REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL FIRST DIVISION

UNITED INTERNATIONAL PICTURES AKTIEBOLAG, *Petitioner*,	**CTA CASE NO. 9930**
	Members:
- **versus** -	**DEL ROSARIO**, *P.J., Chairperson*, **MANAHAN**, and **REYES-FAJARDO**, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent*.	Promulgated: JUN 2 9 2023 10:30 AM

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AMENDED DECISION

DEL ROSARIO, P.J.:

For resolution is petitioner's "**Motion for Reconsideration**" of the Decision dated March 15, 2022, incorporated in its "Omnibus Motion", posted on April 6, 2022 *via* registered mail, with respondent's "**Comment (To Petitioner's 'Omnibus Motion (1) For Reconsideration with (2) Motion to Take Judicial Notice or (3) Alternative Motion for Leave of Court to File and Admit attached Judicial Affidavit and to Set Case for Hearing')**" posted on May 23, 2022.

The dispositive portion of the assailed Decision reads:

> "**WHEREFORE**, in light of the foregoing, the Petition for Revival of Judgment by petitioner United International Pictures Aktiebolag on September 18, 2018 is hereby **DISMISSED** for lack of cause of action.
>
> **SO ORDERED**."

In its Motion for Reconsideration, petitioner prays that the Court: *(i)* reconsider the assailed Decision; *(ii)* revive the Decision dated August 28, 2008 in CTA Case No. 6912; and, *(iii)* order respondent

Commissioner of Internal Revenue (CIR) to refund or issue a tax credit certificate in the amount of ₱7,200,302.97 in favor of petitioner United International Pictures Aktiebolag.

Petitioner contends that the CTA Decision in CTA Case No. 6912 is a final and executory judgment which remains unexecuted, and which should be revived, as the Petition for Revival of Judgment was timely filed.

Petitioner maintains that United International Pictures Aktiebolag (UIP Aktiebolag) is the same as United International Pictures AB (UIP AB) which is the party in CTA Case No. 6912. To prove this fact, petitioner posted *via* registered mail: *(i)* an "Omnibus Motion for Leave of Court to File and Admit Attached Judicial Affidavit and to Set Case for Hearing" on April 6, 2022; and, *(ii)* a "Supplement to the Omnibus Motion" on June 3, 2022, both of which were granted by the Court in the Resolution dated July 11, 2022. The Judicial Affidavit and Supplemental Judicial Affidavit of Atty. Renz Jeffrey A. Ruiz were also admitted by the Court.[1] Atty. Ruiz testified on November 8, 2022 during which he identified his Judicial Affidavit and Supplemental Judicial Affidavit and the documents referred to therein.

On November 18, 2022, petitioner filed its "Supplemental Formal Offer of Evidence" which was resolved by the Court in the Resolution dated February 1, 2023. The Court admitted in evidence **Exhibits** "**P-11**", "**P-11-a**", "**P-11-b**", "**P-11-f**", "**P-12**", "**P-12-a**", "**P-12-b**", "**P-12-g**", "**P-12-h**", "**P-12-m**", "**P-12-n**", "**P-13**", "**P-14**", "**P-15**", "**P-16**", "**P-17**", "**P-18**", "**P-19**", "**P-20**", "**P-21**", "**P-22**", "**P-22-a**", "**P-23**", and "**P-23-a**"; and denied the admission of Exhibits "**P-11-c**", "**P-11-d**", "**P-11-e**", "**P-11-g**", "**P-11-h**", "**P-11-i**", "**P-12-c**", "**P-12-d**", "**P-12-e**", "**P-12-f**", "**P-12-i**", "**P-12-j**", "**P-12-k**", and "**P-12-l**", for failure of petitioner's witness to identify them. The Court directed the parties to file their respective Memoranda within thirty (30) days from receipt of the Resolution dated February 1, 2023.

On March 20, 2023, petitioner posted its Memorandum, incorporating therein a Tender of Excluded Evidence (**Exhibits** "**P-11-c**", "**P-11-d**", "**P-11-e**", "**P-11-g**", "**P-11-h**", "**P-11-i**", "**P-12-c**", "**P-12-d**", "**P-12-e**", "**P-12-f**", "**P-12-i**", "**P-12-j**", "**P-12-k**", and "**P-12-l**") and stating that the denied exhibits had already been admitted in evidence in CTA Case No. 6912. Petitioner insists that the Court may take judicial notice of the evidence and documents presented by UIP

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[1] Resolution dated October 10, 2022.

