REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

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PHILIPPINE AIRLINES, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE AND COMMISSIONER OF CUSTOMS,
Respondents.

CTA EB No. 1254
(CTA Case No. 8415)

Present:

DEL ROSARIO, *P.J.*,
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA,
FABON-VICTORINO,
MINDARO-GRULLA, and
RINGPIS-LIBAN, *JJ.*

Promulgated:

DEC 22 2016 2:25 p.m.

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DECISION

UY, *J*.:

This Petition for Review filed on December 4, 2014[1] before the Court of Tax Appeals *En Banc* by Philippine Airlines, Inc., seeks the setting aside of the Decision dated August 7, 2014[2] and Resolution dated November 14, 2014[3], promulgated by the Second Division of this Court (Court in Division) in CTA Case No. 8415, entitled *"Philippine Airlines, Inc., Petitioner, vs. Commissioner of Internal Revenue and Commissioner of Customs, Respondents,"* the dispositive portions of which respectively read as follows:

Decision dated August 7, 2014:

"**WHEREFORE,** the instant Petition for Review is

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[1] EB Docket – Vol. I, pp. 36 to 65.
[2] EB Docket – Vol. I, pp. 98 to 117.
[3] EB Docket – Vol. I, pp. 75 to 79.

hereby **DENIED** for lack of merit.

SO ORDERED."

Resolution dated November 14, 2014:

"**WHEREFORE,** premises considered, the instant *Motion for Reconsideration [with Motion to Take Judicial Notice]* is hereby **DENIED** for lack of merit.

SO ORDERED."

THE FACTS

Petitioner Philippine Airlines, Inc. is a domestic corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with registered address at PNB Financial Center, President Diosdado P. Macapagal Avenue, CCP Complex 1307, Pasay City.

Respondent Commissioner of Internal Revenue (CIR) is the Commissioner of the Bureau of Internal Revenue (BIR), a government agency tasked with the assessment and collection of all national internal revenue taxes, fees, charges, including excise taxes paid on wines, liquors and cigarettes under Sections 142 and 145, respectively, of the National Internal Revenue Code (NIRC) of 1997, as amended.

Co-respondent Commissioner of Customs (COC) is the Commissioner of the Bureau of Customs (BOC), a government agency tasked with the assessment and collection of customs duties and other lawful revenues from imported articles, including excise taxes imposed on wines, liquors and cigarettes under Sections 142 and 145, respectively, of the NIRC, as amended, on the basis of the delegated authority of respondent CIR through an Authority to Release Imported Goods (BIR Form No. 1918) (ATRIG) duly issued by respondent CIR addressed to respondent COC in accordance with Section 12(a) of the NIRC of 1997, as amended.

On June 11, 1978, petitioner was granted a franchise to operate air transport services domestically and internationally by virtue of Presidential Decree (PD) No. 1590, otherwise known as *"An Act Granting a New Franchise to Philippine Airlines, Inc. to Establish, Operate, and Maintain Air-Transport Services in the Philippines and* *between the Philippines and Other Countries."*

On January 1, 2005, Republic Act (RA) No. 9334, otherwise known as *"An Act Increasing the Excise Tax Rates Imposed on Alcohol and Tobacco Products, Amending for the Purpose Sections 131, 141, 142, 143, 144, 145 and 288 of the National Internal Revenue Code of 1997, as Amended"* took effect.

On February 4, 2005, then COC George M. Jereos issued a Memorandum to BOC officers and personnel directing them to *"effect collection of excise tax due on imported alcohol and tobacco products, even if destined to Duty Free Philippines and to Freeport Zones".*

On March 1, 2005, former COC Alberto D. Lina issued Customs Memorandum Order (CMO) No. 13-2005, which provided for the *"Immediate Collection at the Port of Discharge of Duties, Taxes and Other Charges, Including Excise Tax Due on All Importations of Alcohol and Tobacco Products Destined for Duty Free Shops and Free-Port Zones Pursuant to RA No. 9334 and BIR Revenue Regulations No. 12-2004".*

