REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

****

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-versus-

SKY CABLE CORPORATION,
Respondent.

CTA EB No. 2305
(CTA Case No. 9069)

x- - - - - - - - - - - - - - - - - - - x

SKY CABLE CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB No. 2309
(CTA Case No 9069)

Present:

DEL ROSARIO, P.J.,
CASTAÑEDA, JR.,
UY,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO, and
CUI-DAVID, JJ.

Promulgated:
FEB 10 2022 2:25 pm

x- x

DECISION

MANAHAN, J.:

Before the Court of Tax Appeals *En Banc* are the consolidated Petitions for Review filed by the Commissioner of Internal Revenue (CIR) and Sky Cable Corporation (Sky Cable) assailing the Decision dated November 8, 2020 (assailed Decision) and the Resolution (assailed Resolution) dated June 10, 2020 both promulgated by the Third Division of this Court (Court in Division) in CTA Case No. 9069.

The dispositive portions of the assailed Decision and Resolution are quoted hereunder:

Decision dated November 8, 2019:

> "**WHEREFORE**, in light of the foregoing considerations, the instant Petition for Review is **PARTIALLY GRANTED.** Accordingly, respondent is ordered to refund or issue a TCC in favor of petitioner the amount of Php4,877,569.44, representing the latter's overpayment of withholding taxes on royalties paid from May 2013 to December 2014."
>
> **SO ORDERED.**"

Resolution dated June 10, 2020:

> "**WHEREFORE,** premises considered, respondent's Motion for Partial Reconsideration (Re: Decision promulgated on 8 November 2019) and petitioner's Motion for Partial Reconsideration (Re: Decision dated November 8, 2019) are both **DENIED** for lack of merit.
>
> **SO ORDERED.**"

THE PARTIES

CTA *EB* No. 2305

Petitioner is the duly appointed CIR who has the power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto or other matters arising under the National Internal Revenue Code (NIRC) or other laws or portions thereof administered by the BIR. He may be served with summons, pleadings and other processes at his office at the Bureau of Internal Revenue (BIR)

National Office Building, BIR Road, Diliman, Quezon City.

Respondent is a corporation duly organized and existing under and by virtue of the laws of the Philippines, with office address at the 6th Floor ELJ Communications Center, Mother Ignacia, Quezon City.

CTA *EB* No. 2309

Petitioner Sky Cable is a corporation existing and duly organized under and by virtue of the laws of the Philippines with office address at the 6th Floor, ELJ Condominium, Mother Ignacia Avenue, Quezon City.

Respondent is the duly appointed CIR who has the power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto or other matters arising under the National Internal Revenue Code (NIRC) or other laws or portions thereof administered by the BIR. He may be served with summons, pleadings and other processes at his office at the Bureau of Internal Revenue (BIR) National Office Building, BIR Road, Diliman, Quezon City.

THE FACTS

A narrative of the factual antecedents of this case as laid out by the Court in Division in the Decision dated November 8, 2020 is quoted below:

> "On various dates, Destiny Cable, Inc. ("DCI") and petitioner separately or jointly entered into, or renewed certain distribution agreements, with various non-resident corporations/entities for their respective cable television subscribers in the Philippines.
>
> In May 2012, petitioner and DCI entered into an Asset Purchase Agreement and Deed of Sale and Assignments, whereby DCI sold its assets subscription contracts, and other contracts and assets (as listed therein) to petitioner. The said Agreement was approved by the National Telecommunucations Commission in its Order dated December 18, 2012.
>
> For the months from January 2013 up to December

2014, petitioner filed Monthly Remittance Returns of Final Income Taxes Withheld (BIR Form No. 1601-F), and remitted final withholding taxes on income payments to non-resident cinematographic films *(sic)* owners, lessor, distributor at the rate of twenty-five percent (25%).

On March 16, 2015, petitioner filed an administrative claim for refund with the BIR-Large Taxpayers Serivice ("LTS"), requesting for a refund and/or issuance of TCC in the amount of Php17,470,935.60, allegedly representing the excess taxes withheld and paid by petitioner from royalty payments during the years 2013 and 2014, in connection with its agreements and various non-resident film owners, distributors and lessors.

