

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

CROMA MEDIC, INC.,
Petitioner,

CTA EB NO. 2213
(CTA Case No. 9584)

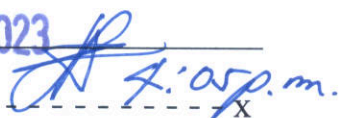
Present:

- versus -

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

COMMISSIONER OF
INTERNAL REVENUE,
Respondent.

Promulgated:

JUN 13 2023 
X ----- X

DECISION

BACORRO-VILLENA, J.:

Before the Court *En Banc* is a Petition for Review¹ filed by petitioner Croma Medic, Inc. (**petitioner/CMI**), pursuant to Rule 43² of the Rules of Court, as amended³, in accordance with Rule 8⁴, Section

¹ Filed on 21 January 2020, *Rollo*, pp. 1-45, with annexes.

² *Appeals from the Court of Tax Appeals and Quasi-Judicial Agencies to the Court of Appeals.*

³ A.M. No. 19-10-20-SC, otherwise known as the 2019 Amendments to the 1997 Rules of Civil Procedure.

⁴ PROCEDURE IN CIVIL CASES.

4(b)⁵ of the Revised Rules of the Court of Tax Appeals (RRCTA). It seeks to reverse and set aside the Decision dated 16 August 2019⁶ (**assailed Decision**) and Resolution dated 18 December 2019⁷ (**assailed Resolution**) of the Court's Special Second Division⁸ in CTA Case No. 9584 entitled *Croma Medic, Inc. v. Commissioner of Internal Revenue*.

PARTIES OF THE CASE

Petitioner is a corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with principal address at Unit 303 Alegria Bldg., 2229 Chino Roces Avenue, Makati City.⁹ It is virtually one hundred percent (100%) owned by a German entity, BEPHA Beteiligungsgesellschaft für Pharmawerte mbH ("BEPHA", for brevity) as the principal and controlling shareholder.¹⁰

Respondent, on the other hand, is the Commissioner of Internal Revenue (**respondent/CIR**), who is sued in his or her official capacity, having been duly appointed and empowered to perform the duties of his or her office, including, among others, the duty to act on and approve claims for refund as provided by law. He or she may be served with summons, notices and other court processes at the Bureau of Internal Revenue (BIR) National Office Building, BIR Road, Diliman, Quezon City.

FACTS OF THE CASE

On 16 March 2016, petitioner allegedly declared a cash dividend of ₱32,000,000.00 in favor of BEPHA. Acting as a withholding agent, petitioner withheld therefrom the amount of ₱3,200,000.00,

⁵ SEC. 4. *Where to appeal; mode of appeal.* —

...

(b) An appeal from a decision or resolution of the Court in Division on a motion for reconsideration or new trial shall be taken to the Court by **petition for review as provided in Rule 43 of the Rules of Court**. The Court *en banc* shall act on the appeal. (Emphasis supplied.)

⁶ Division Docket, pp. 403-413; Penned by Hon. Associate Justice Juanito C. Castañeda, Jr. (Ret.) with Hon. Associate Justice Catherine T. Manahan, concurring.

⁷ Id., pp. 430-433.

⁸ The Special Second Division is composed of Hon. Associate Justice Juanito C. Castañeda, Jr. (Ret.), as Chairperson, and Hon. Associate Justice Catherine T. Manahan, as Member.

⁹ Par. 3.1, III. The Parties, Petition for Review, *supra* at note 1, p. 4.

¹⁰ Par. 4.1, IV. Brief Statement of Facts, Material Dates and Antecedent Proceedings, Petition for Review, *supra* at note 1, p. 4; *see* General Information Sheet (GIS) of Petitioner Croma Medic Inc. for the year 2016, Exhibit "P-1", Division Docket, pp. 28-37.

representing the 10% final withholding tax (FWT) on dividends, then filed its BIR Form No. 1601-F and remitted the amount withheld to the BIR on 12 April 2016, as certified by the Revenue District Office (RDO) No. 048 – West Makati, through Revenue District Officer Wilfredo V. Pilapil (RDO Pilapil).¹¹

BEPHA later notified petitioner that a tax treaty between the Philippines and Germany imposes only a 5% preferential tax on dividends. Petitioner allegedly verified BEPHA's notification with the BIR Records and Management Division and confirmed the existence of a *Double Taxation Avoidance Agreement between the Philippines and Germany (Philippines-Germany Tax Treaty)*, as amended.¹²

Consequently, on 18 April 2016, petitioner filed with RDO No. 048 – West Makati its *Revised* BIR Form No. 1601-F¹³ to reflect the amount of ₱1,600,000.00, representing the 5% FWT on dividends under the Philippines-Germany Tax Treaty. On even date, petitioner also filed an administrative claim for refund¹⁴ for overpayment in the amount of ₱1,600,000.00 and RDO No. 048 – West Makati acknowledged receipt¹⁵ of the same on 16 May 2016.

Thereafter, on 03 June 2016, petitioner filed a Tax Treaty Relief Application (TTTRA) for Dividend Income (BIR Form No. 0901-D)¹⁶ with the BIR International Tax Affairs Division (ITAD).

With respondent's inaction on its administrative claim for refund¹⁷, petitioner elevated the matter to the Court in Division by filing its prior Petition for Review¹⁸ on 03 May 2017. The same was raffled to the Second Division and docketed as CTA Case No. 9584.¹⁹ ✓

¹¹ See Certification dated 04 May 2016, Exhibit "P-4", id., p. 83.

¹² Exhibit "P-2", id., pp. 38-80.

