REPUBLIC OF THE PHILIPPINES

Court of Tax Appeals

QUEZON CITY

En Banc

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-versus-

PHILEX MINING CORPORATION,
Respondent.

CTA *EB* NO. 1493
(CTA Case No. 8819)

Present:
Del Rosario, P.J.,
Castañeda, Jr.,
Bautista,
Uy,
Casanova,
Fabon-Victorino,
Mindaro-Grulla,
Ringpis-Liban, *and*
Manahan, JJ.

Promulgated:
JUN 0 1 2017 3:45pm

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DECISION

BAUTISTA, J:

The Case

Before the Court of Tax Appeals ("CTA") *En Banc* ("Court *En Banc* ") is a Petition for Review[1] filed under *Section 3(b), Rule 8 of the Revised Rules of the Court of Tax Appeals*[2] *("RRCTA")* praying for the

[1] *Rollo, CTA EB No. 1493, Petition for Review ("PFR"),* pp. 5-48, with annexes.

[2] SECTION 3. *Who May Appeal; Period to File Petition.* — xxx

xxx xxx xxx

(b) A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court by filing before it a petition for review within fifteen days from receipt of a copy of the questioned decision or resolution. Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of the reglementary period herein fixed, the Court may grant an additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review.

Court *En Banc* to reverse and set aside the Decision[3] promulgated on May 20, 2016 and the Resolution[4] promulgated on July 7, 2016, both rendered by the Second Division of the CTA ("Court in Division"); and to render a decision denying the claim for refund.[5]

The Parties[6]

Petitioner Commissioner of Internal Revenue ("CIR") is the duly appointed Commissioner of the Bureau of Internal Revenue ("BIR") vested with authority, among others, to act upon and to approve claims for refund or for tax credit of overpaid or erroneously paid internal revenue taxes. He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

Respondent Philex Mining Corporation is a domestic corporation organized under Philippine laws, with principal office at 27 Brixton St. Pasig City. It is engaged in the business of mining, which includes exploration, development, and operation of mining properties for commercial production, and the marketing of mine products, consisting of gold bullion and copper ore concentrates. Respondent is Value-Added Tax ("VAT")-registered with Taxpayer's Identification No. 000-283-731-000, as evidenced by its BIR Certificate of Registration No. OCN8RC0000041684.

The Facts

On March 11, 2004, respondent and Pan Pacific Copper Co., Ltd. of Tokyo, Japan ("PPCCLTJ") executed a Long Term Gold and Copper Concentrates Sales Agreement for the sale by the former of copper concentrates to the latter.[7] On August 16, 2007, respondent entered into a similar contract with Louis Dreyfus Commodities Metals Suisse SA of Switzerland ("LDCMSSAS").[8]

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[3] *Records, CTA Case No. 8819, Decision,* pp. 190-212; penned by Associate Justice Amelia R. Cotangco-Manalastas, with Associate Justices Juanito C. Castañeda and Caesar A. Casanova concurring.
[4] *Id., Resolution,* pp. 229-232; penned by Associate Justice Amelia R. Cotangco-Manalastas, with Associate Justice Juanito C. Castañeda concurring.
[5] *Rollo, PFR, Prayer,* p. 13.
[6] *Records, Decision, Facts,* pp. 190-191.
[7] *Id., Facts,* p. 191.
[8] *Id.*

Respondent filed its Quarterly VAT Returns for the second and the third quarters of 2012 on the following dates:

QUARTERLY RETURN	FILING DUE DATE	DATE OF ACTUAL FILING
Second Quarter	July 25, 2012	July 18, 2012 (original)
		September 25, 2013 (amended)
Third Quarter	October 25, 2012	October 19, 2012 (original)
		September 25, 2013 (amended)[9]

On December 17, 2013, respondent filed an administrative claim for refund or for tax credit with the One-Stop Shop InterAgency Tax Credit and Duty Drawback Center of the Department of Finance ("DOF-OSS") for its alleged excess and unutilized input VAT in the amounts of Php43,969,988.40 for the second quarter and Php42,125,610.72 for the third quarter of 2012.