AB in CTA Case No. 6912 and the facts established by such documents, including, most particularly, the fact that the complete corporate name of UIP AB therein is United International Pictures Aktiebolag.

On the other hand, respondent filed its Memorandum on March 20, 2023. Respondent maintains that petitioner failed to prove that UIP Aktiebolag is the same as UIP AB, and that petitioner failed to present sufficient evidence to prove that the Bureau of Internal Revenue (BIR) did not comply with the Writ of Execution dated November 17, 2008.

THE COURT'S RULING

After a judicious evaluation of petitioner's supplemental evidence, the Court *En Banc* is constrained to reconsider the assailed Decision.

Petitioner UIP Aktiebolag obtained the certified true copies of the documents offered in evidence by UIP AB in CTA Case No. 6912, had them marked, identified in open court, and formally offered in evidence in the present case. As aforestated, in the Resolution dated February 1, 2023, the Court **admitted in evidence** the following:

Exhibits	Description
"P-11"	Petition for Review dated March 31, 2004 filed by petitioner in United International Pictures AB vs. Commissioner of Internal Revenue, docketed as CTA Case No. 6912
"P-11-a"	Securities and Exchange Commission (SEC) Certificate of Filing of Amended Articles of Incorporation of a Foreign Corporation issued in the name of "United International Pictures Aktiebolag" under SEC Registration Number 576
"P-11-b"	Bureau of Internal Revenue (BIR) Form No. 1702 (Annual Income Tax Return) for the Year 2001 in the name of 'United International Pictures Aktiebolag – Philippine Branch' and TIN 000-356-892-000
"P-11-f"	Bureau of Internal Revenue (BIR) Form No. 1702 (Annual Income Tax Return) for the Year 2002 in the name of United International Pictures Aktiebolag – Philippine Branch and TIN 000-356-892-000
"P-12"	Formal Offer of Evidence dated August 5, 2005 filed by Petitioner in CTA Case No. 6912
"P-12-a"	BIR Form No. 1702 (Annual Income Tax Return) for the Year 2001 in the name of United International Pictures Aktiebolag – Philippine Branch and TIN 000-356-892-000
"P-12-b"	Audited Financial Statements for the Year ended December 31,

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	2001 in the name 'United International Pictures Aktiebolag Philippine Branch' and SEC Registration No. 576
"P-12-g"	BIR Form No. 1702 (Annual Income Tax Return) for the Year 2002 in the name of 'United International Pictures Aktiebolag - Philippine Branch' and TIN 000-356-892-000
"P-12-h"	Audited Financial Statements for the Year ended December 31, 2002 in the name 'United International Pictures Aktiebolag Philippine Branch'
"P-12-m"	BIR Form No. 1702 (Annual Income Tax Return) for the Year 2003 in the name of 'United International Pictures Aktiebolag - Philippine Branch' and TIN 000-356-892-000
"P-12-n"	Audited Financial Statements for the Year ended December 31, 2003 in the name 'United International Pictures Aktiebolag Philippine Branch'
"P-13"	Printout of International Affairs Division (ITAD) Ruling No. 087-04 dated August 12, 2004 addressed to Lina Lavares Didulo Guiao & Leviste-Avellana Law Offices
"P-14"	Printout of https://www.encyclo.co.uk/meaning-of-Aktiebolag
"P-15"	Printout of https://www.wordsense.eu/aktiebolag/
"P-16"	Printout of https://bolagsverket.se/en/bus/business/limited/2.1147/business-name
"P-17"	Printout of https://www.dlapiperintelligence.com/goingglobal/corporate/index.html?t=01-form-of-entity&c=SE
"P-18"	Printout of https://www.skatteverket.se/foretag/drivaforetag/foretagsformer/aktiebolag.4.5c13cb6b1198121ee8580002546.html?q-aktiebolag
"P-19"	Printout of https://www.verksamt.se/web/international/starting/protect-your-intangible-assets/protect-your-company-name
"P-20"	Resolution dated January 19, 2006 of the 1st Division of the Court of Tax Appeals in CTA Case No. 6912
"P-21"	Resolution dated February 16, 2006 of the 1st Division of the Court of Tax Appeals in CTA Case No. 6912
"P-22"	Judicial Affidavit of Atty. Renz Jeffrey A. Ruiz dated April 6, 2022
"P-22-a"	Signature of Atty. Ruiz on the Judicial Affidavit of Atty. Renz Jeffrey A. Ruiz dated April 6, 2022
"P-23"	Supplemental Judicial Affidavit of Atty. Renz Jeffrey A. Ruiz dated June 3, 2022
"P-23-a"	Signature of Atty. Ruiz on the Supplemental Judicial Affidavit of Atty. Renz Jeffrey A. Ruiz dated June 3, 2022