¹³ Exhibit "P-3-a", id., p. 332; Denied admission *first* for failure to present the original for comparison *per* Resolution dated 09 January 2018 and *second* for failure to lay the basis for presentation of secondary evidence *per* Resolution dated 02 July 2018, id., pp. 349-350 and 366-368, respectively. See Letter-Request for a Tax Refund dated 18 April 2016, Exhibit "P-3", id., pp. 81-82.

¹⁴ See "Receiving Stamp" on Letter-Request for a Tax Refund dated 18 April 2016, id.

¹⁵ Exhibit "P-5-a", id., p. 85.

¹⁶ Supra at note 14.

¹⁷ Division Docket, pp. 12-91, with annexes.

¹⁸ The Second Division is composed of Hon. Associate Justice Juanito C. Castañeda, Jr. (Ret.), as Chairperson, Hon. Caesar A. Casanova (Ret.) and Hon. Associate Justice Catherine T. Manahan, as Members.

After being granted an extension of time by the Second Division²⁰, respondent filed his or her Answer²¹ on 14 July 2017. In the Answer, respondent alleged, *inter alia*, that petitioner's claim for refund is still subject to the BIR's administrative investigation or examination. According to him, the taxes paid and collected are presumed to have been paid in accordance with law and regulation, hence, not refundable. Since petitioner's claim for refund or issuance of tax credit certificate (TCC) in the amount of ₱1,600,000.00 (representing the alleged overpayment of FWT on dividends) was not fully substantiated by proper documents, respondent insisted that petitioner failed to establish its right to claim a refund.

On 02 August 2017, the Court issued a Notice of Pre-Trial Conference²² and set the Pre-Trial Conference on 31 August 2017. Accordingly, petitioner filed its Pre-Trial Brief²³ on 23 August 2017, while respondent filed his or her Pre-Trial Brief²⁴ on 29 August 2017.

During the 31 August 2017 Pre-Trial Conference, the Second Division granted the parties a period of twenty (20) days within which to file their Joint Stipulation of Facts and Issues (JSFI).²⁵ On 20 September 2017, the parties submitted their JSFI.²⁶

On 27 September 2017, the Second Division issued a Pre-Trial Order²⁷ approving the parties' JSFI and terminating the pre-trial.

In the trial that thereafter ensued, petitioner presented its testimonial and documentary evidence. It offered the testimony of its lone witness, Elizabeth P. Ocampo (**Ocampo**), who testified through her Judicial Affidavit dated 22 August 2017²⁸ and Supplemental Judicial Affidavit dated 21 September 2017.²⁹ There, she declared that: (1) she is petitioner's Senior Vice President; (2) petitioner is a corporation duly organized and existing under Philippine laws but is virtually 100% 

²⁰ See Order dated 05 July 2017, Division Docket, p. 105.

²¹ Id., pp. 106-108.

²² Id., pp. 110-111.

²³ Id., pp. 115-122.

²⁴ Id., pp. 192-194.

²⁵ See Order dated 31 August 2017, id., p. 199.

²⁶ See Joint Stipulation dated 20 September 2017, id., pp. 206-210.

²⁷ Id., pp. 276-279.

²⁸ Id., pp. 123-137.

²⁹ Id., pp. 214-218.

owned by BEPHA, a German company; (3) petitioner declared cash dividends in the amount of ₱32,000,000.00 in favor of BEPHA on 16 March 2016; (4) petitioner, as the withholding agent, erroneously withheld the amount of ₱3,200,000.00, representing the 10% FWT on dividends; (5) the said amount withheld was remitted and paid to the BIR, and the latter acknowledged receipt thereof on 12 April 2016; (6) upon learning of the existence of the Philippines-Germany Tax Treaty³⁰ which imposes only a 5% FWT on dividends, petitioner filed with RDO No. 048 – West Makati on 18 April 2016 its *Revised* BIR Form No. 1601-F to reflect ₱1,600,000.00, the correct amount of tax on dividends under the Philippines-Germany Tax Treaty, and an administrative claim for refund³¹ to recover the overpaid 5% for the same amount; (7) petitioner subsequently filed a TTRA for Dividend Income (BIR Form No. 0901-D) with the BIR ITAD on 03 June 2016; (8) petitioner adequately complied and submitted the required documents, including the proof of remittance of dividends to BEPHA amounting to ₱30,400,000.00 (representing 95% of the declared dividends and with only 5% eventually withheld as tax on dividends); (9) respondent then issued a Letter of Authority (LOA) dated 02 June 2016 with attached Checklist dated 02 June 2016, requiring petitioner to submit several documents; (10) despite petitioner’s full compliance, respondent failed to act on its administrative claim for refund; (11) due to respondent’s inaction, petitioner was impelled to seek immediate judicial review; and, (12) petitioner’s prior Petition for Review³² was filed within the two (2)-year period under Section 204³³, in relation to Section 229³⁴, of the National Internal Revenue Code (NIRC) of 1997, as amended, and Section 3³⁵, Rule 8³⁶ of the RRCTA.

During cross-examination, Ocampo stated that she started working for petitioner in August 1991.³⁷ When asked if she has proof that BEPHA is a German company, she cited petitioner’s General Information Sheet³⁸ (GIS) wherein BEPHA’s nationality is indicated as German.³⁹ Then, when asked if it was the first time that petitioner withheld a 10% tax on dividends, she replied in the negative and

³⁰ Supra at note 12.

³¹ Supra at note 14.

³² Supra at note 18.

³³ **SEC. 204.** *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.*

³⁴ **SEC. 229.** *Recovery of Tax Erroneously or Illegally Collected.*

³⁵ **SEC. 3.** *Who May Appeal; Period to File Petition.*

³⁶ PROCEDURE IN CIVIL CASES.