Due to the inaction of petitioner on respondent's administrative claim for refund, respondent filed a Petition for Review before the Court in Division on May 15, 2014; to which petitioner filed an Answer on July 4, 2014.[10]

On May 20, 2016, the Court in Division promulgated the assailed Decision[11], the dispositive portion thereof reads as follows:

> **WHEREFORE,** premises considered, the instant Petition for Review is **PARTIALLY GRANTED.** Accordingly, [petitioner] is **ORDERED** to **REFUND** or to **ISSUE A TAX CREDIT CERTIFICATE** in favor of [respondent] the amount of **[Php]57,910,100.80,** representing its unutilized excess input VAT for the 2nd and 3rd quarters of 2012 attributable to its zero-rated receipts for the same period.
>
> **SO ORDERED.**[12]

In the assailed Decision, the Court in Division listed the requisites for the refund or the tax credit of unutilized input VAT attributable to zero-rated or effectively zero-rated sales, *viz.*: *(1)* there must be zero-rated or effectively zero-rated sales; *(2)* input taxes were incurred or paid; *(3)* such input taxes were attributable to zero-rated

[9] *Records, Decision, Facts,* p. 191.
[10] *Id.*
[11] *Id., Decision,* pp. 190-212.
[12] Emphases retained.

or effectively zero-rated sales; *(4)* the input taxes were not applied against any output VAT liability; and *(5)* the claim for refund was filed within the two (2)-year prescriptive period.

After determining that respondent complied with the fifth requirement, the Court in Division found that respondent's export sales of USD83,666,415.15 (Php3,565,404,402.91) and USD40,075,634.00 (Php1,681,431,361.70) for the second and the third quarters of 2012 qualify for VAT zero-rating, satisfying the first condition. For the second and third requisites, the Court declared that only the input VAT of Php57,910,100.80 can be attributed to valid zero-rated sales. As to the fourth condition, the Court found that the same was met since input taxes were not applied against any output VAT liability.

Not satisfied with the Decision, petitioner filed his Motion for Reconsideration (on the Decision of the Honorable Court dated May 20, 2016)[13] on June 7, 2016, countered by respondent's Comment/Opposition[14] filed on June 28, 2016.

On July 7, 2016, the Court in Division resolved[15] the Motion for Reconsideration in the following manner:

> **WHEREFORE**, premises considered, the instant Motion for Reconsideration is **DENIED** for lack of merit.
>
> **SO ORDERED.**[16]

After being granted an extension,[17] petitioner raised an appeal to the Court *En Banc* when he filed the present Petition for Review[18] on August 18, 2016; to which respondent filed its Comment[19] on October 6, 2016.

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[13] *Records, Motion for Reconsideration (on the Decision of the Honorable Court dated May 20, 2016)*, pp. 213-220.
[14] *Id., Comment/Opposition*, pp. 223-228.
[15] *Id., Resolution*, pp. 229-232
[16] Emphases retained.
[17] *Rollo*, pp. 1-4.
[18] *Id., PFR*, pp. 5-48, with annexes.
[19] *Id., Comment*, pp. 52-58.

On October 21, 2016, the Court *En Banc* gave due course to the Petition for Review and submitted the case for decision;[20] hence, this Decision.