Petitioner filed the instant Petition for Review before this Court on June 17, 2015, praying that this Court declare that petitioner is entitled to a refund/TCC in the total amount of Php12,304,065.32,allegedly representing overpayment of withholding taxes on royalties paid on May 2013 to December 2014.

xxx xxx xxx

The Pre-trial conference was held on May 26, 2016. The parties submitted their Joint Stipulation of Facts and Issues on June 20, 2016. Thereafter, the Court issued the Pre-Trial Order on July 01, 2016. On July 20, 2016, petitioner filed a Motion to Amend the Pre-Trial Order dated July 01, 2016, which the Court granted in its Resolution dated September 26, 2016.

The trial of the case ensued.

During trial petitioner presented its Administrative Assistant for Tax Regulatory Compliance and its Programming Head, Mr. Ricardo A. Lavendia, Jr., and Mrs. Jesus A. Dumlao, respectively, on Septemeber 27, 2016, Mrs. Daphne D. Caluma, petitioner's Account Manager, on November 8, 2016, and the Court-commissioned Independent Certified Public Accountant ("ICPA"), Mrs. Theresa Romey Dela Roca, on November 29, 2016.

Petitioner filed its Formal Offer of Evidence on December 12, 2017. In two separate Resolutions dated May 09, 2018 and September 13, 2018, the Court admitted petitioner's exhibits xxx xxx xxx

Thereafter, respondent manifested that he will no longer present any witness as there is no report of investigation.

On June 03, 2018, respondent filed his Memorandum, whereas on November 8, 2018, petitioner filed its Memorandum. In the Resolution dated November 13, 2018, the instant case was submitted for decision."

On November 8, 2019, the Court in Division rendered the assailed Decision partially granting petitioner Sky Cable's Petition for Review in CTA Case No. 9069 and ordering CIR to refund or issue a TCC in favor of Sky Cable, in the reduced amount of Php4,877,569.44.

Aggrieved, both the CIR and Sky Cable filed Motions for Partial Reconsideration on November 29, 2019.

The Court in Division denied both Motions for lack of merit in the assailed Resolution dated June 10, 2020.

On July 23, 2020, the CIR filed before the Court *En Banc* a Motion for Extension of Time to File Petition for Review, requesting for an additional period of fifteen (15) days from July 23, 2020 or until August 7, 2020 within which to file his Petition for Review.

This was granted by the Court *En Banc* in a Minute Resolution dated July 28, 2020 giving the CIR until August 7, 2020 within which to file his Petition for Review.

The CIR then filed a Petition for Review with the Court *En Banc* on July 30, 2020 docketed as CTA *EB* No. 2305.

On September 8, 2020, the Court *En Banc* issued a Resolution directing the CIR to submit a compliant Verification and Certification of Non-Forum Shopping, within ten (10) days from notice .

On September 25, 2020, the CIR filed his Compliance to the directive of the Court dated September 8, 2020, attaching thereto a compliant Verification and Certification of Non-Forum Shopping

On July 29, 2020, Sky Cable filed a Motion for Extension of Time to File Petition for Review with the Court of Tax Appeals *En Banc,* requesting for an additional period of fifteen (15) days within which to file its Petition for Review. This was granted by the Court in a Minute Resolution dated August 4, 2020.

Sky Cable posted a Petition for Review with the Court *En*

Banc on September 1, 2020 and received by the Court on September 14, 2020 docketed as CTA *EB* No. 2309.

Both Petitions for Review were consolidated in a Minute Resolution dated September 18, 2020.[1]

In a Resolution dated October 27, 2020, the Court *En Banc* ordered the CIR to file his comment to the Petition for Review filed by Sky Cable in CTA Case No, 2309.[2]

In a Resolution dated November 4, 2020, the Court *En Banc* ordered Sky Cable to file its comment to the Petition for Review filed by the CIR in CTA Case No. 2305.[3]

On November 9, 2020, the CIR posted his *Comment (Re: Petition for Review)*[4] to Sky Cable's Petition for Review which was received by the Court on November 20, 2020. On the other hand, Sky Cable posted its *Comment (Re: Petitioner's Petition for Review dated July 21, 2020)*[5] on December 1, 2020 which was received by the Court on December 17, 2020.

