REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

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COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	**CTA EB No. 2305** (CTA Case No. 9069)
-versus-	
SKY CABLE CORPORATION, *Respondent.*	

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SKY CABLE CORPORATION, *Petitioner,*	**CTA EB No. 2309** (CTA Case No. 9069)
- versus -	Present:
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	**DEL ROSARIO,** P.J., **UY,** **RINGPIS-LIBAN,** **MANAHAN,** **BACORRO-VILLENA,** **MODESTO-SAN PEDRO,** **REYES-FAJARDO,** and **CUI-DAVID,** JJ.
	Promulgated: OCT 04 2022 11:17am

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RESOLUTION

For this Court's resolution are the following:

1. Commissioner of Internal Revenue's (CIR) *Motion for Reconsideration (Re: Decision promulgated on 10 February 2022)* filed on March 3, 2022 with Sky Cable Corporations' (Sky Cable) *Comment (Re: Commissioner of Internal*

Revenue's Motion for Reconsideration re: Decision promulgated 10 February 2022) filed on May 12, 2022; and

2. Sky Cable Corporation's *Motion for Reconsideration* filed on March 8, 2022 with the CIR's *Opposition (Re: Motion for Reconsideration of the Decision dated 10 February 2022)* filed on April 20, 2022.

Both parties pray for the reconsideration of the Court *En Banc*'s Decision dated February 10, 2022, the dispositive portion of which reads:

> **"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."**

The CIR argues that Sky Cable is not entitled to the refund of alleged overpaid withholding taxes on royalties because it failed to submit the Certificate of Residence for Tax Treaty Relief (CORTT) Form as required by Revenue Memorandum Order (RMO) No. 8-2017 which governs the procedure for claiming tax treaty benefits. Since Sky Cable based its claim for refund on the preferential tax rates provided under several tax treaties, the CIR maintains that the claimant should prove that the recipient of the income is a non-resident as proof of residency which is a minimum requirement for the availment of preferential tax treaty rates or tax exemption under all treaties entered into by the Philippine government. Working on the premise that tax refunds are strictly construed against the taxpayer/claimant, the CIR maintains that the Court *En Banc* erred in granting, *albeit*, a portion of Sky Cable's claim for refund in the face of the latter's non-compliance with the documentary requirements provided under RMO 8-2017.

In its *Comment* to the CIR's Motion for Reconsideration, Sky Cable dismisses the above arguments as mere repetitions of issues already raised and passed upon by the Court *En Banc* in its Decision dated February 10, 2022 and that it should be outrightly dismissed for this reason alone.

On the other hand, Sky Cable raised the following grounds in its Motion for Reconsideration, to wit:

A. The R.P. China Tax Treaty is applicable to royalty payments to Globecast Hong Kong, Ltd;
B. Income payments to Carpal Holdings B.V. are subject to the preferential tax treaty rates under the RP-Netherlands Treaty;
C. Income payments to Home Box Office (Singapore) Pte. Ltd are subject to preferential tax treaty rates; and
D. Check vouchers and invoices are not necessary for tax refund.

In her Opposition to the Motion for Reconsideration of Sky Cable, the CIR reiterates the findings of the Court *En Banc* when it held that the RP-China Tax Treaty does not apply to Globecast Hongkong Ltd., not being a resident of China. She also differs with the view of Sky Cable that income payments made to Carpal Holdings B.V. are entitled to the preferential tax treaty rates under the RP-Netherlands Treaty but subject to the final withholding tax rate of twenty-five percent (25%) under Section 28 (B) (2) of the 1997 National Internal Revenue Code (NIRC), as amended, because Sky Cable failed to prove that Carpal Holdings B.V. has no permanent establishment (PE) in the Philippines.

The CIR also fully agrees with the Court *En Banc* when it affirmed that payments made to Home Box Office (Singapore) Pte. Ltd. are not subject to the preferential tax treaty rates because these were not supported by any distribution agreements.

Likewise, the CIR maintains that payments made by Sky Cable to Nimbus Media Pte., Ltd. are subject to the regular final withholding tax Rates of 25% for failure to submit any invoice or check vouchers to prove payment.