The Assigned Errors[21]

THE COURT IN DIVISION ERRED IN NOT CONSIDERING RESPONDENT'S FAILURE TO PROVE THAT IT SUBMITTED WITH THE ONE STOP SHOP THE COMPLETE DOCUMENTS IN SUPPORT OF ITS ADMINISTRATIVE CLAIM FOR REFUND, HENCE, THE EVIDENCE IS INSUFFICIENT TO JUSTIFY THE DECISION;

THE COURT IN DIVISION ERRED IN NOT DECLARING RESPONDENT'S JUDICIAL CLAIM FOR REFUND AS PREMATURELY FILED;

THE COURT IN DIVISION ERRED WHEN IT CONSIDERED AS VALID ALL THE FINAL INVOICES BEARING DATES LATER THAN THE DATES OF SALE OF RESPONDENT'S PRODUCTS;

THE COURT IN DIVISION ERRED IN NOT DENYING THE CLAIM FOR REFUND FOR FAILURE OF RESPONDENT TO SUBMIT ITS SUBSIDIARY SALES JOURNAL AND ITS SUBSIDIARY PURCHASE JOURNAL; AND

THE COURT IN DIVISION ERRED WHEN IT DID NOT STRICTLY CONSTRUE AGAINST RESPONDENT IN THE DETERMINATION OF THE SUFFICIENCY OF EVIDENCE SUBMITTED IN SUPPORT OF ITS CLAIM.

The Ruling of the Court En Banc

The Court *En Banc* finds no merit in the instant Petition for Review.

The Court in Division properly received, evaluated and

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[20] *Rollo,* pp. 60-61.
[21] *Id., PFR, Grounds,* pp. 7-8.

appreciated the evidence submitted before it.

The Court in Division correctly declared that respondent's judicial claim for refund was timely filed.

Petitioner contends that the Court in Division erred in not considering respondent's failure to present evidence showing that it submitted with the DOF-OSS complete documents in support of its claim for refund; that while respondent presented a Letter dated December 11, 2013 enumerating the documents allegedly submitted, the same may not be considered by the Court in Division as it was dated a week before the filing of the administrative claim on December 17, 2013; and that, more importantly, the document does not bear a receiving stamp, does not show that it is in accordance with the DOF-OSS checklist, and does not prove that respondent submitted complete documents. Petitioner likewise posits that since respondent failed to prove submission of complete documents in support of its claim for refund, the counting of the one hundred and twenty (120)-day period for the CIR to grant or to deny the same has not commenced to run; and, consequently, that the judicial claim filed with the Court in Division was filed prematurely.

Respondent argues that the testimony of its witness, Ms. Sylvia Delos Santos ("Ms. Delos Santos"), belied petitioner's assertions; that Ms. Delos Santos identified two (2) letters from respondent addressed to the DOF-OSS, which contained a summary or list of documents that accompanied the filing of the Claimant Information Sheets; that she also identified the DOF official receipt evidencing respondent's payment of the filing and processing fees for each claim; that the DOF-OSS would not have issued the said official receipt if there were no supporting documents accompanying the filing of the claims; and that petitioner's counsel filed a Compliance with the Court in Division dated July 6, 2015, transmitting the BIR Records of the case, which contained the documents that respondent filed with the DOF-OSS. Respondent likewise avers that the Court *En Banc* has already ruled that the completeness of documents to support an administrative claim for refund is determined by the taxpayer and not by the BIR.

The Court *En Banc* finds no merit in petitioner's contentions.

The term "relevant supporting documents" refers to those documents necessary to support the legal basis in disputing a tax assessment or in proving the claim for refund, as determined by the taxpayer and not by the BIR, who can only inform the taxpayer to submit additional documents but cannot demand what type of supporting documents to be submitted.[22] Moreover, a taxpayer's failure to comply with the requirements listed under *Revenue Memorandum Order ("RMO") No. 53-98* is not fatal to its claim for tax credit or refund of excess unutilized excess VAT, especially when the application has arrived at the judicial level.[23] Once the claim for refund has been elevated to the Court, the admissibility, materiality, relevancy, probative value and weight of evidence presented therein become subject to the *Rules of Court;*[24] and the question of whether or not the evidence submitted by a party is sufficient to warrant the grant of a claim for refund lies within the sound discretion and judgment of the Court.[25]

As to the prescriptive periods involved, *Section 112(A) of the 1997 NIRC* states that a taxpayer has two (2) years from the close of the taxable quarter when the sales were made to file an administrative claim with the CIR. The latter is given one hundred and twenty (120) days from submission of complete supporting documents to decide on the claim. In case of inaction by the CIR after one hundred and twenty (120) days from the date of submission of the application with complete documents, *Section 112(C) of the 1997 NIRC,* in relation to *Revenue Regulations ("RR") No. 16-2005,* grants the taxpayer thirty (30) days to file a judicial claim with the CTA.

