REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

AECOM PHILIPPINES, INC., Petitioner,	**CTA EB NO. 2454** (CTA Case No. 9239)
	Present:
- versus -	**DEL ROSARIO, *P.J.*,** **RINGPIS-LIBAN,** **MANAHAN,** **BACORRO-VILLENA,** **MODESTO-SAN PEDRO,** **REYES-FAJARDO,** **CUI-DAVID,** and **FERRER-FLORES,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: JUN 26 2023 1:05pm

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RESOLUTION

DEL ROSARIO, P.J.:

This resolves petitioner's **Omnibus Motion for Reconsideration *(Re: Decision Rendered on December 9, 2022)*** filed on December 28, 2022, *sans* respondent's comment as per Records Verification dated February 22, 2023.

The dispositive portion of the assailed Decision[1] dated December 9, 2022 reads:

> "**WHEREFORE**, premises considered, the present Petition for Review is **DENIED** for lack of merit. Accordingly, the Court in Division's assailed Decision dated April 2, 2019 and assailed Resolution dated February 23, 2021 in CTA Case No. 9239 are **AFFIRMED**.
>
> **SO ORDERED**."

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[1] CTA Docket, pp. 120-131.

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In the assailed Decision, the Court found that there were reconciling items in the Progress Service Reports/Project Status Reports (PSRs) for Fiscal Year (FY) 2013[2] and 2012[3] that were not explained by petitioner. The said reconciliations are reproduced below for easy reference:

FY2013 (Exhibit P-508)	
Total (PPR - Project Performance Report)	**326,368,368.31**
Diff (PSR and TB)	(2,476,080.68)
FY13 audit adj (81301-632-3112-411001-00 TRA - Marine Services Fees - 3rd parties)	320,000.00
FY13 audit adj (81301-632-3112-412003-00 TRA - Marine Intra Co. Service Fees)	361,949.00
Per books after FY13 audit adj	324,574,236.63
Per FY13 AFS	324,574,237.00
Diff	0.37

FY2012 (Exhibit P-509)	
Total (PPR - Project Performance Report)	**355,719,383.94**
FY12 audit adj (81301-632-3112-411001-00)	(14,742.07)
FY12 audit adj (81301-632-3520-411001-00)	(3,069,791.42)
FY12 audit adj (81301-632-3232-411001-00)	(92,742.03)
FY12 audit adj (81301-632-3112-412001-00)	189,450.06
FY12 audit adj (81301-632-3735-412001-00)	(1,404,425.22)
FY12 audit adj (81301-632-3735-412003-00)	(572,946.41)
FY12 audit adj (81301-632-3520-412001-00)	1,196,907.97
FY12 audit adj (81301-632-3232-412001-00)	(254,196.28)
FY12 audit adj (81301-632-3232-412003-00)	(165,681.58)
FY12 audit adj (81301-632-3237-412001-00)	(98,466.06)
Per books after FY12 audit adj	351,432,750.90
Per FY12 AFS	351,432,751.00
Diff	0.10

The Court held that absent any explanation on the said reconciling items (as indicated at the bottom of Exhibits "P-508" and "P-509"), the Court cannot simply adopt the findings of the Independent Certified Public Accountant (ICPA)[4] that the total sales/revenues on

[2] Exhibit "P-508".
[3] Exhibit "P-509".
[4] Finally, the Revenue on the 2013 and 2012 Progress Service Report/Project Status Report (PSR) and Reimbursement Ledger were properly reported in the revenue portion of the Company's Audited Financial Statement and the Income Tax Returns for FY 2013 and FY 2012, as follows:

Particulars	2013	Exh. Ref.	2012	Exh. Ref.
Revenue per Books of Account	324,574,236.63	P-508	351,432,750.90	P-509
Revenue per AFS	324,574,237.00	P-144	351,432,751.00	P-145
Revenue per Income Tax Return	324,574,237.00	P-5	351,432,751.00	P-146

the PSRs for FY 2013 and 2012 were properly reported in the sales/revenues portion of petitioner's Audited Financial Statement (AFS) and its Annual Income Tax Return (ITRs)[5] for FY 2013 and 2012.

