REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

AMADEUS MARKETING PHILIPPINES, INC., Petitioner,	**CTA CASE NO. 9904**
	Members:
- versus -	**CASTAÑEDA, JR.,** *Chairperson,* and **BACORRO-VILLENA,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: JUN 15 2021 11:49 am

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RESOLUTION

CASTAÑEDA, JR., J.:

Before this Court is petitioner's **Motion for Reconsideration** filed on February 3, 2021, with respondent's **Comment (Re: Motion for Reconsideration dated 01 February 2021)** filed on February 26, 2021 through registered mail, and received by the Court on March 10, 2021.

On January 15, 2021, the Court promulgated a Decision denying petitioner's claim for refund its unutilized input value-added tax (VAT) for failing to satisfactorily show that its client is indeed doing business outside the Philippines, the dispositive portion of which reads as follows:

> "**WHEREFORE**, in light of the foregoing considerations, the instant *Petition for Review* is **DENIED** for lack of merit.
>
> **SO ORDERED**."

In its Motion, petitioner primarily asserts that the Travel Agency Management Agreement Systems (TAMS) Distribution Agreement is not determinative of whether Amadeus IT Group S.A. is doing business in the Philippines. It claims that the National Internal Revenue Code (NIRC) of 1997, as amended, particularly Sections 22 and 28 of the Code, only recognizes the two (2) types of foreign corporations, *i.e.* resident and non-resident, the first being engaged in trade or business within the Philippines and the second a foreign corporation not engaged in trade of business within the Philippines. Petitioner continues that the law does not distinguish between a non-resident foreign corporation doing business in the Philippines and one that is not. It avers that as long as it was established that Amadeus IT Group S.A. is a non-resident foreign corporation, it necessarily follows that it is not engaged or doing business in the Philippines. As such, petitioner claims that by proving that Amadeus IT Group S.A. is a non-resident foreign corporation, the burden of proof as to whether it is doing business in the Philippines has therefore shifted to respondent.

On the other hand, in his comment, respondent reiterates that since petitioner appeals to this Court his decision in denying its administrative claim for refund, it is therefore imperative to prove his error in doing so. In the Court's Decision, respondent points out that it was found that petitioner was not able to show the error in respondent's assessments when it failed to present the TAMS Distribution Agreement, which incidentally was also the basis in his denial of petitioner's claim for refund in the administrative proceeding. Respondent further insists that the general rule is that the acts of an authorized official enjoy the presumption of regularity, and may be overthrown only by evidence to the contrary. He stresses that tax refunds are in the nature of tax exemptions and is construed *strictissimi juris* against the taxpayer claiming exemption. Lastly, respondent submits that petitioner has to prove with the required quantum of evidence its entitlement to the refund claimed, even if no controverting evidence was ever presented by respondent.

The Court finds petitioner's Motion for Reconsideration bereft of merit.

As its mandate, the Court of Tax Appeals (CTA) has exclusive appellate jurisdiction to review by appeal the decision of the Commissioner of Internal Revenue (CIR) in cases involving, among others, refunds of internal revenue taxes.[1] In the case of *Luzon Hydro Corporation v. Commissioner of Internal Revenue*,[2] the Supreme Court reiterated that a judicial claim for refund before the CTA is not an original action but an appeal by way of petition for review of the taxpayer's unsuccessful administrative claim for refund, hence, the taxpayer has to convince the CTA that the quasi-judicial agency *a quo* should not have denied the said claim, to wit:

> "Verily, the Court has emphasized in Atlas Consolidated Mining and Development Corporation v. Commissioner of Internal Revenue that **a judicial claim for tax refund or tax credit brought to the CTA is by no means an original action but an appeal by way of a petition for review of the taxpayer's unsuccessful administrative claim; hence, the taxpayer has to convince the CTA that the quasi-judicial agency a quo should not have denied the claim, and to do so the taxpayer should prove every minute aspect of its case by presenting, formally offering and submitting its evidence to the CTA, including whatever was required for the successful prosecution of the administrative claim as the means of demonstrating to the CTA that its administrative claim should have been granted in the first place**." *(Emphasis supplied)*