³⁷ TSN dated 02 October 2017, p. 6.

³⁸ Exhibit “P-1”, supra at note 10.

³⁹ TSN dated 02 October 2017, p. 7.

explained that the withholding tax rate on dividends was 10% before the revision in 2016 that lowered the same to 5%.⁴⁰

No re-direct examination was conducted.⁴¹

In the Order dated 02 October 2017⁴², after completing the presentation of petitioner’s testimonial evidence, the Second Division granted petitioner a period of five (5) days to file a Formal Offer of Evidence (FOE) and respondent the same period from receipt thereof to file his or her comment thereto. In the same Order, the Court noted respondent’s manifestation that he or she will no longer present any evidence; thus, the parties were also granted a period of thirty (30) days from receipt of the Court’s Resolution on petitioner’s FOE within which to submit their respective memoranda.

On 05 October 2017, petitioner filed its FOE⁴³ consisting of Exhibits “P-1” to “P-13”⁴⁴, inclusive of sub-markings. Respondent filed his or her Comment⁴⁵ thereto on 23 October 2017.

⁴⁰ Id., pp. 7-8.
⁴¹ Id., p. 8.
⁴² Division Docket, p. 281.
⁴³ Id., pp. 282-288.
⁴⁴

Exhibit No.	Description
“P-1”	General Information Sheet (GIS) of Petitioner Croma Medic, Inc.
“P-2”	The Tax Treaty entitled “Double Taxation Avoidance Agreement between the Philippines and Germany”.
“P-2-a”	Article 10 paragraph 2 of the “Double Taxation Avoidance Agreement between the Philippines and Germany”.
“P-3”	Letter Request for Tax Refund dated 18 April 2016.
“P-3-a”	Petitioner’s Revised 1601F.
“P-4”	Certification dated 04 May 2016 issued by RDO No. 48.
“P-4-a”	Certification dated 03 May 2017 issued by RDO No. 48.
“P-5”	Notice to Submit Documents (BIR Form No. 0901-D) dated 03 June 2016.
“P-5-a”	Tax Treaty Relief Application (TTRA) for Dividend Income 0901-D
“P-6”	Acknowledgment Receipt dated 03 June 2016.
“P-7”	Letter of Authority (LOA) dated 02 June 2016.
“P-8”	Checklist dated 07 June 2016.
“P-9”	Petitioner’s Compliance Letter dated 14 June 2016.
“P-10”	Email Confirmation dated 27 June 2016.
“P-11”	Bank Confirmation Record.
“P-12”	Secretary’s Certificate dated 26 April 2017.
“P-13”	Certification dated 10 January 2012.

⁴⁵ Division Docket, pp. 345-346.

In the Resolution dated 09 January 2018⁴⁶ (**FOE Resolution**), the Second Division admitted petitioner’s exhibits, *except* Exhibits “P-3-a” and “P-11”⁴⁷, for failure to present the originals for comparison, and Exhibits “P-4-a” and “P-13”⁴⁸, for failure to submit the duly marked exhibits.

On 24 January 2018, petitioner filed a “Partial Motion for Reconsideration with Prayer to Defer the Submission of Memorandum”⁴⁹ (**MPR**) of the Court’s FOE Resolution. Respondent failed to file a comment thereto despite due notice.⁵⁰

In the Resolution dated 02 July 2018⁵¹, the Second Division partially granted petitioner’s MPR on the FOE Resolution. It admitted Exhibits “P-4-a” and “P-13”⁵² but still denied Exhibits “P-3-a” and “P-11”⁵³ (**Denied Exhibits**) for petitioner’s failure to lay the bases for their presentation as secondary evidence. Accordingly, the Court granted the parties another 30-day period from notice within which to submit their respective memoranda.

In compliance with the Court’s directive, petitioner filed its Memorandum⁵⁴ on 14 August 2018. Respondent, on the other hand, failed to filed his or her memorandum.⁵⁵ Accordingly, on 03 September 2018, the Second Division declared the prior Petition for Review⁵⁶ as submitted for decision.⁵⁷

⁴⁶ Id., pp. 349-350.

⁴⁷

Exhibit No.	Description
“P-3-a”	Petitioner’s Revised 1601F.
“P-11”	Bank Confirmation Record.

⁴⁸

Exhibit No.	Description
“P-4-a”	Certification dated 03 May 2017 issued by RDO No. 48.
“P-13”	Certification dated 10 January 2012.

⁴⁹ Division Docket, pp. 351-361, with annexes.

⁵⁰ See Records Verification dated 19 February 2018, id., p. 364.

⁵¹ Id., pp. 366-368.

⁵² Supra at note 48.

⁵³ Supra at note 47.

⁵⁴ Division Docket, pp. 369-389.

⁵⁵ Per Records Verification dated 23 August 2018, id., p. 391.

⁵⁶ Supra at note 18.

⁵⁷ See Resolution dated 03 September 2018, Division Docket, p. 392.

On 16 August 2019, the Special Second Division promulgated the assailed Decision⁵⁸ dismissing the said prior Petition for Review for insufficiency of evidence. The dispositive portion of the assailed Decision reads:

...

WHEREFORE, premises considered, the instant Petition for Review is **DISMISSED** for insufficiency of evidence.

SO ORDERED.

...

The Special Second Division held that petitioner failed to substantiate the amount it claimed to have been erroneously remitted as FWT on dividends as it did not provide the *Original* BIR Form No. 1601-F (Monthly Remittance Return of Final Income Taxes Withheld) for the month of March 2016, with the corresponding payment confirmation receipt filed through the BIR Electronic Filing and Payment System (eFPS). The Court thus cannot clearly ascertain how much final tax were withheld and remitted by petitioner on its dividends.