Petitioner's arguments

In the present Omnibus Motion, petitioner moves for the reconsideration of the assailed Decision based on the following grounds:

(i) The Court *En Banc* erred in denying the claim on the mere ground that the discrepancies were allegedly not properly explained in the ICPA Report; and,

(ii) The Court *En Banc* erred in ruling that the discrepancy between the total amount reported in the PSR for FY 2013 and FY 2012 and the Net Sales/Revenue/Receipts/Fees reflected in the AFS and Annual ITR leaves doubt as to the veracity of the amounts presented in the PSRs.

Petitioner argues that the difference between the Year-to-Date (YTD) Gross Revenue (GR) found in the PSRs and the Net Sales/Revenues/Receipts/Fees reflected in the AFS and Annual ITR for both FY 2012 and FY 2013 represents audit adjustments that were clearly noted in the ICPA Report on the last page of Exhibit "P-508" (PSR for FY 2013) and Exhibit "P-509" (PSR for FY 2012). Petitioner insists that the said adjustments are duly supported by Journal Entries (JE) and General Ledger (GL) Revenue Transaction Listing.[6]

Further, petitioner posits that for FY 2013:

(i) the amount of ₱2,476,080.68 pertains to manual adjustment recorded under GL-JE and its breakdown can be found in the transaction list of FY 2013 Revenue Accounts;[7]

(ii) the amount of ₱320,000.00 pertains to audit adjustment to correct the JE (4560-2) that was made to record Invoice No. R013-006 for Marine Service Fees; and,

(iii) the amount of ₱361,949.00 pertains to audit adjustment to correct the JE (5337-1) for Marine Intra Co. Services Fees.

Anent the Court's finding that the discrepancy between the <u>total amount of ₱326,368,368.31 and ₱355,719,383.94 reported in the YTD</u>

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[5] ICPA Report, p. 6.
[6] Annex "A" of the Omnibus Motion for Reconsideration (Re: Decision Rendered on December 9, 2022), CTA Docket, p. 166.
[7] *Id.*

GR found in the PSRs for FY 2013 and FY 2012, respectively, and the Net Sales/Revenues/Receipts/Fees reflected in the AFS and Annual ITR for FY 2013 and FY 2012 in the amount of ₱324,574,237.00 and ₱351,432,750.90, respectively, leaves doubt as to the veracity of the amounts presented in the PSRs, petitioner contends that the alleged discrepancies should not affect its claim for refund (at least for the amount of ₱13,982,433.00).

Petitioner argues that under Sections 204(C), 229, 76 and 58(D) of the National Internal Revenue Code of 1997, as amended, the only requirement with regard to petitioner's compliance with the *third* requirement for its claim for refund is that the income payments must be declared as part of the gross income in any given year.

Petitioner submits that the Court should accord greater weight to the findings of the ICPA. Citing *Maersk Global Services Centres (Philippines), Ltd. vs. Commissioner of Internal Revenue*,[8] petitioner avers that since there is no contradiction between the ICPA Report and the related supporting documents, said Report should be given due weight and credence and not merely brushed aside.

THE COURT'S RULING

After a careful evaluation of the arguments raised by petitioner in the present Motion, the Court finds the same bereft of merit.

Absent any supporting documents, the explanations put forth by petitioner anent the reconciling items are insufficient to convince the Court to modify its earlier findings.

As can be seen in Exhibits "P-508" and "P-509", the reconciling items were just indicated on the last page of the said exhibits. Petitioner failed to provide supporting documents to prove the veracity of each entry in the PSRs for FY 2013 and 2012. As such, the Court cannot give credence to said reconciliations and to the ICPA's unsubstantiated assertion that the total sales/revenues declared in the Annual ITR tally with the total sales/revenues reported in the PSRs.

As claims for refund are considered tax exemptions which are construed strictly against the taxpayer, the burden is upon petitioner to prove that the related income payments (upon which the claimed CWT were withheld) are properly recorded in its books (PSRs) and subsequently declared in its Annual ITR. Despite petitioner's

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[8] CTA EB Nos. 1804 and 1805, November 14, 2019.

submission of Exhibits "P-508" and "P-509", the Court cannot determine if the corresponding income payments enumerated therein formed part of petitioner's gross income.