In a Resolution dated January 12, 2021, the Court *En Banc* submitted the consolidated Petitions for Review for decision.[6]

THE ISSUES

CTA *EB No.* 2305

The CIR assigned the following error:

> "Whether or not the Third Division of the Honorable Court erred in ruling that respondent is entitled to refund in the reduced amount of P4,877,569.44 allegedly representing overpayment of withholding taxes on royalties paid from May 2013 to December 2014."

---

[1] EB Docket, page 69.
[2] EB Docket, pp.132-133.
[3] EB Docket, pp. 135-136.
[4] EB Docket, pp. 137-143.
[5] EB Docket, pp. 150-155.
[6] EB docket, pp. 89-90.

CTA *EB* No. 2309

Petitioner Sky Cable assigned the following errors:

> "A. The Third Division erred in ruling that the RP-China Tax Treaty is not applicable to royalty payments to Globecast Hongkong Ltd.
> B. The Third Division erred when it did not rule that Carpal Holdings B.V. has no permament establishment in the Philippines.
> C. The Third Division erred when it did not rule that payments of petitioner to Home Box Office (Singapore) Pte., Ltd. are royalties.
> D. The Third Division erred when it did not rule that invoices and check vouchers are not required to prove petitioner's entitlement to refund on taxes withheld on behalf of Nimbus Media Pte. Ltd.
> E. Petitioner is entitled to refund on taxes imposed on license fees without the need *(sic)* invoices and check vouchers."

Arguments in CTA EB No. 2305

The CIR primarily avers that Sky Cable is not entitled to the preferential tax treaty rates on its income payments made to its various licensors because it failed to comply with the requirements provided under Revenue Memorandum Order (RMO) No. 8-2017, specifically the submission of the Certificate of Residence for Tax Treaty Relief (CORTT) Form which replaced the old BIR Form No. 0901 intended for tax treaty relief applications. He states that under Section 5 of RMO 8-2017, Tax Treaty Relief Applications (TTRAs) are no longer mandatory to avail of preferential tax treaty rates and in lieu thereof, a CORTT is required to be submitted by the non-resident. He goes on to state that the non-submission of the CORTT would mean that the non-resident is not claiming any tax treaty relief and states that the failure of Sky Cable and/or the income recipients to submit the CORTT forms to the BIR prior to its/their application of the preferential tax treaty rates precludes them from claiming a tax refund of alleged excess final withholding taxes. Additionally, the CIR maintains that the provisions of RMO 8-2017 do not violate the country's tax treaty obligations because it merely provides for reasonable policies in processing tax treaty relief applications.

In its *Comment (Re: Petitioner's Petition for Review dated July 21, 2020)*, Skycable contravenes the contention of the CIR and asserts that RMO 8-2017 does not apply to the instant case as this was issued after the occurrence of the subject transactions in the years 2013 and 2014. Sky Cable recalls that the subject claims for refund were already pending with the Court of Tax Appeals when RMO 8-2017 was issued so it would have been impossible to comply with the requirements contained therein, invoking Section 246 of the 1997 NIRC, as amended, on the non-retroactive effect of any rules and regulations issued by the CIR, if such will be prejudicial to the taxpayers. Sky Cable also challenges the validity of the provisions of RMO 8-2017 because it contravenes the ruling of the Supreme Court in the case of *Deutsche Bank AG Manila Branch vs. CIR,*[7] *(Deutsche* case*)* where it was supposedly held that the BIR must not impose additional requirements that would negate the availments of tax treaty reliefs granted under tax treaties.

