REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	**CTA *EB* NO. 2132** *(CTA Case Nos. 7180 & 7279)*
	Present: **DEL ROSARIO, P.J., CASTAÑEDA, JR., UY, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA,** *and* **MODESTO-SAN PEDRO,** *JJ.*
-versus-	
CE LUZON GEOTHERMAL POWER COMPANY, INC., *Respondent.*	Promulgated: **JAN 28 2021** 11:56 a.m.

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DECISION

MODESTO-SAN PEDRO, J.:

The Case

Before the Court *En Banc* is a **PETITION FOR REVIEW ("Petition")** filed last 7 October 2019[1] with respondents' **COMMENT (Re: Petition for Review dated October 4, 2019) ("Comment")** filed on 9 December 2019.[2]

The Parties

Petitioner **COMMISSIONER OF INTERNAL REVENUE** is the duly appointed Commissioner of the Bureau of Internal Revenue ("BIR") who has the power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other

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[1] Records, pp. 6-43.
[2] *Id.*, pp. 57-69.

matters arising under the ***Tax Code*** or other laws or portions thereof administered by the BIR.

Respondent **CE LUZON GEOTHERMAL POWER COMPANY, INC.** was a domestic corporation engaged in the energy industry. It owned and operated the CE Luzon Geothermal Power Plant, which generated power for sale to the Philippine National Oil Company-Energy Development Corporation by virtue of an energy conversion agreement. It was a Value Added Tax ("VAT")-registered taxpayer with Tax Identification Number 003-924-356-000.

<u>The Facts</u>

This case is a product of the Supreme Court's Decision, promulgated on 26 July 2017, which involved a VAT refund case.[3] The dispositive portion of said Decision is hereby replicated, as follows:

> "The *Aichi* doctrine was reiterated by this Court in *San Roque,* which held that the 120-day and 30-day periods in Section 112(C) of the National Internal Revenue Code are both mandatory and jurisdictional.
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> In the present case, only CE Luzon's second quarter claim was filed on time. Its claims for refund of creditable input tax for the first, third, and fourth quarters of taxable year 2003 were filed prematurely. It did not wait for the Commissioner of Internal Revenue to render a decision or for the 120-day period to lapse before elevating its judicial claim with the Court of Tax Appeals.
>
> However, despite its non-compliance with Section 112(C) of the National Internal Revenue Code, CE Luzon's judicial claims are shielded from the vice of prematurity. It relied on the Bureau of Internal Revenue Ruling DA-489-03, which expressly states that 'a taxpayer-claimant need not wait for the lapse of the 120-day period before it could seek judicial relief with the [Court of Tax Appeals] by way of a Petition for Review.'
>
> *San Roque* exempted taxpayers who had relied on the Bureau of Internal Revenue Ruling DA-489-03 from the strict application of Section 112(C) of the National Internal Revenue Code. This Court characterized the Bureau of Internal Revenue Ruling DA-489-03 as a general interpretative rule, which has 'misle[d] all taxpayers into filing prematurely judicial claims with the C[ourt] [of] T[ax] A[ppeals].' Although the Bureau of Internal Revenue Ruling DA-489-03 is an 'erroneous interpretation of the law,' this Court made an exception explaining that '[t]axpayers should not be prejudiced by an

[3] G.R. Nos. 197526 & 199676-77.

> erroneous interpretation by the Commissioner, particularly on a difficult question of law.'
>
> Taxpayers who have relied on the Bureau of Internal Revenue Ruling DA-489-03, from its issuance on December 10, 2003 until its reversal on October 6, 2010 by this Court in *Aichi,* are, therefore, shielded from the vice of prematurity. CE Luzon may claim the benefit of the Bureau of Internal Revenue Ruling DA-489-03. Its judicial claims for refund of creditable input tax for the first, third, and fourth quarters of 2003 should be considered as timely filed.
>
> **However, the case should be remanded to the Court of Tax Appeals for the proper computation of creditable input tax to which CE Luzon is entitled."**
> **(Emphasis, Ours)**

In line with this directive from the Supreme Court, the Court in Division rendered the Assailed Amended Decision ("Assailed Decision") on 16 May 2019,[4] the dispositive portion of which reads, as follows:

> "**WHEREFORE,** in light of the foregoing considerations, petitioner's claim for refund is **PARTIALLY GRANTED.** Accordingly, respondent is hereby **ORDERED TO REFUND** the amount of **TWENTY-THREE MILLION FOUR HUNDRED EIGHTY-NINE THOUSAND FIVE HUNDRED FOURTEEN PESOS AND 64/100 (P23,489,514.64)** to petitioner, representing its unutilized input VAT for the four quarters of taxable year 2003."

