**REPUBLIC OF THE PHILIPPINES**
**COURT OF TAX APPEALS**
**QUEZON CITY**

***EN BANC***

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| **FINANCIAL TIMES ELECTRONIC PUBLISHING PHILIPPINES, INC.,** Petitioner, | **CTA EB No. 2333** (CTA Case No. 9434) |
| | ***Present:*** |
| **- versus -** | **DEL ROSARIO,** P.J., **CASTAÑEDA, JR., UY, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, MODESTO-SAN PEDRO, REYES-FAJARDO,** *and* **CUI-DAVID,** JJ. |
| **COMMISSIONER OF INTERNAL REVENUE,** Respondent. | ***Promulgated:*** FEB 24 2022 11:20am |

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# DECISION

**UY, J.:**

Before the Court *En Banc* is a *Petition for Review*[1] filed on September 16, 2020 by petitioner Financial Times Electronic Publishing Philippines, Inc., against respondent Commissioner of Internal Revenue (CIR), praying to vacate the Decision dated February 4, 2019[2] and the Resolution dated July 21, 2020,[3] both rendered by the Special Third Division of this Court (Court in Division) in CTA Case No. 9434, entitled "*Financial Times Electronic Publishing*

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[1] EB Docket, pp. 1 to 13.

[2] Penned by Retired Associate Justice Esperanza R. Fabon-Victorino and concurred by Associate Justice Ma. Belen M. Ringpis-Liban, EB Docket, pp. 18 to 33; Division Docket – Vol. 2 (CTA Case No. 9434), pp. 824 to 839.

[3] *Id*, EB Docket, pp. pp. 35 to 40; Division Docket – Vol. 2 (CTA Case No. 9434), pp. 862 to 867.

*Philippines, Inc., Petitioner, versus Commissioner of Internal Revenue, Respondent".* The dispositive portions respectively read as follows:

***Decision* dated February 4, 2019:**

> "**WHEREFORE**, the instant Petition for Review is **DENIED,** for insufficiency of evidence.
>
> **SO ORDERED.**"

***Resolution* dated July 21, 2020:**

> "**WHEREFORE,** petitioner's Motion for Reconsideration and/or New Trial dated February 26, 2019 and its Manifestation and Motion dated February 21, 2020 are **DENIED**, for lack of merit. The impugned Decision dated February 4, 2019 is **AFFIRMED**.
>
> **SO ORDERED.**"

## THE FACTS

Petitioner is a domestic corporation with principal address at 42/F Philamlife Tower, 8767 Paseo de Roxas, Makati City. Its primary purpose is "to engage in and carry on the business of financial and corporate information data collection facility in the Philippines and generally to perform any and all acts connected with the business aforementioned or arising therefrom or incidental thereto as may be allowed by law.

Petitioner is registered as a VAT taxpayer, with Tax Identification No. (TIN) 204-611-007-000.

On the other hand, respondent is the Commissioner of the Bureau of Internal Revenue (BIR) vested with authority, among others, to act upon and approve claims for refund or tax credit of overpaid or erroneously paid internal revenue taxes. He holds office at the BIR National Office Building, BIR Road, Diliman, Quezon City.

During the period July 1, 2014 to September 30, 2014, petitioner allegedly rendered services to Financial Times Limited, a non-resident foreign corporation not engaged in business with the Philippines, for which it was paid in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP). During the same period, petitioner incurred input taxes from its purchases of goods and services attributable to its VAT zero-rated sales, in the aggregate amount of ₱1,999,768.99.

On October 17, 2014, petitioner filed with the BIR its third (3rd) Quarter VAT Return for CY 2014 declaring, among others, VAT zero-rated sales of ₱210,074.40 and an unutilized input VAT in the aggregate amount of ₱1,999,768.99.

On March 30, 2016, petitioner filed with the BIR-Revenue District Office (RDO) No. 50 of Revenue Region No. 8, an *Application for Tax Credits/Refunds* (BIR Form No. 1914) for its excess and unutilized input VAT for the third quarter of CY 2014 in the total amount of ₱1,999,768.88.

For alleged failure of respondent to act on its administrative claim, petitioner filed a *Petition for Review* before the Court in Division docketed as CTA Case No. 9434 entitled "*Financial Times Electronic Publishing Philippines, Inc. vs. Commissioner of Internal Revenue*".