THE COURT *EN BANC'S* RULING

We deny both motions.

A close study of the arguments and issues raised in both motions filed by the CIR and Sky Cable reveals that they are mere repetitions of what have already been submitted for resolution in the Petitions for Review filed with the Court *En Banc* and which have been thoroughly considered, evaluated and passed upon in the assailed Decision dated February 10, 2022.

We agree with Sky Cable when it stated in its *Comment* that the arguments of the CIR should be outrightly dismissed because they are mere reiterations of matters already raised by the latter in her Petition for Review. This also holds true for Sky Cable's Motion for Reconsideration as it failed to raise any new matters that would compel this Court to modify the assailed Decision which contains a thorough and detailed analysis of tax treaty principles and evidentiary requirements to support the conclusions reached.

Be that as it may, the Court would like to emphasize that the CORTT form that the CIR insists is a vital requirement was not yet in existence at the time the claims for refund were filed by Sky Cable with the Bureau of Internal Revenue (BIR) nor when it filed an appeal with the Court in Division in 2015. In ruling thus, this Court does not dispense with the important requirement of proving residency as "proof of residency of the income recipients remains vital to any applicant who claims entitlement to preferential tax rates under any tax treaty." It is evident from the Decision of the Court in Division, as affirmed by the Court *En Banc*, that it used other substantial parameters to determine residency aside from the CORTT forms. The Court *En Banc*, in turn, amplified such parameters as can be gleaned from a perusal of its conclusions. Working on the premise that tax refunds are strictly construed against the claimant, the Court *En Banc* resolved the merits of the case by the degree of evidence presented by Sky Cable during trial and arrived at a partial grant of the refund claimed. This explanation notwithstanding, we shall tackle the issues raised by Sky Cable in *seriatim*.

A. Income payments made to Globecast Hongkong. Ltd.

Sky Cable insists that the RP-China Tax Treaty is applicable to royalty payments to Globecast Hong Kong because Hong Kong is a part of China based on Article 1 of the "Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China" in relation to Article 13 of the Basic Law of Hong Kong which purportedly provides that Hong Kong is an alienable part of the People's Republic of China and that the the Central People's Government pertaining to the People's Republic of China (PROC) shall be responsible for the former's foreign affairs. Sky Cable contends that being a resident of China and under the PROC's control over its foreign affairs, royalty payments made to Globecast Hong Kong is subject to the preferential rate of 15% instead of the regular rate of 25%.

We are not persuaded.

As discussed in the assailed Decision, the tax treaty benefits granted to a particular state is based on the peculiarity of the laws of each country and it is undisputed that Hong Kong, has its own sets of laws as regards permanent establishment (PE); on shipping and air transport, business profits etc., that may be different from that of the PROC. The assailed Decision correctly ruled that "while it may be true that Hong Kong is a special administrative region of China, it is still an independent region with its own sets of laws."

Even if one considers the argument that Hong Kong is a part of China based on the provisions of Article 1 of the "Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China" and Article 13 of the Basic Law of Hong Kong, Sky Cable failed to offer these laws for the consideration of the Court. "It is well-settled that foreign laws do not prove themselves in our jurisdiction and our courts are not authorized to take judicial notice of them. Like any other fact, these must be alleged and proved."[1]

B. Income payments made to Carpal Holdings B.V. under the RP-Netherlands Tax Treaty

Sky Cable argues that the Court *En Banc* erred in affirming the Decision of the Court in Division dated November 8, 2018, when it held that it failed to adduce evidence that will prove that Carpal Holdings B.V. has no permanent establishment in the Philippines.

We see no reason to deviate from this ruling and we reiterate that to be entitled to the 15% preferential tax treaty rate, petitioner must prove not only that the recipient, Carpal Holdings B.V. is a resident of Netherlands but also that Carpal

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[1] *Wildvalley Shipping Co. Ltd.. vs. Court of Appeals and Philippine President Lines, Inc.*, G.R. No. 119602, October 6, 2000.