Notably, **in substantiating UIP AB's claim for refund in CTA Case No. 6912, the aforesaid documents submitted by UIP AB were under the name of <u>UIP Aktiebolag</u>**. Specifically, the 2001 and 2002 Annual Income Tax Returns (**Exhibits** "**P-11-b**" and "**P-11-f**") and the 2001, 2002, and 2003 Audited Financial Statements (**Exhibits** "**P-12-b**", "**P-12-h**", and "**P-12-n**") submitted by UIP AB in

CTA Case No. 6912 indicate the name of the Philippine Branch of UIP AB as **UIP Aktiebolag**.

The SEC Certificate of Filing of Amended Articles of Incorporation of a Foreign Corporation with SEC Registration No. 576 (**Exhibit** "**P-2**") is also under the name of UIP Aktiebolag. This SEC Certificate (**Exhibit** "**P-11-a**") was used by UIP AB in CTA Case No. 6912 to establish its registration as Philippine branch of a foreign corporation.

Petitioner also submitted the ITAD Ruling No. 087-04 dated August 12, 2004 (**Exhibit** "**P-13**") in which respondent abbreviated the name of United International Pictures Aktiebolag-Philippine Branch to UIP AB Philippine Branch, to wit:

> "This refers to your application for relief from double taxation dated May 26, 2004, on behalf of United International Pictures B.V. (UIP BV), requesting confirmation that: (1) the execution of the License Agreement between UP BV and Solar Entertainment Corporation (Solar) will not create a permanent establishment under the Philippines-Netherlands tax treaty; (2) the income generated by UIP BV on the exhibition of motion pictures in the Philippines relative to the License Agreement with Solar is subject to a fifteen percent (15%) preferential tax rate on royalty payments; and (3) **the execution of a Service Agreement between UIP BV and <u>United International Pictures Aktiebolag</u>-Philippine Branch (<u>UIP AB</u> Philippine Branch)** in the areas of management, accounting and administration, data gathering, advisory and marketing services will not create a permanent establishment in the Philippines." (*Boldfacing* and *underscoring* supplied)

Moreover, a careful scrutiny of the websites cited by petitioner, the printouts of which were admitted in evidence reveals that "Aktiebolag" is a Swedish term which means "(business) a stock company; a corporation; a company that has stocks".[2] It may be abbreviated to "AB" in Sweden or "Ab" in Finland.[3] The *Skatteverket* or Swedish Tax Agency defines "Aktiebolag" as:

> "A limited liability company is a legal entity that can sign contracts, have employees and own things. The limited company can be owned by one or more shareholders. The co-owners can be both natural and legal persons. Joint-stock company is abbreviated as AB."[4]

[2] Exhibit "P-15".
[3] *Ibid.*
[4] Exhibit "P-18".

The *Bolagsverket* or the Swedish Companies Registration Office mandates that businesses of a limited company must contain the word "aktiebolag" or the abbreviation "AB".[5] From the foregoing, it may be surmised that the use of "Aktiebolag" or the abbreviation thereof, "AB", is a general term akin to the use of the word "Limited Liability Company" or the abbreviation thereof, "LLC", in a foreign corporation.

In summary, the admitted pieces of evidence are sufficient to prove that UIP AB in CTA Case No. 6912 is the same as UIP Aktiebolag, the petitioner in the present case.

Respondent has the burden of proof to establish that the judgment has already been satisfied

As to the claim that the said Writ of Execution was not complied with by the BIR, petitioner submitted in evidence the following:

Exhibits	Description
"P-6"	Writ of Execution dated November 17, 2008
"P-7"	Sheriff's Return dated November 19, 2009
"P-8"	Sheriff's Report on the Writ of Execution dated October 26, 2011
"P-9"	UIP's Letter-Request dated January 22, 2020 addressed to the CTA First Division

Section 14, Rule 39 of the Rules of Court provides:

> **"RULE 39**
> **Execution, Satisfaction and Effect of Judgments**
>
> xxx xxx xxx
>
> **Section 14.** *Return of writ of execution.* — The writ of execution shall be returnable to the court issuing it immediately after the judgment has been satisfied in part or in full. **If the judgment cannot be satisfied in full within thirty (30) days after his receipt of the writ, the officer shall report to the court and state the reason therefor.** Such writ shall continue in effect during the period within which the judgment may be enforced by motion. The officer shall make a report to the court every thirty (30) days on the proceedings taken thereon until the judgment is satisfied in full, or its effectivity expires. The returns or periodic reports shall set forth the whole of the

[5] Exhibit "P-19".

proceedings taken, and shall be filed with the court and copies thereof promptly furnished the parties."