Using petitioner's income payments to Asian Terminals, Inc. with Project Contract No. MNLD11589 as an example, it can be noted that the YTD GR (C & D) is greater than the income payments made by petitioner (A), as shown below:

Exhibit	Tax Base per BIR Form No. 2307 [A]	Exhibit	Billing Invoice Amount [B]	PSR 2013 (Exhibit P-508)	PSR 2012 (Exhibit P-509)	Forex Gain(Loss) [Tax Base (A) less Billing Invoice Amount (B)] [E]
				YTD GR 2013 [C]	YTD GR 2012 [D]	
[redacted]						
P-74	₱4,980,005.40	P-318	₱869,198.26	₱5,519,753.43	₱27,502,708.78	
		P-319	869,198.26	17,364,664.94		
		P-320	747,572.11	93,140.40		
		P-321	739,572.11			
		P-322	869,198.26			
		P-323	755,709.38			(₱129,557.02)
P-75	4,099,177.27	P-324	869,198.26			
		P-325	836,038.03			
		P-326	869,198.26			
		P-327	737,314.28			(787,428.44)
P-76	4,821,131.07	P-328	869,198.26			
		P-329	836,038.03			
		P-330	869,198.26			
		P-331	869,198.26			
		P-332	836,038.03			
		P-333	836,038.03			(294,577.80)
P-77	4,534,068.53	P-334	293,200.00			
		P-335	366,500.00			
		P-336	869,198.26			
		P-337	836,038.03			
		P-338	869,198.26			
		P-339	73,300.00			
		P-340	836,038.03			
		For MNLD10533/5105331	733,000.00			390,595.95
Total	**₱18,434,382.27**	**Total**	**₱18,154,378.66**	**₱22,977,558.77**	**₱27,502,708.78**	**₱1,013,003.61**
		Less: for MNLD10533	733,000.00			
		Total for MNLD11589	**₱17,421,378.66**			

Petitioner contends that the ₱18,434,382.27[9] income payments for FY 2013 are collections from the ₱46,033,394.54[10] which were billed to Asian Terminals, Inc. Consequently, since the ₱46,033,394.54 Inception-to-Date (ITD) Billings already formed part of the

[9] Exhibits "P-74" to "P-77".
[10] Exhibit "P-508".

₱50,784,774.61[11] ITD GR, then the collections amounting to ₱18,434,382.27 can be ascertained to have also formed part of the entire revenue recognized for the entire duration of the project.[12]

Petitioner barely alleges that since the ITD GR is greater than the ITD Billing, it follows that all collections pertaining to invoices which were already billed and had formed part of the ITD Billings had already been recognized as revenue in its books. Bare allegations, unsubstantiated by evidence, are not equivalent to proof; in short, mere allegations are not evidence.[13] It is the duty of the petitioner to prove its assertions by providing reconciliation and supporting documents that will explain and convince the Court that its income payments already formed part of its gross income. Petitioner has the burden of proof to establish the factual basis of its claim for tax refund in which it failed to do so.

Anent petitioner's argument that the Court should accord greater weight to the findings of the ICPA, Section 3, Rule 13 of the Revised Rules of the Court of Tax Appeals, as amended, provides that the Court is not bound by the findings of the ICPA, *viz.*:

> "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 conclusion subject to verification**." *(Boldfacing supplied)*

In other words, the Court is free to either adopt (completely or partially) or even disregard the ICPA's findings and conclusions, after making its own verification and evaluation of the same as well as of the evidence on record. Petitioner cannot insist that the ICPA Report should be given due weight and credence, since the ultimate determination of whether or not petitioner has proven its claim rests upon the Court, after it has evaluated the evidence presented.

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[11] Exhibit "P-508".

[12] Petition for Review, CTA Docket, pp. 21-22.

PCC	FY 2013		DIFFERENCE	EXPLANATION
	ITD GR	ITD BILLING		
MNLD11589	₱ 50,784,774.61	₱ 46,033,394.54	₱ 4,751,380.07	All billings had formed part of the revenue recognized to date

[13] *Ermelinda C. Manaloto, et al. v. Ismael Veloso III*, G.R. No. 171365, October 6, 2010.

Considering the foregoing, the Court finds no cogent reason to reverse or modify the assailed Decision dated December 9, 2022.

WHEREFORE, premises considered, petitioner's **Omnibus Motion for Reconsideration (Re: Decision Rendered on December 9, 2022)** is hereby **DENIED** for lack of merit.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

WE CONCUR:

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice