REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

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SYCAMORE GLOBAL SHIPPING CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB No. 2505
(CTA Case No. 10070)

Present:

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

Promulgated:

FEB 28 2023

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DECISION

UY, J.:

Before this Court is the *Petition for Review*[1] filed on July 14, 2021 by petitioner, Sycamore Global Shipping Corporation (Sycamore), against respondent, Commissioner of Internal Revenue (CIR), praying that the Decision[2] dated November 19, 2020 and Resolution[3] dated June 17, 2021, rendered by the First Division of

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[1] EB Docket, pp. 1 to 23.
[2] Penned by Presiding Justice Roman G. Del Rosario and concurred by Associate Justice Catherine T. Manahan; EB Docket, pp. 37 to 53.
[3] Penned by Presiding Justice Roman G. Del Rosario and concurred by Associate Justice Catherine T. Manahan; EB Docket, pp. 32 to 35.

this Court, in CTA Case No. 10070, entitled, *"Sycamore Global Shipping Corporation, Petitioner vs. Commissioner of Internal Revenue, Respondent"* be reversed and set aside. The dispositive portions thereof respectively read as follows:

<u>Decision dated November 19, 2020</u>:

> "**WHEREFORE,** premises considered, the present Petition for Review is hereby **DENIED** for lack of merit.
>
> **SO ORDERED."**

<u>Resolution dated June 17, 2021</u>:

> "**WHEREFORE,** in light of the foregoing premises, petitioner's **Motion for Reconsideration** filed on December 16, 2020 is **DENIED** for lack of merit.
>
> **SO ORDERED.**"

THE PARTIES

Petitioner Sycamore Global Shipping Corporation (Sycamore) is a corporation organized and existing under the laws of the Philippines with Certificate of Incorporation issued by the Securities and Exchange Commission (SEC) on October 9, 2014. Its business address is at Unit B, 14th Floor, Sagittarius I Condominium, 111 H.V. Dela Costa St., Salcedo Village, Makati City, Metro Manila. It is authorized to own, purchase, and acquire vessels, barges, bulk carrier, lighters, tugboats and other mercantile vessels of whatever class and description, together with their equipment and appurtenances, to engage in the business of chartering, and to employ or operate the same in the carriage of dry bulk cargoes, goods, wares and merchandise of whatever description for domestic and international trade. It is registered with the Bureau of Internal Revenue (BIR) as a taxpayer with Tax Identification Number (TIN) 007-613-356-00000 as evidenced by its BIR Certificate of Registration No. OCN 9RC0001622137E dated June 8, 2018 issued by Revenue District Office (RDO) No. 050-South Makati, Revenue Region No. 008-Makati.

Respondent Commissioner of Internal Revenue (CIR) is the Commissioner of the BIR with office address at the BIR National

Office Building, BIR Road, Diliman, Quezon City. He is empowered to perform the duties of his office, including acting on protest cases and approving claims for refund or tax credit involving internal revenue taxes as provided by law and implementing regulations.

THE FACTS

On December 19, 2016, Banyan Towage Services, Inc. (BTSI) declared cash dividend in the total amount of ₱24,000,000.00 to its stockholders of record as of December 1, 2016, including petitioner. Out of said amount, BTSI paid petitioner ₱23,999,976.00 on December 27, 2016 as dividend.

On April 17, 2017, petitioner filed its Annual Income Tax Return (ITR) (BIR Form No. 1702-RT) for taxable year 2016, showing ₱24,053,070.00 as amount of income tax payable, which petitioner paid on even date.

In a letter dated September 24, 2018 addressed to Revenue District Officer Ma. Victoria G. Reinante of RDO No. 50, petitioner requested for a cash refund representing its alleged erroneously paid income tax to the BIR, arising from the cash dividend received from BTSI for taxable year 2016.

Claiming inaction on its claim for refund, petitioner filed a *Petition for Review* before the Court in Division on April 12, 2019.

On July 19, 2019, respondent filed his *Answer*, interposing the following special and affirmative defenses:

> (i) Petitioner's alleged claim for issuance of tax credit certificate is still subject to administrative routinary investigation/examination by respondent;
>
> (ii) Taxes paid and collected are presumed to have been made in accordance with law, hence, not refundable;
>
> (iii) Petitioner's claim for refund in the amount of ₱7,199,992.80, allegedly representing erroneously paid income tax arising from the cash dividend it received from BTSI for the year 2016, was not substantiated by proper documents, such as sales invoices, official receipts and

others, pursuant to Revenue Regulations No. 7-95 in relation to Sections 113 and 237 of the National Internal Revenue Code (NIRC) of 1997, as amended;

