REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

REGUS SERVICE CENTRE, PHILIPPINES B.V. – ROHQ, Petitioner,	**CTA CASE NO. 10124**
	Members:
- versus -	**CASTAÑEDA, JR.**, *Chairperson*, **BACORRO-VILLENA**, *and* **CUI-DAVID**, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: MAY 2 3 2022 8:07 am

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RESOLUTION

CASTAÑEDA, JR., J.:

Before the Court is petitioner's **Motion for Reconsideration** filed on February 28, 2022, without respondent's comment as per Records Verification dated March 31, 2022.

On February 9, 2022, the Court promulgated a Decision denying petitioner's claim for refund of unutilized input value added tax (VAT) attributable to its zero-rated sales for calendar year (CY) 2017 in the amount of ₱12,295,005.64, the dispositive portion of which reads as follows:

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

In its Motion, petitioner assails the above Decision by mainly arguing that the Court erred in ruling that the claim for refund for the first quarter of CY 2017 was filed out of time; and, that petitioner failed to prove that the rendered services were performed in the Philippines.

Petitioner asserts that for the first quarter of CY 2017, it presented proof that it submitted its Application for Tax Credits/Refund (BIR Form No. 1914) on March 29, 2019 but the Bureau of Internal Revenue (BIR) VAT Credit Audit Division refused to accept the same because it was not accompanied by a "Certificate of No Similar Claim". Petitioner further asserts that it was only April 2, 2019 that the said Certificate of No Similar Claim was released by the BIR Revenue District Office (RDO) No. 44 due to the absence of their authorized signatories. Petitioner asseverates that the delay in the release of the said certificate is a violation of petitioner's right to procedural due process law and, as such, it should not be faulted for the absence of the BIR's authorized signatories. Thus, petitioner maintains that its claim for refund for the first quarter of CY 2017 should not be considered as prescribed.

Petitioner also submits that it had sufficiently shown that the services were rendered in the Philippines based on the following: (i.) Regus Service Centre, Philippines B.V. and its regional operating headquarters (ROHQ) in the Philippines appear to be the service provider in the service agreement; (ii.) tax cases are civil in nature and require only a preponderance of evidence to prove entitlement to claim for refund; and, (iii.) the erroneously paid VAT should be refunded following the principle of *"solutio indebiti"*.

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

Notably, the issues and arguments raised by petitioner in its Motion were mere rehashes of the same arguments that were previously raised in its *Memorandum,* filed before the Court on March 24, 2021,[1] which have already been considered and addressed in the Decision it assails.

Again, the filing of the administrative and judicial claims for refund must comply with the requirements set forth in Section 112(A) and (C) of the National Internal Revenue Code (NIRC) of 1997, as amended. The said provisions, require, among others, that the administrative claim for refund must be filed within two (2) years after

[1] Docket – Vol. I, pp. 492 to 526.

the close of the taxable quarter when the zero-rated of effectively zero-rated sales were made; and the judicial claim be filed within thirty (30) days from receipt of respondent's decision.

Herein, records of the case reveal that the administrative claim for refund for CY 2017 was filed on April 5, 2019. However, petitioner insists that it was in fact on March 29, 2019 that it filed its administrative claim for refund but the VAT Credit Audit Division refused to accept the same because of it was not accompanied by a "Certificate of No Similar Claim".

To stress, aside from the lone testimony of its witness, Ms. Edelweiss Y. Chua, petitioner did not present any evidence to substantiate or corroborate its allegations. Basic is the rule in evidence that the burden of proof lies upon him who asserts it, not upon him who denies, since, by the nature of things, he who denies a fact cannot produce any proof of it.[2] Bare allegations which are not supported by any evidence, documentary or otherwise, sufficient to support a claim, fall short to satisfy the degree of proof needed.[3]

In any case, the alleged delay in the release of the document still does not excuse petitioner from the non-observance of procedural rules, much less, in its duty to prosecute its case diligently. After all, in a claim for tax credit or refund, it is the taxpayer who has the burden to prove its cause of action.

As this Court has repeatedly emphasized, a tax credit or refund, like tax exemption, is strictly construed against the taxpayer. The taxpayer claiming the tax credit or refund has the burden of proving that he is entitled to the refund by showing that he has strictly complied with the conditions for the grant of the tax refund or credit. Strict compliance with the mandatory and jurisdictional conditions prescribed by law to claim such tax refund or credit is essential and necessary for such claim to prosper. Noncompliance with the mandatory periods, nonobservance of the prescriptive periods, and nonadherence to exhaustion of administrative remedies bar a taxpayer's claim for tax refund or credit xxx.[4]

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[2] *MOF Company, Inc. v. Shin Yang Brokerage Corporation*, G.R. No. 172822, December 18, 2009.
[3] *LNS International Manpower Services vs. Padua, Jr.*, G.R. No. 179792, March 5, 2010.
[4] *Silicon Philippines, Inc. (formerly Intel Philippines Manufacturing, Inc.) v. Commissioner of Internal Revenue*, G.R. No. 173241, March 25, 2015.

It cannot be stressed enough that the jurisdiction of the CTA over the decisions or inaction of the CIR is only appellate in nature. Thus, it necessarily requires the prior filing of an administrative case before the CIR. The CTA can only validly acquire jurisdiction over a case after the CIR has rendered its decision or, should the CIR fail to act, after the lapse of the period of action provided in the Tax Code, in which case the inaction of the CIR is considered a denial.[5] Hence, the Court reiterates its ruling that the administrative claim covering the first quarter of CY 2017 is filed out of time.