Accordingly, Ms. Gilda L. Cinco, Acting Chief-WAU of the BOC, wrote two letters dated September 23, 2009 to Collector Silveria S. Salazar, Chief of Collection Division-NAIA Customhouse, listing petitioner's importations for collection of petitioner's payment of duties, taxes and other charges including excise taxes in the total amount of ₱1,672,926.66 and ₱1,101,985.90 for petitioner's importations pursuant to CMO No. 13-2005 and Revenue Regulations No. 3-2006, as follows:

Import Entry No.	Date of Arrival	ATRIG No.	Excise Tax
8122	July 12, 2006	00081869	₱159,902.91
14876	December 28, 2006	00090117	173,226.60
4612	April 19, 2006	00074997	149,368.50
7036	August 23, 2009	00039208	507,911.04
5051	May 17, 2006	00075462	144,179.91
01807	February 7, 2007	00030393	165,078.00
8879	August 4, 2007	00030398	186,171.30
01365	February 2, 2007	00030399	187,088.40
			₱1,672,926.66

Import Entry No.	Date of Arrival	ATRIG No.	Excise Tax
11103	October 21, 2008	00030630	₱162,972.00
5343	August 14, 2009	00038724	186,354.79

7085	August 29, 2009	00039249	18,342.00
6205	July 16, 2009	00038309	227,501.82
7056	August 28, 2009	00039212	158,137.03
6980	August 6, 2009	00038723	316,274.06
7002	August 15, 2009	00038727	27,513.00
7063	August 29, 2009	00039211	4,891.20
			₱1,101,985.90

On January 27, 2010, petitioner paid the foregoing excise tax liabilities.

On February 22, 2011, petitioner filed an administrative claim for refund with respondent CIR for the refund of the amounts of ₱1,672,926.66 and ₱1,101,985.90, representing excise taxes paid on January 27, 2010 through the BOC, on the above importations.

Thereafter, on January 26, 2012, petitioner filed a Petition for Review before the Court in Division for the refund of excise taxes paid on January 27, 2010. The case was docketed as CTA Case No. 8415.

Respondent CIR filed his Answer in CTA Case No. 8415 on March 6, 2012, and interposed special and affirmative defenses, alleging, among others, that petitioner's claim for refund is not warranted; in an action for refund, the burden of proof is on the taxpayer who claims the exemption and he must justify his claim by the clearest grant under the Constitutional or statutory law and cannot be permitted by vague implications; RA No. 9334 served as the basis for assessment and collection of excise taxes; the contention of petitioner that its tax exemption under its franchise subsists notwithstanding the passage of RA No. 9334 is clearly unfounded; no less than the Constitution provides that a franchise is subject to amendment, alteration or repeal by Congress; there can be no serious doubt as to the intention of Congress to withdraw petitioner's tax exemption; and the explicit language of Section 6 of RA No. 9334 which authorizes the imposition of excise taxes *"notwithstanding contrary provisions in general or special law"* is all-encompassing and clear.

On the other hand, respondent COC filed his Answer/Comment in CTA Case No. 8415 on March 16, 2012, arguing, among others, that RA No. 9334 is not limited to previously tax-free and duty-free importations of freeports and duty-free shops; Section 6 of RA No. 9334 shows that all importation of cigars and cigarettes, distilled spirits, fermented liquors and wines into the Philippines are subject to applicable taxes, duties and charges — including excise tax; this is underscored by the use of the phrases "[t]*he provision of any special or general law to the contrary notwithstanding*" and "*even if destined for tax and duty-free shops*"; RA No. 9334 amended PD No. 1590; the wording of the repealing clause of RA No. 9334 strongly manifests the intent of Congress to amend any special or general law inconsistent with it, including PD No. 1590; the Constitution is explicit that a franchise is subject to amendment, alteration or repeal by Congress; tax exemptions are construed *strictissimi juris* against the taxpayer and liberally in favor of the taxing authority; and RA No. 9334 is clear — all importations of alcohol and tobacco products from a foreign country into the Philippines are liable for excise tax which includes the subject importations.

During trial before the Court in Division, petitioner presented, by way of Judicial Affidavit, the testimony of Jonathan Castillo Lee, Manager of petitioner's Company Materials Handling Division, Ma. Evelyn L. Taghap, Manager of petitioner's Tax Services Division, and Cheryl V. Capinpin, Manager of petitioner's In-Flight Materials Purchasing Division, Catering and In-Flight Materials Purchasing Sub-Department.

On the other hand, respondents manifested before the Court in Division that they would not present their respective testimonial and documentary evidence.

In the Resolution dated January 13, 2014, CTA Case No. 8415 was submitted for decision after petitioner filed its Memorandum on December 20, 2013, and respondents CIR and COC filed their Memorandum on December 10, 2013 and January 24, 2014, respectively.

In the assailed Decision, the Court in Division denied the Petition for Review for lack of merit. The Court in Division found that petitioner was not able to prove that it paid its corporate income tax for fiscal years ending March 2007 and 2010, and its value-added tax (VAT) for fiscal year ending March 2007; and that petitioner failed to offer evidence to show that the articles imported, from which petitioner paid the excise tax of ₱2,774,912.56, are not locally available in reasonable quantity, quality or price.

Petitioner then filed on August 26, 2014 a *Motion for*

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Reconsideration [with Motion to Take Judicial Notice],[4] which was denied by the Court in Division for lack of merit in the assailed Resolution.[5]

Consequently, petitioner filed, before the Court *En Banc*, a *Motion for Extension of Time to File Petition for Review* on December 3, 2014,[6] praying for an additional period of fifteen (15) days from December 4, 2014 or until December 19, 2014. Without waiting for the resolution of the said *Motion*, petitioner filed the instant Petition for Review on December 4, 2014.[7] Nevertheless, in the Resolution dated December 15, 2014,[8] the said *Motion* was deemed granted by the Court *En Banc.*

Without necessarily giving due course to the instant Petition for Review, respondent CIR was ordered by the Court *En Banc* to file his Comment thereon.[9] Thus, respondent CIR filed his *Comment (Re: Petition for Review)* on April 16, 2015.[10]

Respondent COC filed a *Manifestation and Motion* on April 24, 2015,[11] stating that considering that he is a co-respondent in this case, due process dictates that he be given an equal opportunity to comment on the instant Petition for Review. Thus, the Court *En Banc* granted respondent COC's plea and ordered him to file his comment.[12]

Thereafter, respondent COC filed a *Motion for Extension of Time to File Comment* on July 2, 2015,[13] and another one on July 20, 2015.[14] In the Resolution dated August 17, 2015,[15] the Court *En Banc* denied respondent COC's first *Motion for Extension of Time to File Comment* for being filed beyond the reglementary period. Nevertheless, in the same Resolution, the Court *En Banc* resolved to give due course to the Petition for Review, and required the parties to submit their respective memorandum.

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[4] Division Docket (CTA Case No. 8415), pp. 1229 to 1239.
[5] EB Docket – Vol. I, pp. 75 to 79; Division Docket (CTA Case No. 8415), pp. 1275 to 1279.
[6] EB Docket – Vol. I, pp. 1 to 6.
[7] EB Docket – Vol. I, pp. 36 to 65.
[8] Minute Resolution dated December 15, 2014, EB Docket – Vol. II, p. 524.
[9] Resolution dated March 26, 2015, EB Docket – Vol. II, pp. 534 to 535.
[10] EB Docket – Vol. II, pp. 536 to 542.
[11] EB Docket – Vol. II, pp. 544 to 546.
[12] Resolution dated May 27, 2015, EB Docket – Vol. II, pp. 550 to 552.
[13] EB Docket – Vol. II, pp. 554 to 556.
[14] EB Docket – Vol. II, pp. 560 to 561.
[15] EB Docket – Vol. II, pp. 567 to 569.

Respondent COC, nevertheless, filed his *Comment* on August 19, 2015; as well as a *Motion for Reconsideration* on September 2, 2015,[16] wherein he prayed that the August 17, 2015 Resolution be reconsidered and set aside, and a resolution be issued admitting his *Comment*.

On September 1, 2015, respondent CIR filed a *Manifestation*,[17] stating that he is adopting the *Comment* filed on April 16, 2015 as his *Memorandum*. The Court *En Banc* took note of this *Manifestation* in its Resolution dated September 4, 2015.[18]

Petitioner filed its *Memorandum* on October 8, 2015.[19]

In the Resolution dated October 28, 2015,[20] respondent COC's *Motion for Reconsideration* was granted by the Court *En Banc*, and his *Comment* was admitted. In the same Resolution, respondent COC was ordered to submit his Memorandum.

On December 1, 2015, respondent COC filed a *Manifestation (In Lieu of Memorandum)*,[21] stating that he is adopting his *Comment* as his *Memorandum*. This *Manifestation* was likewise noted by the Court *En Banc* in its Resolution dated December 9, 2015.[22]

Thereafter, the instant Petition for Review was deemed submitted for decision on January 21, 2016.[23]

Hence, this Decision.

THE ISSUE

Petitioner raises the following issue for the Court *En Banc's* resolution, to wit:

> "WHETHER OR NOT THE SECOND DIVISION ERRED IN FINDING THAT PETITIONER WAS NOT

[16] EB Docket – Vol. II, pp. 594 to 603.
[17] EB Docket – Vol. II, pp. 570 to 572.
[18] EB Docket – Vol. II, p. 604.
[19] EB Docket – Vol. II, pp. 620 to 637.
[20] EB Docket – Vol. II, pp. 662 to 664.
[21] EB Docket – Vol. II, pp. 665 to 666.
[22] EB Docket – Vol. II, p. 669.
[23] Resolution dated January 21, 2016, EB Docket – Vol. II, pp. 671 to 672.

ABLE TO SUFFICIENTLY PROVE THAT: (A) IT HAS PAID FOR ITS BASIC CORPORATE INCOME AND VALUE-ADDED TAX FOR THE SUBJECT IMPORTATION PERIODS; AND (B) THE SUBJECT IMPORTED ARTICLES ARE NOT LOCALLY AVAILABLE IN REASONABLE QUALITY, QUANTITY, OR PRICE."[24]

Petitioner's arguments:

Petitioner contends that it sufficiently proved that it complied with the conditions for the entitlement to exemption under Section 13 of Presidential Decree No. 1590.

According to petitioner, it was allegedly able to prove by preponderant and uncontroverted evidence that it has paid its corporate income tax for fiscal years ending March 2007 and 2010, as well as the VAT for the fiscal year ending March 2007 through the testimony of its witness Ms. Taghap in her Judicial Affidavit dated October 10, 2012[25].

Despite this, the Second Division, in its Resolution dated 21 November 2013, allegedly denied admission of petitioner's Exhibits "AAA" and "AAA-1", supposedly because these were not found in the records, and petitioner's Exhibits "EEE", "EEE-1", "GGG" and "GGG-1", for the purported reason that petitioner was allegedly not able to present the originals of said exhibits. Further in the assailed Resolution, the Second Division, allegedly declined to take judicial notice of its prior decisions in CTA Case No. 7843 entitled *Philippine Airlines, Inc. v. Commissioner of Internal Revenue and Commissioner of Customs*, as well as the resolution of the First Division of this Court in CTA Case No. 8362 entitled *Philippine Airlines, Inc. v. Commissioner of Internal Revenue and Commissioner of Customs* [26], that acknowledged PAL's payments.

Allegedly, the refusal of the Court in Division to take judicial notice of PAL's filing of the corporate income tax returns for fiscal year 2007 and 2010 and the quarterly VAT for 2007 defeats justice, equity and fair play, to which technical rules of procedure must yield to. Petitioner insists that decisions issued by this Court, being an official act of the judicial department of the Philippines, should have

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[24] EB Docket – Vol. II, p. 625.
[25] Exhibit "OOO"
[26] See Petition for Review, pp. 10-11

been taken judicial notice of by the Court in Division, especially considering that the decision cited by the petitioner involves the same parties, type of tax, and case.

Petitioner likewise argues that it has sufficiently proved that the subject imported articles are not locally available in reasonable quantity, quality or price. It asserts that the comparative local price is not the only determining factor to justify the exemption of the imported product, more so when such comparative local price could not be provided in view of the absence of local suppliers capable of supplying the required amount of commissary supplies.

Moreover, petitioner maintains that the presentation of the comparative price list is not only to show that its imported products were not locally available in reasonable price, but also that they were just not locally available at all.

Finally, petitioner notes that notwithstanding the positive proof it presented, respondent CIR never presented any evidence to the contrary to show that these same brands of alcohol imported by petitioner were available locally in reasonable quantity, quality or price. In fact, respondent CIR made a judicial admission in his Memorandum, that the importation of the catering supplies cost less than purchasing them locally.

Respondents' counter-arguments:

Respondent Commissioner of Internal Revenue or CIR, counters that petitioner failed to prove that the alleged commissary supplies are not locally available in reasonable quantity, quality and price; and that no independent and credible evidence was presented to prove this matter. According to respondent CIR, it is highly self-serving for petitioner's own employee, Cheryl Capinpin, to certify that the imported products are not locally available in reasonable quantity, quality and price; and her study on prices is not comprehensive in nature.

Respondent CIR further stresses that it is incumbent upon petitioner to prove that it is entitled to the refund sought; that failure to prove the same is fatal to its claim for tax refund; and that it is a well-settled principle in taxation that claims for refund are construed strictly against the claimant as they partake the nature of an exemption from tax.

For his part, co-respondent Commissioner of Customs or COC argues that the Court in Division did not err in refusing to take judicial notice of the evidence submitted in the allied PAL cases, because courts cannot take judicial notice of the records of other cases, even when said cases are pending in the same court. Moreover, according to co-respondent COC, petitioner failed to show that its case falls under the exception to the said doctrine, since respondents did not consent to the taking of judicial notice, and was in fact, vehemently opposed to it; that the taking of judicial notice, as a matter of procedure, may only be done during trial; and that the motion was an afterthought intended to insert evidence that was not part of the record.

Co-respondent COC likewise asserts that petitioner failed to prove that that subject articles are locally unavailable in reasonable quantity, quality, or price; that petitioner merely compared the cost of importing the subject articles with the price lists of two Philippine-based suppliers, *i.e.,* Philippine Wine Merchants (PWM) and Future Trade International (FTI); that no valid comparison can be made since the subject articles were not found in the said price lists, or were not the same brands, variants, or volumes; and that PWM and FTI are just two of the countless alcohol suppliers in the Philippines, and it does not mean that other local suppliers are not offering the same products as well, or that it represents the prices of all suppliers in the country.

In addition, according to co-respondent COC, petitioner merely attempted to show that it was cheaper to import the subject articles, rather than to purchase them locally, but not that the local prices are unreasonable. Allegedly, the Court in Division did not err in giving little or no weight to the testimony of Cheryl V. Capinpin, whose bias is indubitable, and was not presented as, or proven to be, an expert in local commodity prices; and that this being the case, petitioner had to provide support from competent and independent sources, such as third party or independent market price studies of alcohol products to verify the data in her comparative table; otherwise, there would be no means of positively ascertaining that the subject articles were locally unavailable in reasonable prices.

Finally, co-respondent COC argues that petitioner had the burden of proving its entitlement to the tax privilege under Section 13 of P.D. No. 1590, but its evidence did not show that the conditions *sine qua non* were duly complied with.

THE COURT *EN BANC*'S RULING

The instant Petition for Review lacks merit.

Section 13 of PD No. 1590 states the conditions which must be complied with by petitioner in order for its imported supplies to be considered exempt from excise tax, to wit:

> "SECTION 13. In consideration of the franchise and rights hereby granted, the grantee shall pay to the Philippine Government during the life of this franchise whichever of subsections (a) and (b) hereunder will result in a lower tax:
>
> (a) The basic corporate income tax based on the grantee's annual net taxable income computed in accordance with the provisions of the National Internal Revenue Code; or
>
> b) A franchise tax of two per cent (2%) of the gross revenues derived by the grantee from all sources, without distinction as to transport or nontransport operations; *provided*, that with respect to international air-transport service, only the gross passenger, mail, and freight revenues from its outgoing flights shall be subject to this tax.
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> **<u>The tax paid by the grantee</u> under either of the above alternatives shall be in lieu of all other taxes, duties, royalties, registration, license, and other fees and charges of any kind, nature, or description, imposed, levied, established, assessed, or collected by any municipal, city, provincial, or national authority or government agency, now or in the future, including but not limited to the following:**
>
> xxx xxx xxx
>
> (2) **All taxes, including compensating taxes, duties, charges, royalties, or fees due on all importations by the grantee of** aircraft, engines, equipment, machinery, spare parts, accessories, **commissary and catering supplies**, aviation gas, fuel, and oil, whether refined or in crude form and other articles, supplies, or materials; *provided*, that such articles or supplies or materials are imported for the use of the grantee in its transport and nontransport operations and other activities incidental thereto and are not locally

available in reasonable quantity, quality, or price; x x x." *(Emphases and underscoring supplied)*

In *Republic of the Philippines vs. Philippine Airlines, Inc. (PAL), etseq.*,[27] the Supreme Court held:

"...the franchise of PAL remains the governing law on its exemption from taxes. **<u>Its payment of either basic corporate income tax</u> or franchise tax – whichever is lower – shall be in lieu of all other taxes, duties, royalties, registrations, licenses, and other fees and charges, except only real property tax.** The phrase 'in lieu of all other taxes' includes but is not limited to taxes, duties, charges, royalties, or fees due on all importations by the grantee of the commissary and catering supplies, *provided* that such articles or supplies or materials are imported for the use of the grantee in its transport and nontransport operations and other activities incidental thereto and are not locally available in reasonable quantity, quality, or price.

However, upon amendment of the 1997 NIRC, Section 22 of R.A. 9337 abolished the franchise tax and subjected PAL and similar entities to corporate income tax and value-added tax (VAT). **PAL nevertheless remains exempt from taxes, duties, royalties, registrations, licenses, and other fees and charges, <u>provided it pays corporate income tax as granted in its franchise agreement</u>. Accordingly, PAL is left with no other option but to pay its basic corporate income tax, the payment of which shall be in lieu of all other taxes, except VAT, and subject to certain conditions provided in its charter.**" *(Emphases and underscoring supplied)*

Based on the foregoing, the exemption of petitioner, in lieu of all other taxes, except VAT, is dependent on, *inter alia*, its payment of the corporate income tax.

In this case, the Court in Division primarily found that petitioner failed to sufficiently prove that it paid its corporate income tax for fiscal years ending March 2007 and 2010.

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[27] G.R. Nos. 209353-54, and 211733-34, July 6, 2015.

However, petitioner insists that contrary to the Court in Division's finding, it has sufficiently shown, with preponderant and uncontroverted evidence that it has paid its corporate income tax for fiscal years ending March 2007 and 2010, as well as the VAT for the fiscal year ending March 2007.

We are not convinced.

A perusal of the records of this case show that petitioner formally offered certain income tax and VAT returns covering various taxable years, in order to prove its payment of the subject corporate income taxes and VAT, to wit: (1) Exhibits "AAA" to "AAA-1," or petitioner's Annual Income Tax Return for fiscal year ending March 31, 2007; (2) Exhibits "EEE" to "EEE-1," or petitioner's Annual Income Tax Return for fiscal year ending March 31, 2010; and (3) Exhibit "GGG-1," or Quarterly VAT Return for the 4th Quarter of Fiscal Year ending March 31, 2007.

However, it must be emphasized that in the Resolution dated November 21, 2013,[28] the Court in Division denied the admission of the said Exhibits "AAA" to "AAA-1", for not being found in the records; and of Exhibits "EEE" to "EEE-1", and "GGG-1", for failing to submit the originals for comparison. Thus, no evidentiary value can be given to said evidence.

In this connection, petitioner argues that in the decisions of this Court in other cases purportedly acknowledging its tax payments,

should have been taken judicial notice of by the Court in Division, considering that the decision and resolution cited by petitioner involve the same parties, type of tax, and case.

We disagree.

In *Silkair (Singapore) Pte. Ltd. vs. Commissioner of Internal Revenue,*[29] the Supreme Court held that the assertion that this Court may take judicial notice of evidence previously offered and admitted in evidence in similar cases before the same Court is untenable, *viz*:

> "Petitioner's assertion that the CTA may take judicial notice of its SEC Registration, previously offered and

[28] Division Docket (CTA Case No. 8415 – Vol. II), pp. 1114 to 1115.
[29] G.R. No. 184398, February 25, 2010.

admitted in evidence in similar cases before the CTA, is untenable.

We quote with approval the disquisition of the CTA *En Banc* in its Decision dated May 27, 2008 on the non-admission of petitioner's Exhibits 'A,' 'P,' 'Q' and 'R,' to wit:

> Anent petitioners argument that the Court in Division should have taken judicial notice of the existence of Exhibit 'A' (petitioner's SEC Certificate of Registration), although not properly identified during trial as this has previously been offered and admitted in evidence in similar cases involving the subject matter between the same parties before this Court, We are in agreement with the ruling of the Court in Division, as discussed in its Resolution dated April 12, 2005 resolving petitioners Motion for Reconsideration on the courts non-admission of Exhibits 'A', 'P', 'Q' and 'R', wherein it said that:
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>> Each and every case is distinct and separate in character and matter although similar parties may have been involved. Thus, <u>in a pending case, it is not mandatory upon the courts to take judicial notice of pieces of evidence which have been offered in other cases even when such cases have been tried or pending in the same court</u>. <u>**Evidence already presented and admitted by the court in a previous case cannot be adopted in a separate case pending before the same court without the same being offered and identified anew.**</u>
>>
>> The cases cited by petitioner concerned similar parties before the same court but do not cover the same claim. <u>**A court is not compelled to take judicial notice**</u>

> **<u>of pieces of evidence offered and admitted in a previous case unless the same are properly offered or have accordingly complied with the requirements on the rules of evidence. In other words, the evidence presented in the previous cases cannot be considered in this instant case without being offered in evidence.</u>**
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> Moreover, Section 3 of Rule 129 of the Revised Rules of Court provides that hearing is necessary before judicial notice may be taken by the courts. To quote said section:
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> > Sec. 3. *Judicial notice, when hearing necessary.* – During the trial, the court, on its own initiative, or on request of a party, may announce its intention to take judicial notice of any matter and allow the parties to be heard thereon.
> >
> > After the trial, and before judgment or on appeal, the proper court, on its own initiative or on request of a party, may take judicial notice of any matter and allow the parties to be heard thereon if such matter is decisive of a material issue in the case.
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> Furthermore, petitioner admitted that Exhibit 'A' have *(sic)* been offered and admitted in evidence in similar cases involving the same subject matter filed before this Court. Thus, petitioner is and should have been aware of

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> the rules regarding the offering of any documentary evidence before the same can be admitted in court.
>
> As regards Exhibit[s] 'P', 'Q' and 'R', the original copies of these documents were not presented for comparison and verification in violation of Section 3 of Rule 130 of the 1997 Revised Rules of Court. The said section specifically provides that when the subject of inquiry is the contents of a document, no evidence shall be admissible other than the original document itself xxx xxx. **It is an elementary rule in law that documents shall not be admissible in evidence unless and until the original copies itself are offered or presented for verification in cases where mere copies are offered, save for the exceptions provided for by law. Petitioner thus cannot hide behind the veil of judicial notice so as to evade its responsibility of properly complying with the rules of evidence. For failure of herein petitioner to compare the subject documents with its originals, the same may not be admitted.**' (*Emphasis Ours*)

Likewise, in the Resolution dated July 15, 2005 of the Court in Division denying petitioners Omnibus Motion seeking allowance to compare the denied exhibits with their certified true copies, the court *a quo* explained that:

> 'Petitioner was already given enough time and opportunity to present the originals or certified true copies of the denied documents for comparison. When

> <u>petitioner received the resolution denying admission of the provisionally marked exhibits, it should have submitted the originals or certified true copies for comparison, considering that these documents were accordingly available.</u> But instead of presenting these documents, petitioner, in its Motion for Reconsideration, tried to hide behind the veil of judicial notice so as to evade its responsibility of properly applying the rules on evidence. <u>It was even submitted by petitioner that these documents should be admitted for they were previously offered and admitted in similar cases involving the same subject matter and parties. If this was the case, then, there should have been no reason for petitioner to seasonably present the originals or certified true copies for comparison, or even, marking.</u>'xxx

> In view of the foregoing discussion, the Court *en banc* finds that indeed, petitioner indubitably failed to establish its authority to operate in the Philippines for the period beginning June to December 2000.

This Court finds no reason to depart from the foregoing findings of the CTA *En Banc* as petitioner itself admitted on page 9 of its petition for review that '[i]t was through inadvertence that only photocopies of Exhibits 'P', 'Q' and 'R' were introduced during the hearing' and that it was rather unfortunate that petitioner failed to produce the original copy of its SEC Registration (Exhibit 'A') for purposes of comparison with the photocopy that was originally presented.

<u>Evidently, said documents cannot be admitted in evidence by the court as the original copies were neither offered nor presented for comparison and verification</u>

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during the trial. Mere identification of the documents and the markings thereof as exhibits do not confer any evidentiary weight on them as said documents have not been formally offered by petitioner and have been denied admission in evidence by the CTA.

Furthermore, the documents are not among the matters which the law mandatorily requires the Court to take judicial notice of, without any introduction of evidence, as petitioner would have the CTA do. Section 1, Rule 129 of the Rules of Court reads:

> SECTION 1. *Judicial notice, when mandatory.* – A court shall take judicial notice, without the introduction of evidence, of the existence and territorial extent of states, their political history, forms of government and symbols of nationality, the law of nations, the admiralty and maritime courts of the world and their seals, the political constitution and history of the Philippines, the official acts of the legislative, executive and judicial departments of the Philippines, the laws of nature, the measure of time, and the geographical divisions.

Neither could it be said that petitioners' SEC Registration and operating permits from the CAB are documents which are of public knowledge, capable of unquestionable demonstration, or ought to be known to the judges because of their judicial functions, in order to allow the CTA to take discretionary judicial notice of the said documents.

Moreover, Section 3 of the same Rule provides that a hearing is necessary before judicial notice of any matter may be taken by the court. This requirement of a hearing is needed so that the parties can be heard thereon if such matter is decisive of a material issue in the case.

Given the above rules, it is clear that the CTA *En Banc* correctly did not admit petitioners SEC Registration and operating permits from the CAB which were merely photocopies, without the presentation of the original

> copies for comparison and verification. As aptly held by the CTA *En Banc*, petitioner cannot rely on the principle of judicial notice so as to evade its responsibility of properly complying with the rules of evidence. Indeed, petitioner's contention that the said documents were previously marked in other cases before the CTA tended to confirm that the originals of these documents were readily available and their non-presentation in these proceedings was unjustified. Consequently, petitioner's failure to compare the photocopied documents with their original renders the subject exhibits inadmissible in evidence."

In view of the foregoing pronouncements, petitioner cannot successfully rely on the principle of judicial notice to evade its responsibility to properly comply with the rules of evidence, which entails the presentation of the original copies for comparison and verification. It is noteworthy that petitioner did not do anything for the Court in Division to admit the denied Exhibits "AAA" to "AAA-1", "EEE" to "EEE-1", and "GGG-1". It is only when the assailed Decision was promulgated that petitioner filed a *Motion to Take Judicial Notice*. In light of the above-quoted judicial pronouncements, petitioner cannot avail of the benefits of the principle of judicial notice. Such being the case, petitioner failed to comply with the requirement that payment of its corporate income tax must be duly proven.

Finding that petitioner failed to prove the said fact of payment, which is a primary condition for its tax exemption granted under PD No. 1590, it is no longer necessary to address the other arguments raised by petitioner.

WHEREFORE, premises considered, the Petition for Review is hereby **DENIED** for lack of merit. The assailed Decision dated August 7, 2014 and the assailed Resolution dated November 14, 2014 are hereby **AFFIRMED**.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

(On Leave)
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

(On Leave)

CATHERINE T. MANAHAN
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