In his *Answer*, respondent raised Special and Affirmative Defenses and alleged that petitioner's claim for refund was still subject to administrative routinary investigation/examination; that the amount of ₱1,999,768.88 allegedly representing petitioner's unutilized input taxes for the 3rd quarter of CY 2014 was not properly documented; that the burden of proof to establish its right to refund was on petitioner; and that claims for refund are construed strictly against the taxpayer as the same partakes the nature of exemption from taxation.

After the pre-trial conference, the parties filed their *Joint Stipulation of Facts and Issues* on the basis of which a *Pre-Trial Order* was issued on March 23, 2017.

During the trial, petitioner presented two (2) witnesses, namely: 1) its Financial Controller, Paulito B. De Pano; and (2) the Courtcommissioned Independent Certified Public Accountant (ICPA), Annalyn B. Artuz, to prove the material allegations in its petition.

Petitioner filed its *Formal Offer of Evidence* on August 8. 2017. Thereafter, the Court in Division admitted petitioner's exhibits, except for Exhibits "P-3-A" and "P-35", for failure to present originals for comparison.

Petitioner filed a *Motion for Reconsideration to the Resolution dated September 11, 2017* on September 26, 2017. In the Resolution dated November 24, 2017, the Court in Division granted petitioner's motion for reconsideration and admitted Exhibit "P-3-A".

For his part, respondent manifested that he would not present evidence as the Revenue Officer assigned to examine petitioner's books of accounts had not submitted a final report of the examination.

On February 8, 2018, CTA Case No. 9434 was submitted for decision considering the filing of petitioner's *Memorandum* on January 25, 2018. On the other hand, as per Records Verification Report of the Judicial Records Division dated February 6, 2018, respondent failed to file his Memorandum.

On February 4, 2019, the Court in Division rendered the assailed *Decision*[4] denying the *Petition for Review* in CTA Case No. 9434, for insufficiency of evidence.

Aggrieved, petitioner filed a *Motion for Reconsideration and/or New Trial* on February 26, 2019, with respondent's *Opposition/Comment (on the Motion for Reconsideration and/or New Trial)* filed on March 12, 2019.

Pending resolution of petitioner's motion for reconsideration, petitioner filed a *Manifestation and Motion* dated February 21, 2020 praying for the Court in Division to consider and admit its Certification issued by the Registrar of Companies for England and Wales dated February 7, 2020, as additional evidence.

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[4] EB Docket, pp. 18 to 33; Division Docket – Vol. 2 (CTA Case No. 9434), pp. 824 to 839.

In the assailed *Resolution*[5] dated July 21, 2020, the Court in Division denied petitioner's *Motion for Reconsideration and/or New Trial* for lack of merit.

Thus, on September 16, 2020, petitioner filed before the Court *En Banc* the instant *Petition for Review*[6] docketed as CTA EB No. 2333.

In the *Resolution* dated October 7, 2020,[7] the Court *En Banc* ordered respondent to file his *Comment* to the *Petition for Review* within ten (10) days from receipt thereof.

On February 4, 2021, the instant *Petition* was submitted for decision considering the failure of respondent to file his comment/opposition per Records Verification Report dated January 21, 2021.[8]

Hence, this *Decision*.

## THE ISSUE

The main issue for resolution of the Court *En Banc* is:

> "Whether the Honorable Court's Special Third Division erred in ruling that petitioner is not entitled to the issuance of tax credit certificates for the excess and unutilized input value-added tax (VAT), directly attributable to its value-added tax zero-rated sales from 01 July 2014 to 30 September 2014, amounting to ₱1,999,768.88".[9]

***Petitioner's arguments:***

Petitioner argues that the Court in Division committed a reversible error in holding that petitioner failed to prove that its client, Financial Times Limited (FTL), is a non-resident foreign corporation doing business outside the Philippines.

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[5] EB Docket, pp. 35 to 40; Division Docket – Vol. 2 (CTA Case No. 9434), pp. 862 to 867.
[6] EB Docket, pp. 1 to 13.
[7] EB Docket, pp. 44 to 45.
[8] EB Docket, p. 50.
[9] EB Docket, p. 7.

Petitioner stresses that it has sufficiently shown that FTL is a non-resident foreign corporation doing business outside the Philippines; that such was evident in the Authenticated Articles of Incorporation, Services Agreement, and the testimony of petitioner's witness, Paulito B. De Pano.

According to petitioner, there must be continuity of conduct and intention to establish a continuous business before a foreign corporation is treated as doing business in the Philippines. Allegedly, FTL did not have a continuous business in the Philippine because it merely entered into a Service Agreement with petitioner.