With regard to petitioner's argument that it had sufficiently shown that services were rendered in the Philippines based on the service agreement between Regus Service Centre, Philippines B.V. and its ROHQ in the Philippines; and that tax cases are civil in nature and require preponderance of evidence to prove entitlement to claim for refund, the Court is not convinced.

Again, it is indispensable that a claimant of tax refund must prove that the services it rendered to its foreign affiliates must have been performed or rendered in the Philippines under Section 108 of the NIRC of 1997, as amended. Whether a certain service is performed within or outside the Philippines is a question of fact which must be proved by clear and convincing evidence.

As clearly pointed in the assailed Decision, petitioner failed to clearly establish its compliance therewith as the Services Agreement between petitioner's Head Office and Franchise International S.A.R.L. does not bear any indication that the subject services were to be performed by petitioner in the Philippines. Neither is there any other evidence which tend to prove such fact. In addition, a reading of the said Services Agreement, it can be inferred that the same services may be performed by petitioner's Head Office or even Third-Party Provider, not only by petitioner itself.

Also, petitioner's reliance on the Independent Certified Public Accountant (ICPA) to establish that the services were performed in the Philippines, does not constitute sufficient proof that would meet the requirement of the law. It is not enough that petitioner merely rely on the findings of the ICPA that there was unutilized input VAT and all the conditions in claiming it were met. Petitioner as the claimant must still endeavor to present supporting documents to strengthen its claim. It

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[5] *The Commissioner of Internal Revenue v. Visayas Geothermal Power Company, Inc.*, G.R. No. 181276, November 11, 2013.

is also worth stressing that under Section 3, Rule 13 of the Revised Rules of the Court of Tax Appeals (RRCTA), the Court is not bound by the findings of the ICPA, to wit:

> "SEC. 3. *Findings of independent CPA.*– The submission by the independent CPA of pre-marked documentary exhibits shall be subject to verification and comparison with the original documents, the availability of which shall be the primary responsibility of the party possessing such documents and, secondarily, by the independent CPA. **The findings and conclusions of the independent CPA may be challenged by the parties and shall not be conclusive upon the Court, which may, in whole or in part, adopt such findings and conclusions subject to verification**." *(Emphasis and underscoring supplied)*

Clearly, the findings and conclusions of the ICPA are not conclusive upon the Court. As a corollary, the Court is free to either adopt, completely or partially, or even disregard the said findings and conclusions in the ICPA Report, after making its own verification and evaluation of the same based on the evidence on record.

Petitioner cannot assert that the ICPA's findings are sufficient to validate its claim, since the ultimate determination rests upon the Court based on the evidence presented by the parties. However, this is not to say that the Court disregarded the ICPA Report, certainly, the ICPA findings on petitioner's zero-rated sales *vis-à-vis* the pertinent pieces of evidence presented to support the said sales were duly taken into consideration, and were thoroughly examined by the Court in arriving at the conclusions made in the assailed Decision.

Nonetheless, since it was never established that the place of performance of the subject services is in the Philippines, petitioner's sales of services cannot qualify as subject to the zero percent (0%) VAT under Section 108(B)(2) of the NIRC of 1997, as amended.

Lastly, as for petitioner's claim that the erroneously paid VAT should be refunded following the principle of *solutio indebiti,* the Court finds petitioner's argument misplaced. *gr*

In the case of *Commissioner of Internal Revenue v. Manila Electric Co. (MERALCO)*,[6] the Supreme Court had the occasion to discuss the grounds for the application of *solutio indebiti*, to wit:

> "There is solutio indebiti where: (1) *payment is made when there exists no binding relation between the payor, who has no duty to pay, and the person who received the payment*; **and** (2) the payment is made through mistake, and not through liberality or some other cause. Here, there is a binding relation between petitioner as the taxing authority in this jurisdiction and respondent MERALCO which is bound under the law to act as a withholding agent of NORD/LB Singapore Branch, the taxpayer. Hence, the first element of *solutio indebiti* is lacking. Moreover, such legal precept is inapplicable to the present case since the Tax Code, a special law, explicitly provides for a mandatory period for claiming a refund for taxes erroneously paid."

Corollary, there is binding relationship between the respondent, as the taxing authority in this jurisdiction, and petitioner, the taxpayer. Consequently, the first element is likewise not present. Absent one element, *solutio indebiti* does not apply.

Moreover, insofar as tax refunds are concerned, the NIRC of 1997, as amended, is a special law, which prevails over a general law, which is the New Civil Code.

The power of taxation is an inherent attribute of sovereignty; hence, the dictum that "taxes are the lifeblood of the government." For this reason, the right of taxation cannot easily be surrendered; statutes granting tax exemptions are considered as a derogation of the sovereign authority and are strictly construed against the person or entity claiming the exemption. The taxpayer is charged with the heavy burden of proving that he has complied with and satisfied all the statutory and administrative requirements to be entitled to the tax refund.[7]

In view of the foregoing disquisitions, there being no new matter or substantial issue raised by petitioner in its Motion for

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[6] G.R. No. 181459, June 9, 2014.

[7] *Commissioner of Internal Revenue v. Eastern Telecommunications Philippines, Inc.*, G.R. No. 163835, July 7, 2010.

Reconsideration, the Court finds no compelling reason to reverse, amend, or modify the Decision promulgated on February 9, 2022.

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

SO ORDERED.

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

We Concur:

(With due respect, I reiterate my Dissenting Opinion)
JEAN MARIE A. BACORRO-VILLENA
Associate Justice

LANEE S. CUI-DAVID
Associate Justice