The periods covered by respondent's claim are the second and the third quarters of 2012. Following its calendar year, the end of the taxable quarters fall on June 30, 2012 and September 30, 2012, respectively. Consequently, the due dates for the filing of the administrative claims for refund are June 30, 2014 and September 30, 2014, respectively, making the administrative claim for refund filed on December 17, 2013 timely made. Thereafter, petitioner had one hundred and twenty (120) days or until April 16, 2014 to grant or deny the same. Due to petitioner's inaction, respondent had thirty (30) days

[22] *Commissioner of Internal Revenue v. First Express Pawnshop Company, Inc.,* G.R. Nos. 172045-46, June 16, 2009, 589 SCRA 253.
[23] *Pilipinas Total Gas, Inc. v. Commissioner of Internal Revenue,* G.R. No. 207112, December 8, 2015.
[24] *Id.*
[25] *Id.*

or until May 16, 2014 to file a petition for review with the Court in Division. Records reveal that respondent filed its Petition for Review on May 15, 2014. Hence, the administrative and the judicial claims for refund were filed within the reglementary periods provided by law, to wit:

PERIOD	END OF TAXABLE QUARTER	ADMINISTRATIVE FILING DUE DATE	ACTUAL DATE OF FILING	LAST DAY FOR CIR TO DECIDE	JUDICIAL FILING DUE DATE
Second Quarter 2012	30-Jun-12	30-Jun-14	17-Dec-13	16-Apr-14	16-May-14
Third Quarter 2012	30-Sep-12	30-Sep-14			

The Court in Division was correct in considering as valid all the final invoices bearing dates later than the dates of sale of respondent's products.

The Court in Division properly held that the submission of the subsidiary sales journal and the subsidiary purchase journal is not a requirement in the present claim.

The Court in Division did not err in finding that respondent presented sufficient evidence in support of its claim, albeit partial leading to a refund in the reduced amount.

Petitioner avers that respondent failed to comply with the accounting requirements under *Section 133(C) of the 1997 NIRC* and *Section 4.133.3 of RR No. 16-2005;* that respondent failed to prove that the documents it submitted in support of its claim are sufficient, despite non-submission of its subsidiary sales journal and subsidiary purchase journal; and that the Court in Division failed to adhere to the doctrine that a claim for refund is strictly construed against the claimant in considering the evidence of respondent.

In its defense, respondent counters that the Court in Division has thoroughly considered and discussed this item; that the issuance of a final invoice at a later date was necessitated by the fact that to determine the final settlement and final prices for payable copper, payable gold and payable silver and from the very nature of the products, their final prices cannot be determined on the date of shipment for they have to undergo certain intricate procedures at the buyer's smelting or refinery plant at the port of discharge abroad; and that it is for this reason why only a provisional invoice is issued on the date of shipment covering ninety percent (90%) of the estimated or provisional price, and a final invoice is issued after the procedures were completed and the final prices were determined.

Respondent cited the case of *Commissioner of Internal Revenue v. Philex Mining Corporation,* wherein the Court *En Banc* already ruled that presentation before the court of the subsidiary sales journal and subsidiary purchase journal is not required; and that while it is true that claims for refund are strictly construed against the taxpayer, where there is undisputed and sufficient evidence presented, the Court must order a refund to the extent supported by evidence.

