to support his denial. Where a defendant desires to deny only a part of an averment, he shall specify so much of it as is true and material and shall deny only the remainder. Where a defendant is without knowledge or information sufficient to form a belief as to the truth of a material averment made in the complaint, he shall so state, and this shall have the effect of a denial."

It is settled that a denial is not specific simply because it is so qualified by respondent. A general denial does not become specific by the use of the word specifically. When the matters of whether the respondent alleges having no knowledge or information sufficient to form a belief, are plainly and necessarily within respondent's knowledge, its alleged ignorance or lack of information will not be considered as a specific denial. Section 11, Rule 8 of the said Rule, provides that material averments in the complaint other than those as to the amount of unliquidated damages shall be deemed admitted when not specifically denied.[47]

Ferdinand R. Marcos, Jr. vs. Republic of the Philippines[48] holds that when matters regarding which respondents claim to have no knowledge or information sufficient to form a belief are plainly and necessarily within their knowledge, their alleged ignorance or lack of information will not be considered a specific denial. An unexplained denial of information within the control of the pleader, or is readily accessible to him, is evasive and is insufficient to constitute an effective denial.

Also, *Fernando Medical Enterprises, Inc. vs. Wesleyan University Philippines, Inc.*[49] elucidates when an answer is deemed to have admitted the material allegations of ultimate facts of an adverse party's pleadings, *viz.*:

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[47] *Philippine National Bank vs. Honorable Court of Appeals and Atty. Mordeno Cua*, G.R. No. 126153, January 14, 2004.
[48] G.R. No. 189434, April 25, 2012.
[49] G.R. No. 207970, January 20, 2016.

> "The answer admits the material allegations of ultimate facts of the adverse party's pleadings **not only when it expressly confesses the truth of such allegations but also when it omits to deal with them at all**. The controversion of the ultimate facts must only be by specific denial. Section 10, Rule 8 of the *Rules of Court* recognizes only three modes by which the denial in the answer raises an issue of fact. The first is by the defending party specifying each material allegation of fact the truth of which he does not admit and, whenever practicable, setting forth the substance of the matters upon which he relies to support his denial. The second applies to the defending party who desires to deny only a part of an averment, and the denial is done by the defending party specifying so much of the material allegation of ultimate facts as is true and material and denying only the remainder. The third is done by the defending party who is without knowledge or information sufficient to form a belief as to the truth of a material averment made in the complaint by stating so in the answer. **Any material averment in the complaint not so specifically denied are deemed admitted** except an averment of the amount of unliquidated damages." *(Boldfacing supplied)*

In the case at bar, respondent had every opportunity to verify the veracity of petitioner's claim anent the date of filing of the administrative claim for refund so as to make a specific denial thereof by perusing its own BIR records. In short, since respondent ought to know the BIR records of the present case, respondent could have easily denied petitioner's claim that it filed its administrative claim for refund with the BIR on September 24, 2018 by specifying the actual date of filing thereof; yet, respondent failed to do so.

Respondent's general denial of the material allegation in the Petition for Review anent the date of filing of petitioner's administrative claim for refund, without setting forth the substance of the matter relied upon to support his general denial, when such matter was plainly within his knowledge and he could not logically pretend ignorance as to the same, therefore, failed to properly tender an issue anent the aforesaid date of filing of the administrative claim for refund. Thus, petitioner's filing of the administrative claim for refund with the BIR on September 24, 2018 is deemed admitted by respondent.

Since petitioner filed its Annual ITR[50] and paid ₱24,053,070.00 as income taxes[51] on April 17, 2017, the filing of its administrative claim for refund of erroneously paid corporate income tax on September 24, 2018

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[50] Exhibit "P-11-C", CTA Docket, p. 203 and 341.
[51] *Supra* note 11.

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and the Petition for Review on April 12, 2019,[52] were both done within the reglementary period. Hence, the Court has acquired jurisdiction over the present case.

Petitioner failed to prove that "Other Income" includes the dividends received from BTSI

Petitioner alleges that the cash dividend it received from BTSI was declared as part of "Other Income" in its Annual ITR for taxable year 2016. It avers that the breakdown of the "Other Income" in Schedule 3 of petitioner's Annual ITR for taxable year 2016, is as follows:

Item on Other Income		₱115,638,854.00
Less		
(Recon items)		
Management Fee		
Sycamore International Shipping Corporation	10,680,000.00	
Banyan Towage Services, Inc.	948,000.00	
Cedar Shipmanagement, Inc.	1,920,000.00	
Cardinal Agri Products, Inc.	110,341.46	
FLG Management & Development Corp	226,337.73	
JEATA Holdings & Management Inc.	17,918.96	
JEVA Management & Development Corp	15,540.30	
Kenobe Inc	95,500.56	
Theta Petroleum Corporation	167,542.11	
Theta Logistics Company Inc.	153,042.58	
Agency Fee	1,508,893.81	
Dividend		
Banyan Towage Services, Inc.	23,999,976.00	
Procter Limited, Inc. (Panama)	68,460,575.13	
Gain on		
Sale/Rental of car	258,928.58	
Fuel to BTSI	2,873,211.94	
Interest		
Income from Affiliate	1,541,184.88	
Others	2,661,860.38	115,638,854.00
Variance		(0.42)

On the other hand, respondent avers that petitioner failed to prove that the amount declared in its 2016 Annual ITR as part of its "Other Income" actually includes the cash dividend petitioner allegedly received from BTSI.

The Court agrees with respondent.