(iv) Investigation on petitioner's income tax for taxable year 2016 revealed that sales not subjected to income tax amounted to ₱4,399,262.31, unsupported leasehold improvement amounted to 655,318.00, disallowed expenses due to non-withholding amounted to ₱115,165,254.18, disallowed salaries and wages amounted to ₱89,768.47, unsupported claimed losses amounted to ₱2,279,035.00, disallowed retirement expense amounted to ₱3,678,910.00, and disallowed expenses due to non-withholding of final tax amounted to ₱7,909,661.67;

(v) In an action for refund/credit, the burden of proof is on the petitioner to establish its right to claimed refund and failure to adduce sufficient proof is fatal to the claim for tax refund/credit;

(vi) It is incumbent upon petitioner to show that it has complied with the provisions under Section 204(c) in relation to Section 229 of the NIRC of 1997, as amended; and,

(vii) Claims for refund are construed strictly against petitioner since the same partakes the nature of exemption from taxation.

After the Pre-Trial Conference held on September 26, 2019, the parties filed their *Joint Stipulation of Facts and Issues* on October 9, 2019. In the Resolution dated October 21, 2019, the Court approved the parties' *Joint Stipulation of Facts and Issues*, terminated the Pre-Trial, and directed the issuance of a Pre-Trial Order. On November 4, 2019, the Court issued a *Pre-Trial Order*.

During trial, petitioner presented its head of finance, Jesse V. Lava, as its lone witness. Thereafter, petitioner filed its *Formal Offer of Evidence* on November 19, 2019, which were mostly admitted in the Court's Resolution dated May 27, 2020, except Exhibit "P-11-C," which was denied admission for failure to present the original for comparison. In the same Resolution, the parties were given a period of thirty (30) days from notice to file their respective memoranda, considering the earlier manifestation of respondent's counsel that he would not be presenting testimonial evidence.

Petitioner filed an *Omnibus Motion for Partial Reconsideration and to Admit Petitioner's Exhibits* on June 30, 2020.

Meanwhile, on July 21, 2020, petitioner filed its *Memorandum*, while respondent posted his *Memorandum* on July 27, 2020.

In the Resolution dated October 15, 2020, the Court admitted Exhibit "P-11-C" as evidence and CTA Case No. 10070 was submitted for decision.

In the assailed Decision[4] dated November 19, 2020, the Court denied the *Petition for Review* for lack of merit.

Petitioner filed its *Motion for Reconsideration* on December 16, 2020. In the assailed Resolution[5] dated June 17, 2021, the Court in Division denied the *Motion for Reconsideration* for lack of merit.

Undaunted, Sycamore filed the instant *Petition for Review*[6] on July 14, 2021 praying that the assailed Decision[7] dated November 19, 2020 and Resolution[8] dated June 17, 2021, rendered by the First Division of this Court, in CTA Case No. 10070 be reversed and set aside.

On December 14, 2021, respondent was required to file his comment on the *Petition for Review*, within ten (10) days from notice.[9] Respondent, however, failed to file his comment, as per Records Verification[10] dated March 7, 2022.

Thus, the instant *Petition for Review* was submitted for decision on March 22, 2022.[11]

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[4] EB Docket, pp. 37 to 53.
[5] EB Docket, pp. 32 to 35.
[6] EB Docket, pp. 1 to 23.
[7] EB Docket, pp. 37 to 53.
[8] EB Docket, pp. 32 to 35.
[9] EB Docket, pp. 56 to 57.
[10] EB Docket, p. 58.
[11] EB Docket, pp. 60 to 61.

Hence, this decision.

ISSUE

Petitioner raises a sole issue for resolution by the Court *En Banc*, to wit:

> "Whether or not the Honorable CTA First Division erred in denying Petitioner's claim for refund of erroneously paid income tax for taxable year 2016?"[12]

Petitioner's arguments:

Petitioner contends that it was able to present the following documentary evidence to prove the breakdown of its *"Other Income,"* to wit:

1) Secretary's Certificate of BTSI, certifying the Board Resolution declaring dividends to its stockholders of record, including petitioner;

2) Acknowledgment Receipt issued to BTSI as proof that it actually received cash dividends amounting to ₱23,999,976.00.

According to petitioner, the testimony of Jesse V. Lava should be given weight and credence by the Court, especially when respondent failed to controvert the same during cross-examination. Moreover, respondent failed to present any testimonial or documentary evidence to dispute that the cash dividends which petitioner received from BTSI were reported as part of *"Other Income"* in its Annual ITR for 2016.