Arguments in CTA *EB* No. 2309

On the First Assignment of Error:

Sky Cable finds the imposition of the regular rate of 25% final withholding tax on its royalty payments to Globecast Hong kong, Ltd. (Globecast) as violative of the preferential tax rate of 15% provided under the Republic of the Philippines-People's Republic of China (PROC) Tax Treaty. It contends that the Court in Division mistakenly ruled that Globecast is a resident of Hong Kong and not of China, hence the Treaty is not applicable. It insists that Hong Kong is part of the PROC and points to Article 1 of the the Basic Law of the Hong Kong Special Administrative Region which purportedly provides that Hong Kong is an inalienable part of the PROC. As a resident of Hong Kong, Globecast is entitled to the 15% final withholding tax rate under the Treaty instead of the regular rate of 25%.

On the Second Assignment of Error:

Sky Cable maintains that the other recipient of its payments, Carpal Holdings B.V., does not have a permanent establishment in the Philippines and is considered a non-resident foreign corporation (NRFC), hence, royalty payments

[7] G.R. No. 188550, August 19, 2013.

derived by the latter is subject to the preferential rate of 15% and not to the regular rate of 25% under Section 28 (B) (2) of the 1997 NIRC, as amended. Sky Cable submits that it was erroneous on the part of the Court in Division to rule that its failure to submit a Certificate of Non-Registration from the Securities and Exchange Commission (SEC) is fatal to its allegation that Carpal Holdings B.V. is a NRFC subject to the 15% final withholding preferential tax rate. Sky Cable further contends that a SEC Certificate of Non-Registration is not the sole evidence to prove that an entity is a NRFC and holds that the SEC *iView* Facility which can be accessed through the SEC website can provide information on a particular entity's juridical existence in the Philippines. It describes this online confirmation using the SEC *Iview* Facility as simply typing in the name of an entity and prompting a response in the web browser which will give information as to the corporate existence of a particular entity in the Philippines. It claims that when it typed the name of each of their Licensors' name in said web browser, the SEC *iView* Facility prompted a message which reads, *"The name does not exist in the SEC Company Database"* and this, according to Sky Cable is sufficient to prove that Carpal Holdings B.V is not registered in the Philippines. Petitioner admits that Carpal Holdings B.V. was once registered as a foreign stock corporation with the SEC but subsequently filed a Petition to Withdraw or Cancel License which was allegedly approved by the SEC on August 19, 1993. The fact that the SEC database (through its SEC *iView* Facility) no longer recognizes the name of the Licensor Carpal Holdings B.V. should be considered by the Court as solid evidence that it is no longer registered in the Philippines and is, in fact, a NRFC. It calls upon the Court to give importance and relevance to the exhibits offered in Court showing the screenshots from the result pages of the SEC *iView* Facility, and consider these as proofs of the status of Carpal Holdings B.V. as an NRFC.

On the Third Assignment of Error

Sky Cable asserts that the income payments it made to Home Box Office (Singapore) Pte. Ltd. (HBO Singapore) are considered royalties and subject to the preferential tax rate of 15% in accordance with the RP-Singapore Tax Treaty. It ascribes error on the part of the Court in Division when it ruled that the absence of a Distribution Agreement between the parties (petitioner and HBO Singapore) infers that the income payments petitioner made to HBO Singapore are not considered royalties. Again, Sky Cable refers to other evidence which the Court in Division allegedly ignored, such as the ICPA Report; the invoices; check vouchers and telegraphic transfers that supposedly show that the payments made to HBO Singapore were in consideration of the latter's supply of television programs and films to said petitioner, hence, must be treated as royalties subject to the preferential rate of 15%.

<u>On the Fourth Assignment of Error</u>

Sky Cable claims that the non-submission of invoices and check vouchers during trial is not fatal to its claim for refund of the taxes withheld on behalf of Nimbus Media Pte. Ltd. It explains that the reason for the absence of such documents is because the license fees were still unpaid as of December 31, 2013 and 2014 and up to the time the instant Petition for Review was filed in Court on June 17, 2015. It alleges that the taxes on these license fees were already paid/withheld, albeit, at the incorrect rate of 25%. Sky Cable points out that royalties are taxed at the point when they "arise" and not upon receipt by the licensors in accordance with Article 12 of the RP-Singapore Tax Treaty.