Moreover, petitioner asserts that considering that it has presented evidence as to the status of FTL as a non-resident foreign corporation not doing business in the Philippines, respondent now has the burden to prove otherwise. According to petitioner, respondent failed to present controverting evidence to petitioner's claim.

Lastly, petitioner submits that there was an oversight when the Securities and Exchange Commission indicated the name "FINANCIAL TIMES GROUP, LTD." instead of "FINANCIAL TIMES LIMITED" in the Certification of Non-Registration of Company.

## THE COURT *EN BANC*'S RULING

The instant *Petition for Review* is bereft of merit.

***Petitioner failed to discharge the burden of proving that FTL is a non-resident foreign corporation not doing business in the Philippines.***

Petitioner claims that it has sufficiently discharged its burden of proving FTL's status by presenting FTL's Authenticated Articles of Incorporation, Service Agreement, and the testimony of petitioner's witness, Paulito B. De Pano. Considering that it has allegedly presented evidence and has testified as to the status of FTL, petitioner insists that it becomes the burden of the respondent to prove otherwise.

Moreover, petitioner submits that there was an oversight in the issuance of the Certification of Non-registration of Company by the Securities and Exchange Commission (SEC) when it indicated the name "FINANCIAL TIMES GROUP, LTD." instead of "FINANCIAL TIMES LIMITED". Petitioner also asserts that it has secured a new SEC Certification of Non-registration issued in favor of FTL. Thus, it seeks the Court *En Banc* to allow the presentation of the said Certification of Non-Registration and to be identified by Paulito B. De Pano, petitioner's witness, in a new trial, to prove that FTL is not doing business in the Philippines.

We are not persuaded.

In *Commissioner of Internal Revenue vs. Deutsche Knowledge Services Pte. Ltd.,*[10] (*Deutsche* case) the Supreme Court ruled that for purposes of zero-rating under Section 108 (B)(2) of the Tax Code, two (2) components must be established by the claimant, namely: that the claimant's client is a non-resident foreign corporation (or NRFC); and that said client is not engaged in trade or business in the Philippines, to wit:

> "For purposes of zero-rating under Section 108(B)(2) of the Tax Code, the **claimant must establish the two components of a client's NRFC status, *viz*: (1) that their client was established under the laws of a country not the Philippines or, simply, is not a domestic corporation; and (2) that it is not engaged in trade or business in the Philippines. To be sure, there must be sufficient proof of *both*[11] of these components: showing not only that the clients are foreign corporations, but also are not doing business in the Philippines.**
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> xxx xxx xxx
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> In any case, after a judicious review of the records, the Court still do not find any reason to deviate from the court *a quo*'s findings. To the Court's mind, **the SEC Certifications of Non-Registration show that their affiliates are foreign corporations. On the other hand, the articles of association/certificates of**

[10] G.R. No. 234445, July 15, 2020.
[11] Italics by the Supreme Court.

> **incorporation stating that these affiliates are registered to operate in their respective home countries, outside the Philippines are *prima facie* evidence that their clients are not engaged in trade or business in the Philippines.**" (*Emphasis supplied)*

In the present case, petitioner was not able to comply with the requirements under the *Deutsche* case to prove that its client FTL is a non-resident foreign corporation not registered to do business in the Philippines.

While petitioner presented the following evidence during trial: 1) FTL's Certificate of Incorporation[12]; 2) Service Agreement,[13] and 3) SEC Certification of Non-Registration of the Company,[14] it bears noting, however, that that the SEC Certification of Non-Registration of Company was denied admission in the Resolution dated September 11, 2017,[15] because of petitioner's failure to present the original thereof.

Moreover, even if the said SEC Certification of Non-Registration was admitted, We affirm the findings of the Court in Division in the assailed Decision pertaining to the discrepancy in the name of the corporation appearing on the SEC Certification of Non-Registration, to wit:

> "Even assuming that Exhibit P-35 was admitted, the same would not save the day for petitioner insofar as proving that Financial Times Limited was a non-resident foreign corporation not doing business in the Philippines. Perusal of the record reveals that the name in the Certificate of Incorporation and Certificate of Change of Name of the Company, marked as Exhibit P-4, pertains to a company originally incorporated as FINANCIAL TIMES (1928) LIMITED, which was subsequently changed to THE FINANCIAL TIMES LIMITED. On the other hand, **the Philippine SEC Certification of Non-registration of Company marked as Exhibit P-35, pertains to a company named FINANCIAL TIMES GROUP, LTD. Plainly, the Certificate of Non-registration submitted**

[12] Exhibit P-4, Division Docket – Vol. 2 (CTA Case No. 9434), pp. 597 to 600.
[13] Exhibit P-5, Division Docket – Vol. 2 (CTA Case No. 9434), pp. 601 to 614.
[14] Exhibit P-35.
[15] Division Docket – Vol. 2 (CTA Case No. 9434), pp. 762 to 763.