At the outset, the Court *En Banc* finds it necessary to refer to the case of *Philex Mining Corporation v. Commissioner of Internal Revenue*[26] *("PMC v. CIR"),* docketed as *CTA Case No. 8228,* which deals with the same parties and issues as the present case. *PMC v. CIR* originated from the Second Division of the CTA ("Second Division"), wherein the CIR maintained that the taxpayer failed to prove with certainty that the accounting requirements mandated in *RR No. 16-2005* and *Section 114(A) of the 1997 NIRC* were strictly complied with. It must be noted, at this point, that the sales in *PMC v. CIR* also arose from the Long Term Gold and Copper Concentrates Sales Agreement with PPCCLTJ, as in the present case. In partially granting the taxpayer's claim for refund, the Second Division noted that the final invoices submitted by the taxpayer bear dates much later than the dates of shipment indicated in the bills of lading and provisional invoices. However, the taxpayer was able to sufficiently explain that in its direct exports of copper concentrates, it issues two (2) invoices to the buyer, *viz.*: *(1)* a Provisional Invoice covering ninety percent (90%) of the estimated value of the shipment, issued upon shipment, and *(2)* a Final Invoice, issued when the parties reach an agreement regarding the final settlement weights, assays and quotations and the final price of the shipment. Consequently, the Second Division held that the actual shipment date of the mineral products, as appearing in the bills of lading, should be regarded as the actual date when the export sales took place.

[26] CTA Case No. 8228, May 31, 2012.

After the CIR's motion for reconsideration was denied in *PMC v. CIR*, he filed a Petition for Review with the Court *En Banc* docketed as *CTA EB Case No. 923* entitled *Commissioner of Internal Revenue v. Philex Mining Corporation ("CIR v. PMC")*. On January 7, 2013, the Court *En Banc* promulgated a Decision in *CIR v. PMC* stating that the Second Division has already fully and exhaustively resolved the issue in relation to the arguments or grounds raised in the Petition for Review, which are mere rehashes of the arguments proffered in the Motion for Reconsideration. Hence, the Petition for Review was denied for lack of merit. After his motion for reconsideration in *CIR v. PMC* was denied, the CIR raised an appeal with the Supreme Court in *Commissioner of Internal Revenue v. Philex Mining Corporation*, docketed as *G.R. No. 207049*. The Highest Tribunal likewise denied the same and affirmed the ruling of the Court *En Banc* on November 11, 2013.

It must be stressed that a sales invoice is a written account of goods sold or services rendered, indicating the prices charged therefor or a list by whatever name it is known, which is used in the ordinary course of business evidencing sale and transfer or agreement to sell or transfer goods and services.[27] A sales invoice is necessary to substantiate the actual amount or quantity of goods sold and their selling price, and taken collectively are the best means to prove the input VAT payments.[28] Moreover, a VAT invoice is the seller's best proof of the sale of goods or services to the buyer.[29]

It is clear that the export sales actually transpired during the period of the claim, as evidenced by respondent's bills of lading and provisional receipts. To consider them as sales in the subsequent year due merely to the issuance of final invoices is illogical. To record the sale in the year of delivery is likewise in accord with the accrual method of accounting, wherein income is recorded when goods are shipped and delivered, unless there is an agreement to the contrary.

As to petitioner's claim that respondent's non-submission of its subsidiary sales journal and subsidiary purchase journal is fatal to its claim, the Court *En Banc* does not agree.

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[27] *Commissioner of Internal Revenue v. Manila Mining Corporation*, G.R. No. 153204, August 31, 2005, 468 SCRA 571, citing Deoferio and Mamalateo, The Value Added Tax in the Philippines, 1st ed., 2000.
[28] *Id.*
[29] *Northern Mindanao Power Corporation v. Commissioner of Internal Revenue*, G.R. No. 185115 February 18, 2015, 750 SCRA 733.