In its Resolution, dated 28 August 2019, the Court in Division denied petitioner's Motion for Reconsideration of the Assailed Decision for lack of merit.[5]

Consequently, on 19 September 2019, petitioner filed a Motion for Extension of Time to File Petition for Review[6] before this Court *En Banc,* which was granted in a Resolution, dated 24 September 2019.[7]

On 7 October 2019, petitioner filed the instant Petition.

In line with the filing of the Petition, this Court *En Banc*, through a Resolution, dated 7 November 2019,[8] ordered respondent to file a Comment.

[4] See Petition, Annex "A", Records, pp. 25-31.
[5] *Id.*, Annex "B", Records pp. 32-43.
[6] Records, pp. 1-4.
[7] *Id.*, p. 5.
[8] *Id.*, pp. 44-46.

Thereafter, on 28 November 2019, respondent filed a Motion for Additional Time to File Comment[9] via registered mail, which was granted by this Court *En Banc* in a Resolution, dated 5 December 2019.[10] On 9 December 2019, respondent filed its Comment.

Eventually, the present case was submitted for decision in a Resolution, dated 28 January 2020, by this Court *En Banc.*[11]

The Assigned Errors[12]

The issues to be resolved are as follows:

a) The Honorable Court in Division erred in ruling that respondent is entitled to claim refund in the amount of Php23,489,514.64; and

b) The Honorable Court in Division erred in considering evidence not submitted at the administrative level by respondent in resolving the claim for refund.

Arguments of the Parties

Petitioner presented the following arguments:[13]

1. Respondent is not entitled to claim refund in the amount of Php23,489,514.64 representing alleged unutilized input VAT due to its failure to comply with the invoicing requirements under ***Section 110 and 113 of the Tax Code;*** and

2. Respondent should not be allowed to present evidence which were not submitted at the administrative level. A taxpayer must not only show to this Honorable Court that he is entitled under substantial law to his claim for refund to tax credit, but he must also satisfy all the documentary and evidentiary requirements for an administrative claim. It is incumbent upon him to show that its administrative claim should have been granted in the first place. He cannot cure its failure to submit a document requested at the administrative level by presenting the same before this Honorable Court.

Respondent counter-argued as follows:[14]

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[9] *Id.*, pp. 50-55.
[10] *Id.*, p. 56.
[11] *Id.*, pp. 70-73.
[12] Petition, p. 8, Records, p. 13.
[13] See Petition, pp. 8-12, Records, pp.13-17.
[14] Comment, pp. 3-10, Records, pp. 59-66.

1. Non-submission of documents during the pendency of the administrative claim, assuming it was established, does not bar respondent from availing of the judicial remedies provided under ***Section 112 (C) of the Tax Code***; and

2. Respondent proved by material and competent evidence that its invoices and receipts supporting its unutilized input VAT comply with the invoicing requirements of the ***Tax Code***.

The Ruling of the Court En Banc

This Court resolves to ***DENY*** *the* ***Petition*** *for lack of merit.*

A perusal of the arguments set forth by petitioner would show that these are mere reiterations of those raised in the Motion for Reconsideration filed before the Court in Division. These have already been sufficiently passed upon in the Resolution, dated 28 August 2019. On this note, alone, the Petition deserves no credence.

At any rate, it can be demonstrated that each argument raised by petitioner is baseless, due to the following reasons:

Petitioner's general averment that respondent failed to comply with the invoicing requirements cannot supplant the findings of this Court which was a result of a detailed examination of the pieces of evidence adduced by respondent.

"It is basic that whoever alleges a fact has the burden of proving it because a mere allegation is not evidence."[15] Hence, a litigant cannot simply allege a fact and rely on a court to believe the same. He or she must first adduce evidence to support such fact before a Ccurt lends credence to the same.