Aggrieved, petitioner filed a Motion for Reconsideration⁵⁹ (**MR**) on 03 September 2019. Respondent was ordered to submit a comment thereto but he or she again failed to do so despite due notice.⁶⁰

On 18 December 2019, the Special Second Division promulgated the assailed Resolution⁶¹ denying petitioner's MR for lack of merit. The dispositive portion of the assailed Resolution states:

...

WHEREFORE, premises considered, petitioner's Motion for Reconsideration is **DENIED** for lack of merit.

SO ORDERED.

...

⁵⁸ Supra at note 6; The case was transferred to the Special Second Division pursuant to Administrative Circular No. 02-2018 dated September 18, 2018, Reorganizing the Three (3) Divisions of the Court. Division Docket, pp. 414-425.

⁶⁰ See Resolution dated 10 September 2019 and Records Verification dated 01 October 2019, id., pp. 427 and 428, respectively.

⁶¹ Supra at note 7.

With the denial of its MR⁶², petitioner filed the present Petition for Review⁶³ with the Court *En Banc* on 21 January 2020.

Thereafter, on 11 February 2020, the Court *En Banc* ordered petitioner to submit within five (5) days from notice: (1) a Secretary's Certificate authorizing the filing of the instant petition; and, (2) a Verification and Certification against forum shopping.⁶⁴ The Court also ordered petitioner's counsel, Atty. Bryan B. Hernandez (**Atty. Hernandez**) to submit within ten (10) days from notice a copy of his Mandatory Continuing Legal Education (MCLE) Certificate of Compliance for the 6th Compliance Period and pay a fine of ₱2,000.00.⁶⁵

On 20 February 2020, petitioner filed its "Compliance and Motion for Reconsideration (To Notice of Resolution dated 11 February 2020)"⁶⁶ (**Compliance with MR**), thereto attaching the Secretary's Certificate dated 17 January 2020⁶⁷ and Verification and Certification of Non-Forum Shopping⁶⁸, and requesting the Court to reconsider the fine of ₱2,000.00 imposed upon Atty. Hernandez (who was admitted as a member of the Philippine Bar only on 20 June 2019⁶⁹ and has until May 2020 to comply with his first MCLE).

In the Resolution dated 11 March 2020⁷⁰, the Court *En Banc* granted petitioner's MR and noted its Compliance with the 11 February 2020 Resolution. In the same Resolution, the Court ordered respondent to file his or her comment on the present Petition for Review⁷¹ within 10 days from notice. However, respondent still failed to submit any such comment.⁷²

Subsequently, on 29 July 2020, petitioner filed a "Manifestation and Motion to Admit New Evidence in Support of the Petition"⁷³ (**Manifestation and Motion to Admit New Evidence**), informing the

⁶² Supra at note 59.

⁶³ Supra at note 1.

⁶⁴ See Resolution dated 11 February 2020, *Rollo*, pp. 47-48.

⁶⁵ Id.

⁶⁶ Id., pp. 49-56, with annexes.

⁶⁷ Annex "B", id., p. 55.

⁶⁸ Annex "C", id., p. 56.

⁶⁹ Annex "A", id., p. 54.

⁷⁰ Id., pp. 58-59.

⁷¹ Supra at note 1.

⁷² See Records Verification dated 02 September 2020, *Rollo*, p. 65.

⁷³ Id., pp. 60-65, with Annex "A".

Court *En Banc* that, during the pendency of the instant case, it received a Letter dated 28 February 2020⁷⁴ (**Approval Letter**) issued by the BIR and which it claims to bolster its entitlement to refund categorically.

In the Resolution dated 22 September 2020⁷⁵, the Court *En Banc* directed respondent to file a comment on petitioner’s Manifestation and Motion to Admit New Evidence and granted him an additional period of 10 days to comply with the 11 March 2020 Resolution.⁷⁶ Since respondent once again neglected to file any comment⁷⁷, the Court *En Banc* deemed petitioner’s Manifestation and Motion to Admit New Evidence as submitted for resolution.⁷⁸

Later, finding petitioner’s Motion to Admit New Evidence unmeritorious, the Court *En Banc* denied the same and thereby, submitted the present Petition for Review for decision in its Resolution dated 09 June 2021.⁷⁹ The dispositive portion thereof reads:

...

WHEREFORE, in view of the foregoing, petitioner’s Motion to Admit New Evidence in Support of the Petition is hereby **DENIED** for lack of merit.

Accordingly, petitioner’s Petition for Review, *sans* Comment from respondent, is hereby deemed submitted for decision.

SO ORDERED.

...

Dissatisfied, petitioner filed a “Motion for Reconsideration of the Resolution dated 9 June 2021”⁸⁰ (**MR on the 09 June 2021 Resolution**) on 12 July 2021. 

⁷⁴ Annex “A” to Petitioner’s “Manifestation and Motion to Admit New Evidence in Support of the Petition”, id., p. 65.
⁷⁵ Id., pp. 67-68.
⁷⁶ Supra at note 70.
⁷⁷ See Records Verification dated 25 January 2021, *Rollo*, p. 69.
⁷⁸ See Resolution dated 10 February 2021, id., pp. 71-72.
⁷⁹ Id., pp. 74-77.
⁸⁰ Id., pp. 78-92, with Annex “A”.