> **by petitioner was not for its client Financial Times Limited."** *(Emphasis supplied)*

Clearly, the Court in Division was correct in finding that petitioner failed to satisfy the requirement that its client, FTL, is a non-resident foreign corporation not registered to do business in the Philippines.

Petitioner, however, contends that the SEC's issuance of the Certification of Non-Registration of Company was due to an oversight on the part of SEC when it indicated the name "FINANCIAL TIMES GROUP, LTD." instead of "FINANCIAL TIMES LIMITED". Hence, to cure the said defect, petitioner has secured a new SEC Certification of Non-Registration issued in favor of FTL, and now moves that the Court *En Banc* allow the presentation and identification of the said certification by Paulito B. De Pano, as petitioner's witness, in a new trial to prove that FTL is not doing business in the Philippines

We find petitioner's arguments unmeritorious.

Section 5 of Rule 15 of the Revised Rules of the Court of Tax Appeals (RRCTA), as amended, enumerates the grounds for the filing of a motion for new trial, to wit:

> "SEC. 5. *Grounds of motion for new trial.* – A motion for new trial may be based on one or more of the following causes materially affecting the substantial rights of the movant:
>
> > (a) Fraud, accident, mistake or excusable negligence which ordinary prudence could not have guarded against and by reason of which the rights of such aggrieved party has probably been impaired in his rights; or
> >
> > (b) Newly discovered evidence, which the party could not, with reasonable diligence, have discovered and produced at the trial and, which, if presented, would probably alter the result."

Based on the foregoing, a motion for new trial is allowed on the grounds of fraud, accident, mistake or excusable negligence or if there is newly discovered evidence which the party could not, with reasonable diligence, have discovered and produced at the trial and, which, if presented, would probably alter the result.

In the assailed Resolution, the Court in Division held that there was no valid justification to allow a new trial of the case for purposes of admitting the additional document. Particularly, the Court in Division in the assailed Resolution found that petitioner's negligence was not excusable and that petitioner failed to cure the lapses observed by the Court in Division on the first opportunity.

Thus, We find no cogent reason to deviate from the foregoing ruling and accordingly sustain the Court in Division's denial of petitioner's motion for new trial.

Needless to state, in cases filed before this Court, which are litigated *de novo,* party-litigants must prove <u>every minute aspect</u> of their case.[16] Further, it bears emphasis that actions for tax refund, as in the instant case, are in the nature of a claim for exemption and the law is not only construed in *strictissimi juris* against the taxpayer, but also the pieces of evidence presented entitling a taxpayer to an exemption is *strictissimi* scrutinized and must be duly proven.[17]

**WHEREFORE**, in light of the foregoing considerations, the instant *Petition for Review* is hereby **DENIED** for lack of merit. Accordingly, the *Decision* promulgated on February 4, 2019, and the *Resolution* promulgated on July 21, 2020, by the Special Third Division of this Court in CTA Case No. 9434 are hereby **AFFIRMED**.

**SO ORDERED.**

**ERLINDA P. UY**
*Associate Justice*

[16] Edison (Bataan) Cogeneration Corporation vs. Commissioner of Internal Revenue, et seq., G.R. Nos. 201665 and 201668, August 30, 2017; Commissioner of Internal Revenue vs. Philippine National Bank, G.R. No. 180290, September 29, 2014; Commissioner of Internal Revenue vs. United Salvage and Towage (Phils.), Inc., G.R. No. 197515, July 2, 2014; 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.

[17] Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue, G.R. No. 159490, February 18, 2008.

WE CONCUR:

**ROMAN G. DEL ROSARIO**
Presiding Justice

Juanito C. Castañeda, Jr.
**JUANITO C. CASTAÑEDA, JR.**
Associate Justice

**MA. BELEN M. RINGPIS-LIBAN**
Associate Justice

Catherine T. Manahan
**CATHERINE T. MANAHAN**
Associate Justice

**JEAN MARIE A. BACORRO-VILLENA**
Associate Justice

**MARIA ROWENA MODESTO-SAN PEDRO**
Associate Justice

Marian Ivy F. Reyes - Fajardo
**MARIAN IVY F. REYES-FAJARDO**
Associate Justice

**LANEE S. CUI-DAVID**
Associate Justice

## 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*