In the Petition, petitioner merely alleged that respondent is not entitled to the VAT refund granted to it by this Court due to a supposed failure to comply with the invoicing requirements under ***Sections 110 and 113 of the***

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

Tax Code.[16] He did so by merely quoting the legal provisions requiring such compliance but did not specify which requirements respondent failed to comply.

As duly found by the Court in Division, the "Court in Division and *En Banc* arrived at the said findings [that respondent is entitled to a VAT refund] after a careful evaluation of the evidence presented, [so] it behooves [petitioner] to specifically pinpoint any error thereon. The general averment of [petitioner] that [respondent] failed to prove that it has complied with the invoicing requirements mentioned in Sections 110 and 113 of the National Internal Revenue Code (NIRC), as amended, in relation to the provisions of RR No. 7-95, cannot constitute a reversible error on the part of this Court for being unsubstantiated, too vague, highly speculative, and uncertain. As between the above-stated findings of this Court, and the general averment of [petitioner], the former must perforce prevail."[17]

Indeed, in order for petitioner to reverse a factual finding made by this Court, he must pinpoint specific competent evidence showing the contrary (*i.e.,* respondent failed to comply with the requisites for VAT refund). Mere allegation will not suffice. The reason for this is simple. This Court, in arriving at such factual findings, has scrutinized each and every piece of evidence adduced during trial. As such, these findings are accorded the highest presumption of regularity which can only be overturned by clear and convincing evidence.

As petitioner failed to specifically point to any actual error committed by this Court in the appreciation of the evidence adduced that would merit a reversal of its factual findings (*i.e.,* that respondent is entitled to a VAT refund), such findings remain unperturbed.

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[16] See Petition, p.8-11, Records, pp. 13-17.
[17] See Resolution, dated 28 August 2019, pp. 6-7, Records, pp. 37-38.

Jurisprudence dictates that respondent is allowed to introduce evidence in the judicial proceedings which was not presented during the administrative proceedings, provided that the denial of the VAT refund is not due to failure to submit complete documents despite notice or request.

Petitioner argues that the Court in Division should not have allowed respondent to present evidence which were not adduced in the administrative level. This is misplaced.

Indeed, this matter has already been definitely settled in ***Pilipinas Total Gas, Inc. v. Commissioner of Internal Revenue,***[18] to wit.:

> "At this stage, a review of the nature of a judicial claim before the CTA is in order. In *Atlas Consolidated Mining and Development Corporation v. CIR*, it was ruled –
>
>> x x x First, a judicial claim for refund or tax credit in the CTA is by no means an original action but rather an *appeal* by way of petition for review of a previous, unsuccessful administrative claim. Therefore, as in every appeal or petition for review, a petitioner has to convince the appellate court that the quasi-judicial agency *a quo* did not have any reason to deny its claims. In this case, it was necessary for petitioner to show the CTA not only that it was entitled under substantive law to the grant of its claims but also that it satisfied all the documentary and evidentiary requirements for an administrative claim for refund or tax credit. Second, cases filed in the CTA are litigated *de novo*. Thus, a petitioner should prove every minute aspect of its case by presenting, formally offering and submitting its evidence to the CTA. Since it is crucial for a petitioner in a judicial claim for refund or tax credit to show that its administrative claim should have been granted in the first place, part of the evidence to be submitted to the CTA must necessarily include whatever is required for the successful prosecution of an administrative claim.
>> [*Underscoring Supplied*]
>
> **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**

[18] G.R. No. 207112, 8 December 2015, *citing* Atlas Consolidated Mining and Development Corporation v. CIR, G.R. Nos. 141104 & 148763, 8 June 2007.

> **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."
> (Emphasis and underscoring, Ours)

Following the above disquisitions, a distinction must be made between a) an administrative VAT refund claim that was dismissed due to failure to submit complete documents despite notice or request; and b) administrative VAT refund claims that were either deemed denied due to inaction or denied by petitioner other than due to failure to submit complete documents despite notice or request. In the first instance, a taxpayer-claimant must show this Court during the judicial proceedings not only his entitlement to a VAT refund under substantive law, but that he also submitted complete documents as requested by petitioner. In the second instance, a taxpayer-claimant may present all evidence to prove its entitlement to a VAT refund, and the Court will consider all evidence offered even those not presented before petitioner at the administrative level.