On 14 July 2021, respondent’s counsel, Atty. Jesse S. Alcaraz (Atty. **Alcaraz**), filed a Withdrawal of Appearance⁸¹ (in view of Revenue Travel Assignment Order [RTAO] No. 249-2021 dated 09 June 2021⁸²), which was noted by the Court *En Banc* in the Minute Resolution dated 19 July 2021.⁸³

Then, on 07 October 2021, the Court *En Banc* directed respondent to file a comment on petitioner’s MR on the 09 June 2021 Resolution within five (5) calendar days from notice.⁸⁴ However, respondent yet again failed to comment thereon despite due notice.⁸⁵ Considering that the period granted by the Court had already lapsed, respondent was deemed to have waived his or her right to file a comment and petitioner’s MR on the 09 June 2021 Resolution was submitted for resolution.⁸⁶

On 13 June 2022, the Court *En Banc* ultimately denied petitioner’s MR on the 09 June 2021 Resolution⁸⁷ for lack of merit, after finding no sufficient basis to grant a new trial on the ground of newly discovered evidence, and submitted the case anew for decision.⁸⁸

ISSUES

In the present Petition for Review before the Court *En Banc*, petitioner assigns the following errors to the Special Second Division’s actions⁸⁹:

I.

THE COURT OF TAX APPEALS – SPECIAL SECOND DIVISION SERIOUSLY ERRED IN FINDING THAT PETITIONER CROMA MEDIC, INC. FAILED TO PRESENT THE CERTIFICATES OF INCOME TAX WITHHELD AT SOURCE WHEN IN FACT IT SUBMITTED RELEVANT DOCUMENTS THAT WOULD ADEQUATELY AND SUFFICIENTLY SUBSTANTIATE ITS CLAIM FOR REFUND;

⁸¹ Id., p. 93.
⁸² Id., p. 94.
⁸³ Id., p. 95.
⁸⁴ See Resolution dated 07 October 2021, id., pp. 97-98.
⁸⁵ See Records Verification dated 04 March 2022, id., p. 99.
⁸⁶ See Resolution dated 11 April 2022, id., pp. 101-102.
⁸⁷ Supra at note 80.
⁸⁸ See Resolution dated 13 June 2022, *Rollo*, pp. 103-110.
⁸⁹ V. Grounds in Support of the Petition, Petition for Review, supra at note 1, pp. 9-10.

II.

THE COURT OF TAX APPEALS – SPECIAL SECOND DIVISION GRAVELY ERRED IN DISMISSING THE PETITION FOR REVIEW AND MOTION FOR RECONSIDERATION FILED BY PETITIONER CROMA MEDIC, INC. ON THE GROUND OF INSUFFICIENCY OF EVIDENCE; AND,

III.

THE COURT OF TAX APPEALS – SPECIAL SECOND DIVISION SERIOUSLY ERRED IN FINDING THAT PETITIONER CROMA MEDIC, INC. IS NOT ENTITLED TO A REFUND IN THE AMOUNT OF ₱1,600,000.00 NOTWITHSTANDING THAT IT HAS PROVED AND ESTABLISHED FACTS EVIDENCING THE OVERPAYMENT OF FINAL CREDITABLE WITHHOLDING TAX.

In support of the above, petitioner insists that it was able to prove and establish the undisputed chronological facts evidencing the overpayment of FWT on the dividends it declared in favor of BEPHA, a German company that virtually owns 100% of its shares of stock.

Petitioner stresses that respondent did not rebut, with contrary evidence, the facts surrounding the aforesaid dividend declaration and payment of the corresponding FWT on dividends at the rate of 10% (instead of the 5% preferential tax under the Philippines-Germany Tax Treaty⁹⁰) amounting to ₱3,200,000.00. Such being the case, it claims to have substantially complied with all the requisites necessary for the refund of the overpayment of ₱1,600,000.00.

Petitioner submits further that respondent was aware of the existence of the Philippines-Germany Tax Treaty as early as 16 February 2016 but he or she still refused to recognize petitioner's right to refund, or even if he or she did, no action was taken or made on the refund claim.

Since petitioner substantially complied with all the requirements for refund, it argues that the burden has already shifted to respondent to prove non-entitlement. However, instead of challenging the evidence it presented, respondent opted to not present any controverting evidence and simply relied on the principle that a refund claim is strictly construed against the taxpayer-claimant. ✓

Even in the absence of the Denied Exhibits⁹¹, petitioner further submits that it was able to prove the fact of filing of its administrative claim for refund⁹² on 18 April 2016 and the fact of receipt⁹³ by BEPHA of the amount of ₱30,400,000.00 (95%) out of the declared dividend of ₱32,000,000.00. According to it, this signifies that only 5% was deducted as FWT on dividends.

Lastly, petitioner invokes the principle of *solutio indebiti* to establish its entitlement to the subject refund claim. Alleging that it has adequately proven the remittance or payment of ₱3,200,000.00 to the BIR, petitioner claims that the overpaid amount of ₱1,600,000.00 should be returned by the government to it as a matter of right. It cites the case of *Commissioner of Internal Revenue v. Fortune Tobacco Corporation*⁹⁴ wherein the Supreme Court recognized and applied the principle of *solutio indebiti* even against the government.

RULING OF THE COURT

Before going into the merits of the case, We shall first determine the timeliness of the present petition.

THE PETITION FOR REVIEW WAS
TIMELY FILED.

The Special Second Division issued the assailed Resolution⁹⁵ denying petitioner's MR⁹⁶ on the assailed Decision⁹⁷ on 18 December 2019. Petitioner received the assailed Resolution on 06 January 2020.⁹⁸

⁹¹ Exhibits "P-3-a" (Petitioner's Revised BIR Form No. 1601F for the month of March 2016) and "P-11" (Bank Confirmation Record), *supra* at note 47.