Holdings B.V. does not carry on business in the Philippines through a permanent establishment situated therein. Sky Cable failed to present a Certification of Non-Registration of Company issued by the Securities and Exchange Commission (SEC), but instead submitted a screenshot of its search results from the alleged *'SEC iView'* facility of the Philippine SEC website which cannot be considered an official document nor may be even be classified as a document, being a mere web browser.

In fact, Sky Cable provided the SEC Certificates of Non-Registration of its other Licensors avowing that the same document will prove that those Licensors are neither registered nor licensed to do business in the Philippines.[2] It would seem that Sky Cable wants to be excused in presenting the SEC Certificate of Non-Registration as far as Carpal Holdings B.V. is concerned. While there is nothing in the RP-Netherlands Tax Treaty which prescribes the form of proof of residency/non-residency to be entitled to the tax treaty benefits, still petitioner must prove that the recipient of its payments is a non-resident foreign corporation without permanent establishment in the Philippines by adducing competent documentary evidence. Failure to do so will bar petitioner of availing of the 15% preferential tax treaty privilege.

C. Income payments made to Home Box Office (Singapore) Pte. Ltd.

Petitioner disagrees with the Court in Division in denying its claim for refund pertaining to the income payments made to HBO Singapore for its failure to submit the Distribution Agreement with HBO Singapore. Petitioner points to its other evidence such as the Independent Certified Public Accountant (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.

To reiterate, to be deemed as royalties, the payments should be shown to have been received as consideration for the use of, or the right to use, cinematographic films or tapes for television or broadcasting.

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[2] Exhibit "P-122", Q&A26, Judicial Affidavit of Ms. Daphne D. Caluma, CTA Case No. 9069, Docket – Vol. 2, p. 641.

While this Court acknowledges that the Distribution Agreement is not the only evidence that would show the nature of income payments agreed upon, it is incumbent upon petitioner to prove that the payments made to HBO Singapore, as purportedly supported by telegraphic transfers, invoices and check vouchers, indeed pertains to royalties arising from the use of, or the right to use, cinematographic films or tapes granted by HBO Singapore for television or broadcasting via the petitioner's cable network. Simply put, there must be proof of agreement that gives rise to royalties. Furthermore, the Court is not bound by the findings and conclusions of the ICPA as they are still subject to further verification. We therefore see no valid reason to depart from our earlier findings expressed in the assailed Decision, quoted as follows:

> "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 services 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. Necessity of Check vouchers and invoices to prove its claim for refund.

Sky Cable asserts that check vouchers and invoices need not be submitted to support its claim for tax refund. It contends, (as certified by the ICPA), that its failure to submit the vouchers and invoices is due to its allegation that these fees were still unpaid as of December 31, 2013 and 2014 and up to the time of the ICPA's examination. Nonetheless, it already paid the tax on these license fees *albeit* at the rate of 25%.

The Court has time and again ruled that it is not bound by the findings and conclusions of the ICPA. In the determination of the veracity of the judicial claim for refund filed by a taxpayer, the Court is not precluded to resort to other substantial evidence, such as check vouchers and sales invoices to corroborate petitioner's claim that the payments pertain to royalties. It is possible that such payments may be made for services other than royalties, in which case, such will not be subject to the preferential tax treaty rate of 15%. Correspondingly, for failure of Sky Cable to present controverting evidence proving that payments relative to royalty have been made to Nimbus Media, the claim for refund pertaining thereto cannot be granted.

It is a time-honored principle that tax refunds are in the nature of tax exemptions.[3] As such, they are regarded as in derogation of sovereign authority and ought to be construed strictly against the person or entity claiming the exemption. The burden of proof is upon him who claims the exemption in his favor and he must be able to substantiate by clear and convincing proof his entitlement to the refund sought.

WHEREFORE, premises considered, the CIR's *Motion for Reconsideration (Re: Decision promulgated 10 February 2022)* and Sky Cable's *Motion for Reconsideration,* are **DENIED** for lack of merit.

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

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[3] *Team Sual Corporation vs. Commissioner of Internal Revenue,* G.R. Nos. 201225-26, 201132 and 20133, April 18, 2018.

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

ERLINDA P. UY
Associate Justice

Ma. Belen

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