In the case at bar, the VAT refund claims for the first, third, and fourth quarters of taxable year 2003 ("TY 2003") were deemed denied due to inaction by petitioner.[19] Consequently, this Court may consider all of the evidence presented by respondent to substantiate its claims for VAT refund

[19] See Resolution, dated 28 August 2019, p. 9, Records, p. 40.

for the said periods even though these have not been presented before petitioner at the administrative level.

On the other hand, the VAT refund claim for the second quarter of TY 2003 was denied by petitioner, but not due to failure to submit complete documents despite notice or request, *viz.*:

> "This refers to your request for refund/issuance of tax credit certificate filed with this Office on January 20, 2005 of unutilized input tax for the second (2nd) quarter of 2003, amounting to Php4,568,458.49 pursuant to LA No. 00012996 dated April 7, 2005.
>
> Pursuant to the provision of Section 110(B) of the Tax Code, a VAT-registered person has the option either to carry-over the excess input tax to the next quarter(s) or to refund or apply for Tax Credit Certificate (TCC) any excess input tax attributed to capital goods or to zero-rated sales. **In this case, the excess input tax in 2003 second (2nd) quarter of Php4,568,458.49 were carried over to your respective succeeding VAT returns. This indicated that you have opted to carry-over the excess tax instead of applying for its refund.**
>
> xxx xxx xxx
>
> In view of the foregoing, with references to Sections 6(A), 110(B) and 110(C) of the National Internal Revenue Code, **your request for refund/issuance of Tax Credit Certificate (TCC) for the excess input taxes for 2003 [second (2nd)] quarter, amounting to Php4,568,458.49, is hereby denied since you have presumptively opted to carry-over the alleged excess input tax, to your succeeding quarters."[20]**
> (Emphasis, Ours)

As shown above, the VAT refund claim for the second quarter of TY 2003 was denied by petitioner allegedly because it was carried over to the succeeding periods. Hence, the same was not denied due to failure to submit complete documents despite notice or request. As such, this Court may similarly consider all evidence presented by respondent in the judicial proceedings to support its claim for VAT refund, including those which were not submitted before petitioner at the administrative level. In this case, the grant or denial of the VAT refund claim lies within the sound discretion of the Court.

All told, this Court affirms the findings of the Court in Division that respondent was able to submit sufficient evidence to prove its entitlement to VAT refund in the total amount of Php23,489,514.64 for TY 2003.

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[20] *Id.*, pp. 9-10, Records, pp. 40-41.

WHEREFORE, the instant Petition for Review is hereby **DENIED** for lack of merit. Accordingly, the Assailed Decision, dated 16 May 2019, and Resolution, dated 28 August 2019, promulgated by the Court in Division are hereby **AFFIRMED**.

SO ORDERED.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

WE CONCUR:

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

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

ERLINDA P. UY
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
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. 2132** (CTA Case Nos. 7180 & 7279)
	Present:
-versus-	**DEL ROSARIO, *P.J.*, CASTANEDA, JR., UY, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA,** *and* **MODESTO-SAN PEDRO,** *JJ.*
CE LUZON GEOTHERMAL POWER COMPANY, INC., *Respondent.*	Promulgated:
	JAN 28 2021 11:52 a.m.

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CONCURRING OPINION

DEL ROSARIO, P.J.:

Citing *Pilipinas Total Gas, Inc. vs. Commissioner of Internal Revenue ("Pilipinas Total Gas ")*,[1] petitioner posits that when an administrative claim for refund was dismissed by reason of the taxpayer's failure to substantiate its administrative claim, this Court's jurisdiction becomes strictly appellate in nature, and thus, the taxpayer can no longer present documents before the Court that it did not submit at the administrative level. According to petitioner, the taxpayer cannot cure its failure to submit a document requested by petitioner at the administrative level by submitting said document in Court.

I find petitioner's argument bereft of merit.

The issue of whether or not the non-submission of documents at the administrative level bars a taxpayer from submitting documents

[1] G.R. No. 207112, December 8, 2015.

before this Court has been time and again raised by petitioner. The Court has repeatedly ruled that the non-submission of complete supporting documents at the administrative level is not necessarily fatal to the claimant's judicial claim.

To reiterate, a taxpayer may present additional documents before the CTA to substantiate its claim for refund, albeit the same were not presented at the administrative level. Republic Act (RA) No. 1125, as amended, provides that the CTA is a court of record, *viz.*:

> "Section 8. *Court of record; seal; proceedings.* - **The Court of Tax Appeals shall be a court of record** and shall have a seal which shall be judicially noticed. It shall prescribe the form of its writs and other processes. It shall have the power to promulgate rules and regulations for the conduct of the business of the Court, and as may be needful for the uniformity of decisions within its jurisdiction as conferred by law, but such proceedings shall not be governed strictly by technical rules of evidence." (*Boldfacing supplied.*)

Undeniably, cases filed before this Court are litigated *de novo*, and party-litigants are required to prove every minute aspect of their cases. In *Philippine Airlines, Inc. vs. Commissioner of Internal Revenue,*[2] the Supreme Court was explicit that a taxpayer-claimant may present new and additional evidence to the CTA to support its claim for tax refund:

> "The Commissioner contends that PAL failed to present several of its documentary evidence before the Bureau of Internal Revenue during the administrative level. Thus, she claims that the new evidence that petitioner presented in the Court of Tax Appeals should not have been considered because trial de novo in the Court of Tax Appeals must be limited to the evidence shown in the administrative claim.
>
> This Court rules that the **Court of Tax Appeals is not limited by the evidence presented in the administrative claim in the Bureau of Internal Revenue.** The claimant may present new and additional evidence to the Court of Tax Appeals to support its case for tax refund.
>
> Section 4 of the National Internal Revenue Code states that the Commissioner has the power to decide on tax refunds, but his or her decision is subject to the exclusive appellate jurisdiction of the Court of Tax Appeals:

[2] G.R. Nos. 206079-80 and 206309, January 17, 2018.

[initials]

xxx xxx xxx

Republic Act No. 9282, Republic Act No. 1125, is the governing law on the jurisdiction of the Court of Tax Appeals. Section 7 provides that the Court of Tax Appeals has exclusive appellate jurisdiction over tax refund claims in case the Commissioner fails to act on them:

xxx xxx xxx

This means that while the Commissioner has the right to hear a refund claim first, if he or she fails to act on it, it will be treated as a denial of the refund, and the Court of Tax Appeals is the only entity that may review this ruling.

The power of the Court of Tax Appeals to exercise its appellate jurisdiction does not preclude it from considering evidence that was not presented in the administrative claim in the Bureau of Internal Revenue. Republic Act No. 1125 states that the Court of Tax Appeals is a **court of record**:

> Section 8. Court of record; seal; proceedings. — The Court of Tax Appeals shall be a court of record and shall have a seal which shall be judicially noticed. It shall prescribe the form of its writs and other processes. It shall have the power to promulgate rules and regulations for the conduct of the business of the Court, and as may be needful for the uniformity of decisions within its jurisdiction as conferred by law, but such proceedings shall not be governed strictly by technical rules of evidence.

As such, **parties are expected to litigate and prove every aspect of their case anew and formally offer all their evidence. No value is given to documentary evidence submitted in the Bureau of Internal Revenue unless it is formally offered in the Court of Tax Appeals. Thus, the review of the Court of Tax Appeals is not limited to whether or not the Commissioner committed gross abuse of discretion, fraud, or error of law, as contended by the Commissioner. As evidence is considered and evaluated again, the scope of the Court of Tax Appeals' review covers factual findings**." (*Boldfacing supplied.*)

The Court is not barred from receiving, evaluating and appreciating evidence submitted before it. Once the claim for refund has been elevated to the Court, the admissibility, materiality, relevance, probative value and weight of evidence presented to substantiate the claim become subject to the relevant provisions of the Rules of Court.

In determining respondent's entitlement to its claim for refund, this Court may consider all pieces of exhibits formally offered before it during trial, which were admitted in evidence.

All told, I concur in the denial of the Petition for Review filed by the Commissioner of Internal Revenue for lack of merit.

ROMAN G. DEL ROSARIO
Presiding Justice