⁹² *Supra* at note 14.

⁹³ Email Confirmation dated 27 June 2016 from BEPHA, Exhibit "P-10", Division Docket, p. 90.

⁹⁴ G.R. Nos. 167274-75, 11 September 2013.

⁹⁵ *Supra* at note 7.

⁹⁶ *Supra* at note 59.

⁹⁷ *Supra* at note 6.

⁹⁸ *See* Notice of Resolution dated 18 December 2019, Division Docket, p. 429.

Under Section 2(a)(1)⁹⁹, Rule 4, in relation to Section 3(b)¹⁰⁰, Rule 8, of the RRCTA, petitioner had fifteen (15) days from 06 January 2020, or until 21 January 2020, within which to file an appeal before this Court. Accordingly, petitioner timely filed the present petition on 21 January 2020.¹⁰¹

Now, as to the merits of the case, a closer evaluation of the records and the arguments raised by petitioner in the present Petition for Review¹⁰² reveals that the arguments relied upon are, indeed, mere rehash of the matters which the Special Second Division had already considered and discussed in the assailed Decision¹⁰³ and Resolution.¹⁰⁴

Nevertheless, for clarity, the Court *En Banc* shall pass upon petitioner's arguments to determine whether there is basis to apply the 5% preferential tax rate under the Philippines-Germany Tax Treaty¹⁰⁵, and consequently, grant its claim for refund.

PETITIONER FAILED TO PROVE THAT THE BENEFICIAL OWNER OF THE DIVIDENDS IS A NON-RESIDENT FOREIGN CORPORATION (NRFC) ENTITLED TO AVAIL OF THE PREFERENTIAL TAX RATES UNDER THE PHILIPPINES-GERMANY TAX TREATY.

⁹⁹ SEC 2. *Cases Within the Jurisdiction of the Court En Banc.* — The Court *en banc* shall exercise exclusive appellate jurisdiction to review by appeal the following:

(a) Decisions or resolutions on motions for reconsideration or new trial of the Court in Division in the exercise of its exclusive appellate jurisdiction over:

(1) Cases arising from administrative agencies — **Bureau of Internal Revenue**, Bureau of Customs, Department of Finance, Department of Trade and Industry, Department of Agriculture[.] (Emphasis supplied.)

¹⁰⁰ SEC. 3. *Who may appeal; period to file petition.* —

...
(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 before it 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.

¹⁰¹ Supra at note 1.

¹⁰² V. Grounds in Support of the Petition, Petition for Review, supra at note 1, pp. 9-10.

¹⁰³ Supra at note 6.

¹⁰⁴ Supra at note 7.

¹⁰⁵ Exhibit “P-2”, supra at note 12.

Petitioner avers that it complied with the requirements under the Philippines-Germany Tax Treaty¹⁰⁶ and hence, is qualified for the application of the 5% preferential tax rate granted under Article 10(2)(a) of the same. Thus, it contends that it is entitled to the refund of the excess 5% FWT on dividends which it paid to the BIR.

We disagree.

For intercorporate dividends derived by a non-resident foreign corporation (NRFC), FWT of 15% may be imposed, instead of the 30% income tax under Section 28(B)(1) of the NIRC of 1997, as amended, on the amount of dividends received from a domestic corporation, subject to the conditions laid down by Section 28(B)(5)(b) of the same law, which states:

...

SEC. 28. Rates of Income Tax on Foreign Corporations. —

...

(B) Tax on Non-resident Foreign Corporation. —

(1) In General. — Except as otherwise provided in this Code, a foreign corporation not engaged in trade or business in the Philippines shall pay a tax equal to thirty-five percent (35%) of the gross income received during each taxable year from all sources within the Philippines, such as ... dividends ...: *Provided, That effective January 1, 2009, the rate of income tax shall be thirty percent (30%).*

...

(5) Tax on Certain Incomes Received by a Non-resident Foreign Corporation. —

...

(b) Intercorporate Dividends. — A final withholding tax at the rate of fifteen percent (15%) is hereby imposed on the amount of cash and/or property dividends received from a domestic corporation, which shall be collected and paid as provided in Section 57(A) of this Code, subject to the condition that the country in which the non-resident foreign corporation is domiciled, shall allow a credit against the tax due from the non-resident foreign corporation taxes deemed to have been paid in the

Philippines equivalent to twenty percent (20%), which represents the difference between the regular income tax of thirty-five percent (35%) and the fifteen percent (15%) tax on dividends as provided in this subparagraph: Provided, that effective January 1, 2009 the credit against the tax due shall be equivalent to fifteen percent (15%), which represents the difference between the regular income tax of thirty percent (30%) and the fifteen percent (15%) tax on dividends[.]¹⁰⁷

...

Based on the foregoing provisions, as a general rule, except as otherwise provided in the NIRC of 1997, as amended, a foreign corporation not engaged in trade or business in the Philippines shall pay a tax equivalent to 30% of the dividends earned. Such income tax rate may be reduced to 15%, subject to the condition that the country in which the NRFC is domiciled allows credit against the tax due from the NRFC taxes deemed to have been paid in the Philippines equivalent to 15%, which represents the difference between the said regular income tax of 30% and the 15% tax on dividends.

However, the NIRC of 1997, as amended, also provides that such income may be exempted from income tax or subjected to a reduced income tax to the extent required by any treaty obligation of the Philippines, to wit:

...

SEC. 32. Gross Income. —

...

(B) Exclusions from Gross Income. — The following items shall not be included in gross income and shall be exempt from taxation under this Title:

...

(5) Income Exempt under Treaty. — Income of any kind, to the extent required by any treaty obligation binding upon the Government of the Philippines.¹⁰⁸

...

¹⁰⁷

Italics in the original text; Emphasis and underscoring supplied.

¹⁰⁸

Italics in the original text; Emphasis and underscoring supplied.

Clearly from the foregoing, an income may be exempted from taxation to the extent required by any treaty obligation binding upon the Government of the Philippines.

A treaty obligation may be embodied in bilateral treaties for the avoidance of double taxation. The purpose of these international agreements is to reconcile the national fiscal legislations of the contracting parties in order to help the taxpayer avoid simultaneous taxation in two different jurisdictions. More precisely, the tax conventions are drafted with a view towards the elimination of *international juridical double taxation*, which is defined as the imposition of comparable taxes in two or more states on the same taxpayer in respect of the same subject matter and for identical periods.¹⁰⁹

One such bilateral agreement is the Philippines-Germany Tax Treaty¹¹⁰, the amended version of which was already in effect¹¹¹ at the time petitioner declared dividends in favor of BEPHA on 16 March 2016. Article 10¹¹² of the said amended tax treaty provides for the following guidelines with regard to dividends:

...

Article 10
Dividends

- (1) Dividends paid by a company which is a resident of a Contracting State to a resident of the other Contracting State may be taxed in that other State.
- (2) However, such dividends may also be taxed in the Contracting State of which the company paying dividends is a resident and according to the laws of that State, but if the beneficial owner of the dividends is a resident of the other Contracting State, the tax so charged shall not exceed:
 - (a) **5 percent of the gross amount of the dividends if the beneficial owner is a company (other than a**

¹⁰⁹ *Commissioner of Internal Revenue v. S.C. Johnson and Son, Inc., et al.*, G.R. No. 127105, 25 June 1999.

¹¹⁰ Exhibit “P-2”, supra at note 12.

¹¹¹ Article 32(2) of the Philippines-Germany Tax Treaty itself provides that it shall enter into force on the thirtieth day after the exchange of instruments of ratification, which took place on 30 November 2015. Accordingly, the Philippines-Germany Tax Treaty became effective on 31 December 2015.

¹¹² Exhibit “P-2-a”, supra at note 12, pp. 51-52; Emphasis and underscoring supplied.

partnership) which holds directly at least 70 percent of the capital of the company paying the dividends;

- (b) 10 percent of the gross amount of the dividends if the beneficial owner is a company (other than partnership) which holds directly at least 25 percent of the capital of the company paying the dividends;
- (c) 15 percent of the gross amount of the dividends in all other cases.

This paragraph shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

- (3) The term "dividends" as used in this Article means income from shares, "jouissance" shares or "jouissance" rights, mining shares, founders' shares or other rights not being debt-claims, participating in profits, as well as other income which is subjected to the same taxation treatment as income from shares by the laws of the State of which the company making the distribution is a resident and distributions on certificates of an investment fund or investment trust.
- (4) **The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State of which the company paying the dividends is a resident,** through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.¹¹³

...

Based on the above-quoted provisions, the Philippines may tax the dividends paid by a Philippine company to a **resident of Germany** at a rate not exceeding (a) 5% of the gross amount of the dividends if the beneficial owner is a company (other than partnership) which holds directly at least 70% of the capital of the company paying the dividends; (b) 10% of the gross amount of the dividends if the beneficial owner is a company (other than partnership) which holds directly at least 25% of the capital of the company paying the dividends; and, (c) in all other cases, 15% of the gross amount of dividends. Moreover, to be entitled to

¹¹³

Emphasis and underscoring supplied.

the preferential tax rates, **the beneficial owner of the dividends who is a resident of Germany must not carry on business in the Philippines** pursuant to Article 10(4) above.

After a careful evaluation of the evidence on record, the Court *En Banc* finds that petitioner failed to comply with the foregoing provisions.

While petitioner, a domestic corporation, was able to prove that its parent company and controlling stockholder, BEPHA, owns 99.99993% (virtually 100%) of its common shares¹¹⁴, and thus, may also be considered as the beneficial owner of the dividends it declared pertinent to the said shares, it nevertheless failed to prove that BEPHA is a resident of Germany.

It is clear from Article 10 of the Philippines-Germany Tax Treaty¹¹⁵ that for the preferential tax rates to apply, the subject dividends must be paid to a resident of the other Contracting State which, in this case, is Germany. Relative thereto, Article 1 of the said tax treaty is explicit that the same shall apply to residents of the Philippines or Germany, or both, viz:

...
Article 1
Personal Scope

This Agreement shall apply to persons who are residents of one or both of the Contracting States.¹¹⁶
...

Moreover, Article 4(1) of the Philippines-Germany Tax Treaty¹¹⁷, reads as follows: 

¹¹⁴ GIS of petitioner Croma Medic Inc. for the year 2016, Exhibit “P-1”, supra at note 10.
¹¹⁵ Exhibit “P-2”, supra at note 12.
¹¹⁶ Emphasis supplied.
¹¹⁷ Exhibit “P-2”, supra at note 12.

...

Article 4
Resident

- (1) For the purposes of this Agreement, the term “resident of a Contracting State” means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of management, place of incorporation or any other criterion of a similar nature, and also includes that State, a Land and any political subdivision or local authority thereof.¹¹⁸

...

Accordingly, a resident of Germany, for the purpose of the Philippines-Germany Tax Treaty, is any person who, under the laws of Germany, is liable to tax therein by reason of his domicile, residence, place of head or main office, place of incorporation or any other criterion of similar nature.

Pertinently, Section 3 of Revenue Memorandum Order (RMO) No. 72-2010¹¹⁹ (which is the issuance applicable to the transaction date of 16 March 2016) requires the submission of the income earner’s Proof of Residency and/or Articles of Incorporation (AOI) to establish the fact of residency, viz:

...

SECTION 3. GENERAL DOCUMENTARY REQUIREMENTS. — The following documents are the general documentary requirements which shall be attached to all duly accomplished TTRAs (3 copies) which must be signed by the applicant who may either be the income earner or the duly authorized representative of the income earner, pursuant to existing Philippine tax treaties, viz.:

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. ;

¹¹⁸ Emphasis supplied.

¹¹⁹ Guidelines on the Processing of Tax Treaty Relief Applications (TTRA) Pursuant to Existing Philippine Tax Treaties” dated 25 August 2010.

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 original copy of a consularized certification from the issuing agency, office or authority that the copy of the AOI (or equivalent Fact of Establishment/Creation/Organization) is a faithful reproduction or photocopy.

...

Unfortunately for petitioner, based on the admitted evidence, there is no indication that BEPHA is a resident of Germany or subject to tax in Germany based on various criteria such as domicile, residence, place of head or main office, place of incorporation or those of similar nature. This is because petitioner did not offer in evidence either BEPHA's Proof of Residency or AOI. It relied solely on its GIS declaration that BEPHA's nationality is German. Contrary to the Special Second Division's finding, petitioner's GIS¹²⁰ and the un rebutted testimony of petitioner's lone witness¹²¹, Ocampo, indicating that BEPHA is a German company, do not suffice to establish that BEPHA is a resident of Germany; if anything, these are merely self-serving.

Furthermore, even assuming for the sake of argument that there is enough evidence to establish that BEPHA is a resident of Germany, petitioner still failed to satisfy the requirements for entitlement to the said preferential tax on dividends as it likewise did not offer any evidence to show that BEPHA does not do business in the Philippines, as required under Article 10(4) of the Philippines-Germany Tax Treaty.¹²²

Clearly, with the foregoing, there is no sufficient evidence to establish that the beneficial owner, BEPHA, is an NRFC entitled to avail of the preferential tax rates under the Philippines-Germany Tax Treaty. Consequently, the Court shall apply the normal rate of 30%, as provided in Section 28(B)(1) and (5)(b) of the NIRC of 1997, as amended¹²³, as to dividends paid to BEPHA.

¹²⁰ Supra at note 10.

¹²¹ Supra at note 28, p. 126.

¹²² Exhibit "P-2", supra at note 12.

¹²³ Supra at pp. 15-16.

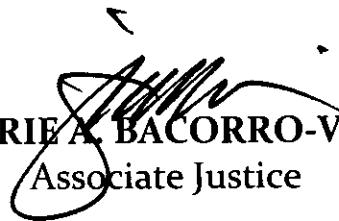
It is well-entrenched in jurisprudence that tax refunds partake the nature of tax exemptions in that they are strictly construed against the claimant.¹²⁴ The burden of proof rests upon the taxpayer to establish by sufficient and competent evidence its entitlement to a claim for refund.¹²⁵ Since taxes are the lifeblood of the Government, tax laws must be faithfully and strictly implemented. They are not intended to be liberally construed.¹²⁶

Having determined that the 5% preferential tax cannot be applied in this case and since the 30% normal tax exceeds the 10% allegedly withheld and remitted to the BIR, petitioner certainly failed to establish its right to a refund of overpaid FWT on dividends.

With the above conclusion thus reached, the Court finds no need to discuss the other matters raised by petitioner.

WHEREFORE, premises considered, the present Petition for Review filed by petitioner Croma Medic, Inc. on 21 January 2020 is hereby **DENIED** for lack of merit. Accordingly, the Special Second Division's Decision dated 16 August 2019 and Resolution dated 18 December 2019, respectively, in CTA Case No. 9584 entitled *Croma Medic, Inc. v. Commissioner of Internal Revenue*, are hereby **AFFIRMED** as to the result.

SO ORDERED.


JEAN MARIE A. BACORRO-VILLENA
Associate Justice

¹²⁴ *Coca-Cola Bottlers Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 222428, 19 February 2018; *Applied Food Ingredients Company, Inc. v. Commissioner of Internal Revenue*, G.R. No. 184266, 11 November 2013; *Gulf Air Company, Philippine Branch (GF) v. Commissioner of Internal Revenue*, G.R. No. 182045, 19 September 2012; *Atlas Consolidated Mining and Development Corporation v. Commissioner of Internal Revenue*, G.R. No. 159490, 18 February 2008.

¹²⁵ *Philippine Airlines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 231638, 17 February 2021 (Resolution).

¹²⁶ *Coca-Cola Bottlers Philippines, Inc. v. Commissioner of Internal Revenue*, supra at note 124.

WE CONCUR:



ROMAN G. DEL ROSARIO

Presiding Justice



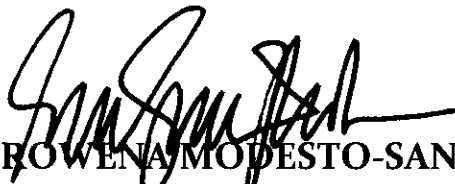
MA. BELEN M. RINGPIS-LIBAN

Associate Justice



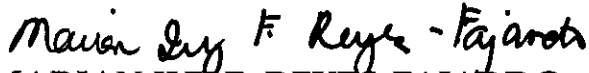
CATHERINE T. MANAHAN

Associate Justice



MARIA BOWENA 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