Certain requisites have been jurisprudentially developed which a taxpayer-applicant must comply with to successfully obtain a credit or a refund of excess input VAT. The said requisites are:

1. the claim is filed with the CIR within two (2) years after the close of the taxable quarter when the sales were made;[30]

2. in case of full or partial denial of the refund claim, or the failure on the part of the CIR to act on the said claim within a period of 120 days, the judicial claim has been filed with the Court, within thirty (30) days from receipt of the decision or after the expiration of the said one hundred and twenty (120)-day period;[31]

3. the taxpayer is VAT-registered;[32]

4. the taxpayer is engaged in zero-rated or effectively zero-rated sales;[33]

5. for zero-rated sales under *Sections 106(A)(2)(a)(1), (2) and (b), and 108(B)(1) and (2),* the acceptable foreign currency exchange proceeds have been duly accounted for in accordance with BSP rules and regulations;[34]

6. the input taxes are due or paid;[35]

7. the input taxes are not transitional input taxes;[36]

8. the input taxes claimed are attributable to zero-rated or effectively zero-rated sales;[37]

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[30] *Intel Technology Philippines, Inc. v. Commissioner of Internal Revenue,* G.R. No. 166732, April 27, 2007, 522 SCRA 657; *San Roque Power Corporation v. Commissioner of Internal Revenue,* G.R. No. 180345, November 25, 2009, 605 SCRA 536; *AT&T Communications Services Philippines, Inc. v. Commissioner of Internal Revenue,* G.R. No. 182364, August 3, 2010, 626 SCRA 567.
[31] *Rohm Apollo Semiconductor Philippines v. Commissioner of Internal Revenue,* G.R. No. 168950, January 14, 2015.
[32] *Supra* note 30.
[33] *Id.*
[34] *Id.*
[35] *Id.*
[36] *Id.*
[37] *Id.*

9. where there are both zero-rated or effectively zero-rated sales and taxable or exempt sales, and the input taxes cannot be directly and entirely attributable to any of these sales, the input taxes shall be proportionately allocated on the basis of sales volume;[38] and

10. the input taxes have not been applied against output taxes during and in the succeeding quarters.[39]

There is nothing in law and jurisprudence which compels the presentation of the subsidiary sales journal and the subsidiary purchase journal of a taxpayer in a claim for a credit or a refund of excess input VAT. Hence, the Court *En Banc* finds that the Court in Division is justified in not requiring the said documents from respondent in the present case.

While basic is the rule that tax refunds are in the nature of tax exemptions and are to be construed *strictissimi juris* against the entity claiming the same,[40] this rule is not absolute. A taxpayer who seeks for refund can justify the claim by words too plain to be mistaken and too categorical to be misinterpreted.[41] The Court *En Banc* finds no reason to reverse the findings of the Court in Division, which merely considered the evidence presented by respondent in arriving at its Decision. In fact, due to the rule that refunds are construed strictly against the taxpayer, the Court in Division did not award respondent the full refund it prayed for and only granted a portion thereof which is supported by evidence.

WHEREFORE, the instant Petition for Review is hereby **DENIED** for lack of merit. Accordingly, the Decision promulgated on May 20, 2016 and the Resolution promulgated on July 7, 2016 both rendered by the Court in Division are hereby **AFFIRMED**.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

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[38] *Supra* note 30.
[39] *Id.*
[40] *Philippine Geothermal, Inc. v. Commissioner of Internal Revenue*, G.R. No. 154028, July 29, 2005 456, SCRA 308.
[41] *Sea-land Service, Inc. v. Court of Appeals*, G.R. No. 122605, April 30, 2001, 357 SCRA 441.