In the present case, petitioner appealed its unsuccessful administrative claim for refund with the CIR, thus, it is imperative for petitioner to illustrate before this Court not only that it is entitled to refund, but also show that the CIR should not have denied it in the first place. Perforce, in his administrative decision, respondent denied petitioner's claim for refund finding that the entity to which petitioner rendered services, *i.e.* Amadeus IT Group S.A., was doing business in the Philippines, based on the TAMS Distribution Agreement. As such, petitioner should show to this Court that respondent committed a patent error in arriving at his decision. However, like in the administrative proceeding, petitioner did not also present as evidence the TAMS Distribution Agreement in order for the Court to determine whether the finding of respondent is erroneous. Evidently, by not being able to show that respondent erred in finding that Amadeus IT Group S.A. is doing business in the Philippines, petitioner's appeal should therefore be denied.

As to petitioner's claim that it need not prove that a non-resident foreign corporation doing business in the Philippines gr

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[1] Section 7(a)(1) of Republic Act (RA) No. 1125, as amended.
[2] G.R. No. 188260, November 13 2013.

pursuant to the NIRC of 1997, as amended, particularly Sections 22 and 28 of the Code, this Court does not agree.

Corollarily, petitioner erroneously cited on the provisions of the NIRC of 1997, as amended, in an attempt to bolster its claim. To stress, the definition of resident and nonresident foreign corporations in Section 22 of the NIRC of 1997, as amended, are used for purposes of Title II of the NIRC of 1997, as amended, which is "Tax on Income;" whereas, Section 108(B)(2), which is in Title of IV of the NIRC of 1997, as amended, falling under "Value-Added Tax", requires that the recipient of the services of a VAT-registered person must be doing business outside the Philippines or is a nonresident person not engaged in business who is outside the Philippines when the services were performed. Nonetheless, the Court clarifies that the foregoing definitions do not contradict each other, but merely imposes additional requirements for purposes of VAT zero-rating. Thus, merely establishing that the recipient of the service is a nonresident foreign corporation is not enough to prove that the taxpayer-claimant incurred zero-rated input VAT.

In the same vein, this Court is likewise not persuaded with petitioner's assertion that the law merely requires proof that the recipient of the services is doing business outside the Philippines and respondent now has the burden to prove such otherwise.

Again, while it was respondent who denied the claim for refund based on the TAMS Distribution Agreement, it remains petitioner's responsibility to prove every minute aspect of its case, as cases filed before this Court are litigated *de novo*.[3] It is basic that whoever alleges a fact has the burden of proving it because a mere allegation is not evidence. In civil cases, the burden of proof is on the party who would be defeated if no evidence is given on either side.[4]

In the present case, merely alleging that the CIR erred in denying its claim for refund, is not enough. Petitioner should have presented the crucial document, which the CIR based his denial, in order for the Court to determine whether there really was error in denying the claim for refund. By failing to do so, respondent's error in denying petitioner's claim for refund remains to be a mere allegation.

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[3] *Commissioner of Internal Revenue v. United Salvage and Towage (Phils.), Inc.*, G.R. No. 197515, July 2, 2014.

[4] *BP Oil and Chemicals International Philippines, Inc. v. Total Distribution & Logistic Systems, Inc.*, G.R. No. 214406, February 6, 2017.

It is also worthy to note that while the copy of the TAMS Distribution Agreement was attached by petitioner in the instant Motion, the Court however cannot consider documents which were not formally offered during trial.[5]

Jurisprudence is replete with cases where the Supreme Court ruled that tax refunds partake of the nature of tax exemptions which are a derogation of the power of taxation of the State. Consequently, they are construed strictly against a taxpayer and liberally in favor of the State.[6]

In view of the foregoing disquisitions, the Court finds no cogent reason to reverse or modify the conclusion in the assailed Decision.

WHEREFORE, petitioner's Motion for Reconsideration is **DENIED** for lack of merit.

SO ORDERED.

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

I Concur:

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

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[5] *Rafael Arsenio S. Dizon, et al. v. Court of Tax Appeals, et al.*, G.R. No. 140944, April 30, 2008.
[6] *Republic of the Philippines represented by the Commissioner of Internal Revenue v. GST Philippines, Inc.,* G.R. No. 190872, October 17, 2013.