<u>On the Fifth Assignment of Error</u>

The fifth assignment of error merely echoes that of Sky Cable's immediately preceding assigned error. Sky Cable expressed disagreement with the ruling of the Court in Division that the invoices and check vouchers are required to prove the existence of payment of royalties. Petitioner avers that it is no longer necessary to show the invoices and check vouchers in refunds of this nature because royalties are taxed at the point when they arise and not upon receipt of the licensor. Sky Cable submits that the presentation of the Distribution Agreements; the Monthly Remittance Returns of Final Income Tax Withheld (BIR Form 1601F) and the Monthly Alphalists of Payees are sufficient to prove its entitlement to the refund claimed without the need to show the invoices and check vouchers.

In his *Comment (Re: Petition for Review)*, the CIR agrees with the ruling of the Court in Division that income payments made by Sky Cable to Globecast Hongkong Ltd. are not covered by the RP-China Tax Treaty simply because the latter applies only to residents of China and not of Hong Kong.

As to income payments made by Sky Cable to Carpal Holdings B.V., the CIR contends that this should not be treated as royalties because Sky Cable miserably failed to prove that the income recipient is a NRFC. According to the CIR, Sky Cable should have presented a SEC Certificate of Non-Registration and a Certificate/Articles of Foreign Incorporation/Association.

As regards the remaining income recipients covered by the instant claim for refund which were all identified as NRFC, the CIR observed that they are not covered by an IntraGroup Service Agreement, thus there was no way for the Court to determine with certainty which type of services were rendered by Sky Cable to said income recipients. The CIR contends that Sky Cable should have presented the respective Service Schedules to prove that the services rendered by the income recipients fall under the category of "service other than processing manufacturing or repacking of goods" under Section 108 (B) of the 1997 NIRC, as amended.

As to income payments made to HBO Singapore, the CIR agrees with the Court in Division that the failure of Sky Cable to offer in evidence the Distribution Agreement is fatal to its claim for refund as it was not able to prove that the said income falls into the category of royalties hence, not entitled to the preferential tax treaty rate under the RP-Singapore Tax Treaty.

Lastly, the CIR upholds the importance of submitting the invoices and receipts to prove that income payments were indeed made, as ruled by the Court in Division in the assailed Decision.

THE COURT *EN BANC'S* RULING

Timeliness of the Petitions

We shall first rule on the timeliness of the appeal made by the CIR to the Court *En Banc.*

Records show that the CIR received a copy of the assailed Resolution of the Court in Division on July 8, 2020.

As earlier mentioned, the CIR filed a Motion for Extension of Time to File Petition for Review on July 23, 2020, requesting for an additional period of fifteen (15) days or until August 7, 2020, within which to file his Petition for Review. This was granted by the Court *En Banc* which gave him until August 7, 2020 within which to file an appeal.

The Petition for Review was filed by the CIR with the Court *En Banc* on July 30, 2020, hence timely filed.

On the other hand, the timeliness of the appeal made by petitioner Sky Cable is likewise shown by the dates on record.

Petitioner Sky Cable received the assailed Resolution dated June 10, 2020 denying its Motion for Reconsideration on July 15, 2020, and consequently filed a Motion for Extension of Time to File Petition for Review with the Court of Tax Appeals *En Banc,* requesting for an additional period of fifteen (15) days from July 30, 2020 or until August 14, 2020 within which to file an appeal with the Court *En Banc.*

The Court *En Banc* granted the said motion of petitioner and gave the latter until August 14, 2020 within which to file his Petition for Review.