Thus, petitioner asserts that it was able to sufficiently establish, by way of preponderance of evidence, that the cash dividends petitioner received from BTSI was duly reported as part of *"Other Income,"* as appearing in Schedule 3 of its 2016 Annual ITR.

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[12] EB Docket, p. 6.

THE COURT *EN BANC*'S RULING

The instant *Petition for Review* lacks merit.

Petitioner was unable to present competent evidence to prove that the cash dividend from BTSI was duly reported as part of its "Other Income" in its 2016 ITR.

According to petitioner, the Secretary's Certificate of BTSI and the Acknowledgment Receipt issued to BTSI are sufficient proof that it actually received cash dividends amounting to ₱23,999,976.00, and that the subject cash dividends were erroneously declared as part of its *"Other Income"* in its Annual ITR for 2016.

We are not convinced.

The Court of Tax Appeals is a court of record, as stated in Section 8 of Republic Act No. 1125, as amended, which states that:

> "**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." (*Emphasis supplied.)*

As a court of record, this Court is required to conduct a formal trial (trial *de novo*), and party litigants are required to prove *every minute aspect* of their case.[13]

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[13] *Edison (Bataan) Cogeneration Corporation vs. Commissioner of Internal Revenue*, G.R. Nos. 201665 and 201668, August 30, 2017; *Dizon vs. Court of Tax Appeals, et al.*, G.R. No. 140944, April 30, 2008; *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue*, G.R. No. 145526, March 16, 2007; and *Commissioner of Internal Revenue vs. Manila Mining Corporation*, G.R. No. 153204, August 31, 2005.

Records show that petitioner presented the following evidence to prove the breakdown of its *"Other Income"* in the amount of ₱115,638,854.00:

1) Schedule 3 of its Annual ITR for 2016;[14]

2) Secretary's Certificate dated September 19, 2019;[15]

3) Acknowledgment Receipt dated December 27, 2016;[16] and

4) Testimony of Sycamore's Head of Finance, Jesse V. Lava.[17]

A perusal of the foregoing, however, shows that none of these are sufficient to prove the breakdown of its *"Other Income"* in the amount of ₱115,638,854.00.

First, the Court notes that Schedule 3 of its Annual ITR for 2016[18] does not provide the breakdown of petitioner's *"Other Income,"* and only states the ***total*** amount thereof, to wit:

Schedule 3 – Other Taxable Income Not Subjected to Final Tax	
1 OTHER INCOME – OTHERS	115,638,854
2	0
3	0
4 Total Other Taxable Income Not Subjected to Final Tax	115,638,854

Second, contrary to petitioner's contention, the Secretary's Certificate dated September 19, 2019[19] and Acknowledgment Receipt dated December 27, 2016[20] merely proves that petitioner received a cash dividend from BTSI. However, it does not support the assertion that the subject cash dividend from BTSI formed part of its *"Other Income"* in its Annual ITR for 2016.

Third, the alleged breakdown of petitioner's *"Other Income"* can only be found in the testimony of petitioner's Head of Finance, Jesse V. Lava,[21] to wit:

[14] Exhibit "P-11-A," Division Docket (CTA 10070), p. 328.
[15] Exhibit "P-9," Division Docket (CTA 10070), p. 193.
[16] Exhibit "P-10," Division Docket (CTA 10070), p. 194.
[17] Exhibit "P-15," Division Docket (CTA 10070), pp. 127 to 136.
[18] Exhibit "P-11-A," Division Docket (CTA 10070), p. 328.
[19] Exhibit "P-9," Division Docket (CTA 10070), p. 193.
[20] Exhibit "P-10," Division Docket (CTA 10070), p. 194.
[21] Exhibit "P-15," Division Docket (CTA 10070), pp. 127 to 136, at 131.

"37 Q: What is the breakdown of the 'Other Income' in the total amount of ₱115,638,854?
A: The 'Other Income' in the total amount of ₱115,638,854 as reported in the Petitioner's ITR for the year 2016 is broken down as follows:

1. Management Fee	
-Sycamore International Shipping Corporation	₱10,680,000.00
-Banyan Towage Services, Inc.	948,000.00
-Cedar Shipmanagement, Inc.	1,920,000.00
-Cardinal Agri Products Inc.	110,341.46
-FLG Management & Development Corp	226,337.73
-JEATA Holdings & Management Inc.	17,918.96
-JEVA Management & Development Corp	15,540.30
-Kenobe Inc	95,500.56
-Theta Petroleum Corporation	167,542.11
-Theta Logistics Company, Inc.	153,042.58
	₱14,334,223.70
2. Agency Fee	1,508,893.81
3. Gain on Sale of car	258,928.58
4. Fuel Transfer to Banyan Towage Services, Inc.	2,873,211.94
5. Interest Income from Affiliates	1,541,184.88
6. Dividend Income – Procter Limited, Inc. (non-resident foreign Corporation)	68,460,575.13
7. Banyan Towage Services, Inc. (Domestic Corporation)	23,999,976.00