WE CONCUR:

(With Concurring Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

CERTIFICATION

Pursuant to *Article VIII, Section 13 of the Constitution*, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	**CTA EB NO. 1493** (CTA Case No. 8819)
	Present:
-versus-	Del Rosario, *P.J.*, Castañeda, Jr., Bautista, Uy, Casanova, Fabon-Victorino, Mindaro-Grulla, Ringpis-Liban, *and* Manahan, *JJ.*
PHILEX MINING CORPORATION, *Respondent.*	Promulgated: JUN 0 1 2017 3:54 pm

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CONCURRING OPINION

DEL ROSARIO, P.J.:

I concur in the *ponencia*'s denial of the Petition for Review filed by the Commissioner of Internal Revenue for lack of merit. I deem it imperative, however, to address petitioner's argument that the Court in Division should not have partially granted respondent's claim for refund in view of the latter's submission of insufficient evidence at the administrative level.

In my Concurring Opinion in *Commissioner of Internal Revenue vs. Deutsche Knowledge Services Pte, Ltd. (Deutsche case),*[1] I addressed this similar argument raised by petitioner, in this wise:

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[1] CTA EB Nos. 1262 & 1263, July 15, 2016; reiterating the Concurring Opinion in *Commissioner of Internal Revenue vs. Deutsche Knowledge Services Pte. Ltd.*, CTA EB Nos. 1266 & 1267, February 17, 2016.

"I find it necessary to address the argument raised by the CIR in her Answer that DKS did not observe the doctrine of exhaustion of administrative remedies as it failed to submit complete documents required under Revenue Memorandum Order (RMO) No. 53-98. The CIR argues that DKS' failure to submit complete supporting documents warrants the dismissal of the petition for lack of jurisdiction. She also insists in her petition that it is mandatory for DKS to have proven before the Court in Division that it has strictly complied with the submission of documents provided under RMO No. 53-98 to justify the grant of its claim for refund.

The issue involved in this case is not novel. In the earlier case of *Commissioner of Internal Revenue vs. Deutsche Knowledge Services Pte, Ltd.*[2] involving the same parties but pertaining to a different quarter for the taxable year 2009, I had the occasion to expound on this very point, viz:

> The *ponencia* is correct in rejecting the CIR's contention, citing *Commissioner of Internal Revenue vs. Team Sual Corporation (Formerly Mirant Sual Corporation)*,[3] that submission of documents enumerated in RMO No. 53-98 is not a requirement for a grant of tax refund.
>
> Moreover, there is no showing that the CIR sent a written notice requiring DKS to submit additional documents -- a process that is indispensable in computing the 120+30 day period. The recent *Pilipinas Total Gas, Inc. vs. Commissioner of Internal Revenue (Total Gas case)*[4] is instructive on this point, viz:
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>> To summarize, for the just disposition of the subject controversy, the rule is that from the date an administrative claim for excess unutilized VAT is filed, a taxpayer has thirty (30) days within which to submit the documentary requirements sufficient to support his claim, unless given further extension by the CIR. Then, upon filing by the taxpayer of his complete documents to support his application, or expiration of the period given, the CIR has 120 days within which to decide the claim for tax credit or refund. Should the taxpayer, on the date of his filing, manifest that he no longer wishes to submit any other addition documents

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[2] CTA EB No. 1266 & 1267, February 17, 2016.
[3] G. R. No. 205055, July 18, 2014.
[4] G. R. No. 207112, December 8, 2015.

> to complete his administrative claim, the 120-day period allowed to the CIR begins to run from the date of filing.
>
> xxx First, the 120-day period had commenced to run and the 120+30-day period was, in fact, complied with. As already discussed, **it is the taxpayer who determines when complete documents have been submitted for the purpose of the running of the 120- day period. It must again be pointed out that *this in no way precludes the CIR from requiring additional documents necessary to decide the claim, or even denying the claim if the taxpayer fails to submit the additional documents requested.***
>
> Second, the CIR **sent no written notice informing Total Gas that the documents were incomplete or required it to submit additional documents.** As stated above, such notice by way of a written request is required by the CIR to be sent to Total Gas. Neither was there any decision made denying the administrative claim of Total Gas on the ground that it had failed to submit all the required documents. It was precisely the inaction of the BIR which prompted Total Gas to file the judicial claim. Thus, **by failing to inform Total Gas of the need to submit any additional document, the BIR cannot now argue that the judicial claim should be dismissed because it failed to submit complete documents."** *(Boldfacing in the original)*