On August 3, 2020, the Supreme Court issued Supreme Court (SC) Administrative Circular No. 43A-2020 suspending the reglementary periods for the filing of petitions, appeals, complaints, motions and pleadings before the Courts from August 4, 2020 to August 18, 2020 and which will resume on August 19, 2020. Counted from August 19, 2020, petitioner had until August 30, 2020 to file an appeal with the Court *En Banc* pursuant to Section 3 (b), Rule 8 of the Revised Rules of the Court of Tax Appeals (RRCTA) which reads as follows:

Rule 8
Procedure in Civil Cases

Sec. 3. *Who may appeal; period to file petition.-*

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 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.** (emphasis supplied)

However, August 30, 2020 fell on a Sunday and the Monday after August 30, 2020 was declared a non-working holiday,[8] hence, the filing of the Petition for Review posted on the next working day, Tuesday (September 1, 2020) is considered timely filed.

The Court shall now proceed to determine the merits of the Petitions for Review filed by the CIR and Skycable.

CTA EB No. 2305

At the heart of the contentious exchanges of legal arguments between the CIR and Sky Cable, is the degree of proof that will prove the entitlement of the claimant to the preferential tax treaty rates under the applicable tax treaties involved in this case.

The CIR, on the one hand, expresses a blanket conclusion that the failure of Sky Cable to submit the CORTT forms required under RMO 8-2017 is fatal to to its entire claim for refund because the applicability of the regular withholding tax rate of 25% negates the allegation of Sky Cable that there was overpayment of taxes.

Sky Cable, on the other hand, maintains that the provisions of RMO 8-2017 do not apply to transactions which occurred in 2013 and 2014, the years when the withholding of taxes were made on several income payments made to its alleged licensors.

We agree with Sky Cable that the submission of the CORTT Forms under RMO 8-2017 should not apply to withholding of taxes on income payments made in 2013 and 2014 because this issuance was issued and signed on October 4, 2016 and made effective only ninety (90) days thereafter, as provided in Section 10 of said RMO 8-2017, and we quote:

---

[8] National Heroes Day.

> "Section 10. *Effectivity.* **This Order shall take effect after 90 days upon signing** to afford nonresident income earners time to secure the required CORTT Form or prescribed certificate of residency from their respective countries of residence." (emphasis supplied)

It is clear from the afore-quoted provision that the prescribed CORTT Forms were not yet in existence at the time that the claims for refund were filed by Sky Cable with the BIR and when it filed its appeal with the Court in Division in 2015, so it was not possible for the claimant to comply with said requirement.

As described by RMO 8-2017, the CORTT form is a document that would prove the tax residency of the income recipients which, in turn, would prove whether the Philippines has indeed a tax treaty with the country of which these recipients are residents.

While this Court upholds the argument of Sky Cable that the specific CORTT Forms do not apply to the instant claims for refund, we still maintain that proof of residency of the income recipients remains vital to any applicant who claims entitlement to preferential tax rates under any tax treaty because of the very nature of a "treaty."

A tax treaty is an an agreement between sovereign states "for purposes of eliminating double taxation on income and capital, preventing fiscal evasion, promoting mutual trade and investment, and according fair and equitable tax treatment to foreign residents or nationals.[9] The purpose of tax treaties or bilateral tax agreements was described by the Supreme Court in the same case,[10] and we quote:

> "The apparent rationale for doing away with double taxation is to encourage the free flow of goods and services and the movement of capital, technology and persons between countries, conditions deemed vital in creating robust and dynamic economies. Foreign investments will only thrive in a fairly predictable and reasonable international investment climate and the protection of double taxation is crucial in creating such a climate."

---

[9] *Air Canada vs. CIR,* G.R. No. 169507, January 11, 2016.
[10] Ibid.

A particular tax treaty may contain several tax benefits such as preferential tax treaty rates (or reduced tax rates) as well as exemptions from taxes and from its nature and the wordings contained in each tax treaty, residency is a vital element for entitlement. In other words, only persons, natural or juridical, who are residents of one or both of the Contracting States may avail of the benefits under a tax treaty.[11]