8. Fuel end Lubes Transfer to Sycamore International Shipping Corporation	2,661,860.38
TOTAL "OTHER INCOME"	115,638,854.42
PER ITR	115,638,854.00
VARIANCE	0.42"

However, in the absence of other supporting documentary evidence, such as Audited Financial Statements, or other source documents to prove the other items declared in the alleged breakdown, the Court has no means to verify the accuracy or truthfulness of the alleged breakdown.

Thus, it was incumbent upon petitioner to prove every minute aspect of its case, and present corroborative evidence, *i.e.,* Audited Financial Statements, or other source documents, to allow this Court to verify its claim. The records of the case, however, are bereft of any other documentary evidence to substantiate the breakdown of petitioner's *"Other Income."*

Thus, We quote with approval the findings of the Court in Division in the assailed Decision, to wit:

> "In the present case, while petitioner and its witness provide the breakdown of petitioner's 'Other Income' in the amount of ₱115,638,854.00, the same cannot be verified by the Court. Perusal of petitioner's evidence reveals that no other documents such as petitioner's audited financial statements or any other source documents were presented to validate the entries in the 'Other Income' in Schedule 3 of petitioner's 2016 Annual ITR. Stated differently, petitioner failed to present other documentary evidence through which the Court could verify the items composing petitioner's 'Other Income,' specifically the inclusion therein of the amount of ₱23,999,976.00, representing the cash dividend it received from BTSI, which petitioner allegedly erroneously subjected to income tax."[22]

[22] EB Docket, pp. 51-52.

The burden of establishing the factual basis of a claim for a refund rests upon the taxpayer.

Petitioner asserts that respondent failed to controvert, and present evidence, to dispute the claim that the BTSI cash dividends were reported as part of "*Other Income*" in its Annual ITR for 2016. Hence, the testimony of its witness, Jesse Lava, should be given weight and credence.

We are not swayed.

It is a basic rule that he who alleges must prove what is alleged.[23] Accordingly, petitioner is tasked with presenting convincing evidence to establish its claim, *i.e.,* that the BTSI cash dividends were indeed reported as part of its *"Other Income."* The veracity of its claim for refund should not be made reliant on respondent's alleged failure to controvert the testimony of its witness.

In the case of *Commissioner of Internal Revenue vs. Far East Bank & Trust Company,*[24] the Supreme Court ruled as follows:

> "***Entitlement to a tax refund is for the taxpayer to prove and not for the government to disprove***.
>
> xxx xxx xxx
>
> Moreover, the fact that the petitioner failed to present any evidence or to refute the evidence presented by respondent does not *ipso facto* entitle the respondent to a tax refund. ***It is not the duty of the government to disprove a taxpayer's claim for refund***. Rather, the burden of establishing the factual basis of a claim for a refund rests on the taxpayer.
>
> And while the petitioner has the power to make an examination of the returns and to assess the correct amount of tax, his failure to exercise such powers does

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[23] *Eastern Assurance and Surety Corporation vs. Con-Field Construction and Development Corporation*, G.R. No. 159731, April 22, 2008.
[24] G.R. No. 173854, March 15, 2010.

> not create a presumption in favor of the correctness of the returns. The taxpayer must still present substantial evidence to prove his claim for refund. As we have said, there is no automatic grant of tax refund." *(Emphasis supplied)*

Clearly, it is not the duty of the government to *disprove* a taxpayer's claim for refund. The alleged failure of the respondent to adduce evidence to contradict petitioner's assertions, does not lend credence to its claim for refund. Petitioner is still mandated to discharge the burden of proving the factual basis of its refund claim. Unfortunately, petitioner's failure to present other evidence by which the Court could verify the breakdown of its "*Other Income,*" is fatal to its claim.

In sum, We find no compelling reason to modify or reverse the factual findings of the Court in Division that Sycamore was unable to prove the breakdown of its "*Other Income*" in the amount of ₱115,638,854.00.

WHEREFORE, in light of the foregoing considerations, the instant *Petition for Review* is hereby **DENIED** for lack of merit. The assailed Decision dated November 19, 2020 and Resolution dated June 17, 2021, rendered by the First Division of this Court in CTA Case No. 10070 are hereby **AFFIRMED**.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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

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