If petitioner truly believed that respondent submitted insufficient documents in support of its administrative claim for refund, then petitioner should have notified respondent of the necessary documents needed to ascertain the validity of its refund claim. Interestingly, records of the case reveal that no such action was taken by petitioner.[5] Consequently, denial of respondent's refund claim on the ground that it did not submit complete supporting documents would be contrary to fair play and basic tenets of justice.

Similar to the *Deutsche case*, *supra,* the present petition arose from the inaction of the CIR on respondent's claim for refund. In the cited Concurring Opinion, *supra,* I noted the distinction made in the *Total Gas case* between an appeal from the CIR's decision on the merits and inaction on the taxpayer's claim for refund:

> "Novel in the *Total Gas case* is the distinction between an appeal from the CIR's decision on the merits

[5] Resolution dated July 7, 2016, CTA EB No. 1493 Docket, p. 44.

and inaction on the taxpayer's claim for refund involving input Value-Added Tax (VAT), viz:

> A distinction must, thus, be made between administrative cases appealed due to inaction and those dismissed at the administrative level due to the failure of the taxpayer to submit supporting documents. **If an administrative claim was dismissed by the CIR due to the taxpayer's failure to submit complete documents despite notice/request**, then the judicial claim before the CTA would be dismissible, not for lack of jurisdiction, but for the taxpayer's failure to substantiate the claim at the administrative level. **When a judicial claim for refund or tax credit in the CTA is an appeal of an unsuccessful administrative claim, the taxpayer has to convince the CTA that the CIR had no reason to deny its claim. It, thus, becomes imperative for the taxpayer to show the CTA that not only is he entitled under substantive law to his claim for refund or tax credit, but also that he satisfied all the documentary and evidentiary requirements for an administrative claim.** It is, thus, crucial for a taxpayer in a judicial claim for refund or tax credit to show that its administrative claim should have been granted in the first place. **Consequently, a taxpayer cannot cure its failure to submit a document requested by the BIR at the administrative level by filing the said document before the CTA.**
>
> In the present case, however, Total Gas filed **its judicial claim due to the inaction of the BIR**. Considering that the administrative claim was never acted upon; there was no decision for the CTA to review on appeal per se. Consequently, **the CTA may give credence to all evidence presented by Total Gas, including those that may not have been submitted to the CIR as the case is being essentially decided in the first instance.** The Total Gas must prove every minute aspect of its case by presenting and formally offering its evidence to the CTA, which must necessarily include whatever is required for the successful prosecution of an administrative claim.

In other words, if the appeal was made from the CIR's decision on the merits, it is crucial for the taxpayer to have submitted all the documents in the administrative level. Failure to do so would bar the taxpayer from presenting additional documents to this Court. If the appeal was made due to the CIR's inaction, the taxpayer is not precluded from submitting additional documents to prove its claim for refund.

The appeal in this case involves the CIR's inaction. Thus, DKS was allowed to present in evidence additional documents not submitted in the administrative level and such evidence was correctly considered by the Court in Division in arriving at the assailed Decision dated September 23, 2014 and Amended Decision dated December 19, 2014 to refund or issue a Tax Credit Certificate in favor of DKS." *(Boldfacing in the original)*

Considering that the present petition is a result of petitioner's inaction on respondent's refund claim, respondent may submit as it did, any document or evidence it deems necessary to support its judicial claim. Thus, the Court in Division acted judiciously in giving credence as it did *albeit* partially, to the pieces of evidence offered by respondent.

All told, I **VOTE** to **DENY** petitioner's Petition for Review for lack of merit.

ROMAN G. DEL ROSARIO
Presiding Justice