Pursuant to the well-established principle that tax refunds are to be construed strictly against the claimant,[12] this Court shall determine the merits of this case by the degree of evidence presented by Sky Cable during trial in the Division level. It is worthy to note that the *Deutsche* case cited by Sky Cable did not altogether obviate the submission of proof of the residency status of the income recipients, but only eliminated the *prior* filing of the tax treaty relief application with the BIR for purposes of using the preferential tax treaty rates on the taxes to be withheld on the income payments. It bears stressing that the ruling in the *Deutsche* case did not nullify the requirement of filing a tax treaty relief application (TTRA) with the BIR and the other substantial requirements to prove entitlement to the tax treaty provisions. We quote the relevant portions of the ruling of the Supreme Court in the *Deutsche* case, to wit:

> "Nevertheless, even without the BIR Ruling, the CTA Second Division found as follows:
>
> > Based on the evidence presented, both documentary and testimonial, petitioner was able to establish the following:
> >
> > a. **That petitioner is a branch office in the Philippines of Deustsche Bank AG, a corporation organized and existing under the laws of the federal Republic of Germany;**
> > b. That on October 21, 2003, it filed its Monthly Remittance Return of Final Income Taxes Withheld under BIR Form No. 1601-F and remitted the amount of Php67,688,553.51 ad branch profits remittance tax with the BIR; and
> > c. That on October 29, 2003, the Bangko Sentral ng Pilipinas issued a clearance, petitioner remitted to Frankfurt Head Office the amount of xxx xxx xxx representing its 2002 profits remittance." (emphasis supplied)

[11] BIR website, www.bir.gov.ph/index.php/international-tax-matters/taxation-of-non-residents.html.
[12] *Silicon Philippines, Inc. (formerly Intel Philippines Manufacturing, Inc,) and CIR vs. Silicon Philippines, Inc.*, G.R. Nos. 184360 and 184361, February 19, 2014.

The Supreme Court in the afore-quoted *Deutsche* case still retained essential requirements for the availment of tax treaty benefits in judicial claims for refund and one of this is proof of residency. Using these requirements/conditions as parameters, the Court in Division in the assailed Decision came up with the conclusion of a partial grant of refund in favor of Sky Cable.

CTA EB No. 2309

Now we go to the arguments/assignment of errors of Sky Cable in its Petition for Review individually.

A. Income payments made to Globecast

Sky Cable maintains that Globecast, a corporation organized under the laws of Hong Kong, is considered a resident of China, thus, covered by the RP-China Tax Treaty.

We disagree.

As discussed earlier, the benefits of a tax treaty is exclusive to residents of one or both of the contracting states. The confinement of the tax treaty benefits to a particular state is based on the peculiarity of the laws of each country as can be seen by the provisions therein, e.g. permanent establishment (PE); on shipping and air transport, independent personal services, etc., which are exclusive to a country's local laws. In the instant case, the RP-China Tax Treaty refers to the laws of the People's Republic of China. Hong Kong on the other hand, may have different laws on PE, shipping and air transport and so forth, such that the provisions of the RP-China Tax Treaty may not be the same, and hence, may not and should not apply. While it may be true that Hong Kong is a special administrative region of China, it still is an independent region with its own sets of laws. Unfortunately, at the present time, the Philippines has no existing tax treaty with Hong Kong, thus it is erroneous for petitioner to apply the preferential tax rates applicable to China on the income payments made to Globecast.

B. Income Payments made to Carpal Holdings B.V.

Sky Cable submits that the non-recognition by the SEC *iView* Facilty of the name of "Carpal Holdings B.V." is sufficient to prove that the latter is an NRFC and a resident of Netherlands.

Again, we go back to the Court's original ruling that proof of residency is essential to avail of the tax treaty benefits. A mere description in the SEC *iView* Facility is certainly not competent to prove the allegation of an entity's status as an NRFC as this is not considered an official document nor may even be classified as a document, being a mere web browser. This Court finds that the proof of residency and/or Articles of Incorporation listed in RMO 72-2010 dated August 25, 2010 (which is the issuance applicable to the transaction dates of 2013 and 2014) are considered a competent and relevant evidence as described in Section 3 (1) and (2), quoted as follows:

> "Section 3. *General Documentary Requirements.* – xxx xxx xxx
>
> (1) Proof of Residency.
> Original copy of a consularized certification issued by the tax authority of the country of the income earner to the effect that such income earner is a resident of such country for purposes of the tax treaty being invoked in the tax year concerned.
>
> (2) Articles of Incorporation (AOI)(For income earner other than an individual).
> Photocopy of the AOI or equivalent Fact of Establishment/Creation/Organization) of the income earner with the the original copy of a consularized certification from the issuing agency, office or authority that the copy of the AOI (or equivaent Fact of Establishment/Creation/Organizatuon is a faithful reproduction of photocopy."