Based on the foregoing rule, if a judgment cannot be satisfied, the Sheriff shall make a report and submit the same to the Court indicating the reason why such judgment cannot be enforced.

In the present case, the Writ of Execution dated November 17, 2008 (**Exhibit** "**P-6**"), was received by respondent on November 19, 2008. Sheriff III, Mr. Adelberto V. Juan, executed a "Sheriff's Return" (**Exhibit** "**P-7**") dated November 19, 2009 certifying that he served a copy of the said Writ of Execution to respondent at the Office of the Commissioner of Internal Revenue, to wit:

"I HEREBY CERTIFY that on the 19th of November 2009, the undersigned served a copy of the Writ of Execution issued by the Honorable Court on November 17, 2009, to the respondent at the Office of the Commissioner of Internal Revenue, 7th Floor, Bureau of Internal Revenue, National Office Building, Diliman, Quezon City and it was properly received by Ms. Amafe Ingal, Litigation Receiving Clerk, and immediately it was forwarded to the Official concerned for their appropriate action.

xxx xxx xxx"

After three (3) years and still no response from respondent on the Writ of Execution, Sheriff Juan executed a "Sheriff's Report" (**Exhibit** "**P-8**") dated October 26, 2011 avowing that he followed-up the Writ of Execution dated November 17, 2009, to wit:

"**SHERIFF'S REPORT ON THE WRIT OF EXECUTION**

I hereby certify that I followed-up copy of the Writ of Execution served upon, Commissioner of Internal Revenue, BIR Main, Diliman, Quezon City.

The docket of the case has been forwarded to the BIR Revenue Region No. 7, Delta, Quezon City for their appropriate action.

The original report of the Writ of Execution is, therefore, respectfully returned, DULY FOLLOWED-UP."

Thereafter, there was no update or progress with regard to the Writ of Execution.

Respondent claims that petitioner failed to present sufficient evidence that the BIR did not comply with the said Writ of Execution. Respondent avers that in the absence of evidence showing that the judgment was not satisfied, the presumption of regularity in the performance of official duties prevails; thus, the judgment is presumed to have been satisfied.

The Court finds respondent's contentions bereft of merit.

Section 3(m), Rule 131 of the Rules on Evidence, as amended states that regularity of performance of official duties is a disputable presumption.

To overcome this burden, petitioner presented the Sheriff's Return and the Sheriff's Report to establish that the said Writ of Execution has yet to be carried out. The burden of proof was shifted to respondent to prove that he complied with the said Writ of Execution. Respondent, however, merely made a general denial and invoked the presumption of regularity in the performance of its duties. Since respondent ought to know the tax records of all taxpayers, respondent could have easily proven that the judgment in CTA Case No. 6912 has been satisfied; yet, respondent failed to do so.

Judicium non debet esse illusorium; suum effectum habere debet (A judgment ought not to be illusory it ought to have its proper effect).[6]

In summary, petitioner was able to prove that: *(i)* it is a real party-in-interest in the present case and has material interest in reviving the judgment in CTA Case No. 6912; and, *(ii)* judgment has not yet been satisfied. Accordingly, the Court resolves to grant petitioner UIP Aktiebolag's Petition for Revival of Judgment.

WHEREFORE, in light of the foregoing, petitioner's "Motion for Reconsideration" incorporated in its "Omnibus Motion" is hereby **GRANTED**. The "Petition for Revival of Judgment" filed by petitioner United International Pictures Aktiebolag on September 18, 2018 is **GRANTED**.

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[6] *Philippine Airlines, Inc. vs. Honorable Court of Appeals et al.*, G.R. No. L-49188, January 30, 1990.

Accordingly, the Decision rendered in CTA Case No. 6912 promulgated on August 28, 2008 is hereby **REVIVED** and the Commissioner of Internal Revenue is hereby **ORDERED TO REFUND OR ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner United International Pictures Aktiebolag in the amount of ₱7,200,302.97, representing excess/unutilized creditable withholding taxes for taxable year 2002. Let the corresponding Writ of Execution be issued.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

WE CONCUR:

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice

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