In his Judicial Affidavit,[53] petitioner's witness, Mr. Lava testified, as follows:

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[52] *Supra* note 1.
[53] Exhibit "P-15", CTA Docket, pp. 127-136.

"32 Q: You mentioned earlier that the Petitioner paid the regular corporate income tax on the aforesaid cash dividends received from BTSI. What is your proof that the aforesaid cash dividends were declared as income in the Income Tax Return of the Petitioner for the year 2016?

A: The cash dividends received from BTSI in 2016 were reported as part of "Other Income" in the Annual Income Tax Return of the Petitioner for taxable year 2016.

33 Q: You mentioned that the cash dividends received from BTSI were reported as part of "Other Income" in the Petitioner's ITR for 2016. How much is the total "Other Income" reported in the 2016 ITR of the Petitioner?

A: It is ₱115,638,854, sir.

34 Q: Where can you find the total amount of ₱115,638,854 "Other Income" in the 2016 ITR of the Petitioner?

A: It is in Schedule 3 of the 2016 ITR, sir.

35 Q: If shown to you a copy [of] Schedule 3 of the 2016 ITR with the "Other Income" in the amount of ₱115,638,854, will you be able to identify the same?

A: Yes sir.

36 Q: Showing to you a copy of Schedule 3 of the 2016 Annual Income Tax Return of the Petitioner, sub marked as annex "P-11-A", with the amount ₱115,638,854, is this the one you mentioned previously?

A: Yes sir.

37 Q: What is the breakdown of the "Other Income" in the total amount of ₱115,638,854?

A: The "Other Income" in the total amount of ₱115,638,854 as reported in the Petitioner's ITR for the year 2016 is broken down as follows:

1. Management Fee	
-Sycamore International Shipping Corporation	10,680,000.00
-Banyan Towage Services, Inc.	948,000.00
-Cedar Shipmanagement, Inc.	1,920,000.00
-Cardinal Agri Products, Inc.	110,341.46
-FLG Management & Development Corp	226,337.73
-Jeata Holdings & Management Inc	17,918.96
-JEVA Management & Development Corp	15,540.30
-Kenobe Inc	95,500.56
-Theta Petroleum Corporation	167,542.11
-Theta Logistics Company Inc.	153,042.58

	P14,334,223,70
2. Agency Fee	1,508,893.81
3. Gain on Sale of Car	258,928.58
4. Fuel Transfer to Banyan Towage Services, Inc.	2,873,211.94
5. Interest Income from Affiliates	1,541,184.88
6. Dividend Income – Procter Limited, Inc. (non-resident foreign Corporation)	68,460,575.13
7. Banyan Towage Services, Inc. (Domestic Corporation)	23,999,976.00
8. Fuel and Lubes Transfer to Sycamore International Shipping Corporation	2,661,860.38
TOTAL "OTHER INCOME"	115,638,854.42
PER ITR	115,638,854 00
VARIANCE	0.42

"

In *Fortune Tobacco Corporation vs. Commissioner of Internal Revenue*,[54] the Supreme Court had the occasion to discuss that the taxpayer's own tax refund computation summary or the unsatisfactory explanation of its lone witness are not sufficient to prove the allegations made in its claim for refund, *viz.*:

> "Finally, as correctly held by the CTA *En Banc*, even if the Court would consider petitioner's otherwise excluded evidence, the same would still fail to sufficiently prove the petitioner's entitlement to its claim for refund. The disquisition of the CTA Division, as quoted in the CTA *En Banc* decision, is hereby reiterated with approval:
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> 'xxx xxx xxx
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> > **This Court cannot likewise rely solely on petitioner's Excise Tax Refund Computation Summary. The figures therein must be verified through other documentary evidence which this Court must look into and which petitioner failed to properly provide.**'
>
> Clearly, **it is petitioner's burden to prove the allegations made in its claim for refund**. For a claim for refund to be granted, the manner in proving it must be in accordance with the prescribed rules of evidence. It would have been **erroneous had the CTA *En Banc* relied on petitioner's own Excise Tax Refund Computation Summary or the unsatisfactory explanation of its lone witness to justify its claim for tax refund.**" (*Boldfacing supplied*)

In the present case, while petitioner and its witness provide the breakdown of petitioner's "Other Income" in the amount of ₱115,638,854.00, the same cannot be verified by the Court. Perusal of petitioner's evidence reveals that no other documents such as

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[54] G.R. No. 192024, July 1, 2015.

petitioner's audited financial statements or any other source documents were presented to validate the entries in the "Other Income" in Schedule 3 of petitioner's 2016 Annual ITR. Stated differently, petitioner failed to present other documentary evidence through which the Court could verify the items composing petitioner's "Other Income", specifically the inclusion therein of the amount of ₱23,999,976.00, representing the cash dividend it received from BTSI, which petitioner allegedly erroneously subjected to income tax.

Tax refunds, being in the nature of tax exemptions, are construed in *strictissimi juris* against the taxpayer and liberally in favor of the government.[55] The burden in claiming tax refund rests upon the taxpayer which petitioner has failed to discharge. For failing to prove its entitlement to a tax refund, petitioner's claim must perforce be denied.

WHEREFORE, premises considered, the present Petition for Review is hereby **DENIED** for lack of merit.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

I CONCUR:

CATHERINE T. MANAHAN
Associate Justice

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[55] *Eastern Telecommunications Philippines, Inc. vs. Commissioner of Internal Revenue,* G.R. No. 183531, March 25, 2015.

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