For failure of Sky Cable to offer any of these in the instant case, we uphold the denial made by the Court in Division as to the claims pertaining to the taxes withheld from income payments made to Carpal Holdings, B.V. as it was not proven that the latter is a resident of Netherlands covered by the RP-Netherlands Tax Treaty.

C. Income payments made to HBO Singapore

The Court in Division denied the claim for refund pertaining to the income payments made to HBO Singapore for failure of Sky Cable to submit the Distribution Agreeements with HBO Singapore.

Sky Cable disagrees with the Court in Division and points to its other evidence such as the ICPA report, telegraphic transfers, invoices and check vouchers showing payments made to HBO Singapore in consideration of the latter's supply of television programs and films.

This Court agrees with the Court in Division that the evidence submitted by Sky Cable is insufficient, although we find the Distribution Agreement, by itself, is also not a sufficient basis to prove that the income payment may be classified as royalties subject to the preferential rates on royalties.

Royalties as defined by the RP-Singapore Tax Treaty is quoted as follows:

> "Section 12- *Royalties.*
>
> 3. The term "royalties" as used in this Article means payments of any kind received **as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work, including cinematographic films or tapes for television or broadcasting**, any patent, trade mark, design or model, plan secret formula or process, or for the use of, or the right to use, industrial, commercial or scientific equipmentor for information concering industrial, commercial or scientific experience." (emphasis supplied)

The supply of HBO Singapore to Sky Cable of television films and programs fall into the category of the use of intellectual property (IP) such as copyright of cinematographic films or tapes for television broadcasting, thus, must be covered by the necessary License Agreement where the licensor grants the licensee the right to use such copyright. A Distribution Agreement, although proving the business relationship of Sky Cable with HBO Singapore for the distribution of the films via the former's cable network, does not in itself prove the grant of IP use that will result to royalties. In addition to the Distribution Agreement, this Court finds that Sky Cable should have presented the License Agreement with HBO Singapore as grantor. The presentation of the check vouchers, telegraphic transfers (suggested by Sky Cable) may prove payment to HBO Singapore but does not prove the right to use IP rights subject to income tax on royalties. These payments (evidenced by check vouchers, etc.) may be for s*ervices* rendered and not necessarily for the use of IP rights which is in a separate category in the RP-Singapore Tax Treaty. In fact, records show that Sky Cable calls these payments as "license fees" but unfortunately did not submit the corresponding License Agreement.

D and E. Denial of claims for refund pertaining to income payments made but not supported by check vouchers and invoices.

After arguing that check vouchers and invoices may prove payment of royalties as discussed above, Sky Cable now shifts its argument and states that said check vouchers and invoices are not necessary for the claim for refund to prosper because royalties are taxed at the point when they arise and not upon receipt of the licensor of said payments. At the time of the claim, Sky Cable avers that the license fees have yet to be paid to some of the income recipients, e.g., Nimbus Media.

The argument of Sky Cable is questionable.

The withholding of taxes on income payments is premised on the fact of payment of the so-called "license fees." Without proving the fact of payment of these license fees to recipients, there can be no basis for the Court to conclude that there was overpayment of taxes. We therefore uphold the ruling of the Court in Division on this matter.

WHEREFORE, premises considered, the Petitions for Review filed by the CIR and Sky Cable are hereby **DENIED** for lack of merit. Accordingly the assailed Decision dated November 8, 2019 and the assailed Resolution dated June 10, 2020, all promulgated by the Third Division of this Court, are hereby **AFFIRMED.**

SO ORDERED.

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

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

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

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

LANEE S. CUI-DAVID
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 cases were assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice