REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**CTA EB CASE NO. 980 (CTA Case No. 8071)**
- *versus* -	Present: *Del Rosario, P.J. Castañeda, Jr., Bautista, Uy, Casanova, Fabon-Victorino, Mindaro-Grulla, Cotangco-Manalastas, and Ringpis-Liban, JJ.*
PRHC PROPERTY MANAGERS, INC., Respondent.	**Promulgated:** JUL 02 2014 9:05 a.m.

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DECISION

BAUTISTA, J.:

The Case

Before the Court *En Banc* is a Petition for Review,[1] filed by petitioner, Commissioner of Internal Revenue ("CIR"), on January 31, 2013, praying that the Amended Decision[2] of the Second Division of the Court ("Court in Division") dated October 9, 2012 be reversed and set aside, and that respondent, PRHC Property Managers, Inc. ("PRHC"), claim for refund in the amount of P1,898,655.14, representing excess creditable withholding tax for the year 2007 be denied.

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[1] *Rollo*, CTA EB Case No. 980 (CTA Case No. 8071), pp. 1-52, with Annexes.

[2] *Rollo*, pp. 11-22; Annex "A," Penned by Associate Justice Cielito N. Mindaro-Grulla, with Associate Justices Juanito C. Castañeda, Jr. and Caesar A. Casanova, concurring.

Antecedent Facts

The relevant antecedents are succinctly recited by the Court in Division in its Decision dated January 6, 2012, as follows:[3]

> "Petitioner (*now herein* 'respondent') PRHC Property Managers, Inc. is a corporation organized under Philippine laws and is engaged in the business of managing, operating, administering, maintaining, servicing, buying, leasing or selling real and/or personal properties either for itself or for others.
>
> Respondent (*now herein* 'Petitioner'), on the other hand, is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR), authorized and empowered by the National Internal Revenue Code (NIRC) of 1997 to decide and approve claims for refund of internal revenue taxes.
>
> On April 15, 2008, petitioner filed with the Bureau of Internal Revenue its Annual Income Tax Return (ITR) for the taxable year ending December 31, 2007, which showed a taxable income of P1,091,805.00 and a corresponding tax due in the amount of P382,132.00.
>
> In the same Annual ITR, petitioner reported the amount of P1,434,076.00 as its creditable taxes withheld for the first three quarters, as well as the creditable taxes withheld for the fourth quarter in the amount of P494,382.00, or a total of P1,928,458.00, to wit:

Tax Credits/Payments	
Add: Creditable Tax Withheld for the First Three Quarters	P1,434,076.00
Add: Creditable Tax Withheld for the Fourth Quarter	494,382.00
Total Tax Credits/Payments	P1,928,458.00

> Petitioner likewise indicated its intention not to carry over its excess/unutilized creditable withholding

[3] *Ibid.*, pp. 24-51.

taxes by marking the box 'To be refunded' in Line 31 of said ITR.

On November 4, 2008, petitioner filed a letter with BIR Revenue District Office (RDO) No. 43 requesting the refund of its unutilized creditable taxes withheld at source for taxable year 2007 in the amount of P1,928,458.00.

However, to date, respondent has neither denied nor approved petitioner's administrative claim for refund. Hence, petitioner filed the instant Petition for Review on April 13, 2010.

On June 8, 2010, respondent filed her Answer raising the following Special and Affirmative Defenses:

> '4. Claims for refund are strictly construed against the taxpayer as the same partakes the nature of tax exemption;
>
> 5. The taxpayer has the burden to show that the taxes were erroneously or illegally paid. Failure on the part of the Petitioner to prove the same is fatal to its cause of action;
>
> 6. Petitioner failed to substantiate by documentary evidence its claim for refund;
>
> 7. The Petitioner must prove that the amount of creditable withholding VAT (*sic*) being claimed as refund was not utilized;
>
> 8. The Petitioner should prove its legal basis for claiming the amount being refunded.'

Upon approval by the Court of the 'Joint Stipulation of Facts' filed by both parties, pre-trial was deemed terminated.

Trial ensued during which petitioner presented its only witness, Ma. Theresa L. Kampitan.

On December 8, 2010, petitioner filed its Formal Offer of Evidence without respondent's comment. This Court in its Resolution dated February 2, 2011 admitted Exhibits 'A' to 'J-1,' 'L' to 'Z-1,' 'AA' to 'ZZ-1,' 'AAA' to 'ZZZ-1,' 'AAAA' to 'XXXX-1,' 'ZZZZ,' 'ZZZZ-1,' 'GGGGG,' 'GGGGG-1,' 'GGGGG-4,' 'HHHHH,' 'HHHHH-1,' 'IIIII,' 'IIIII-1,' 'JJJJJ,' 'JJJJJ-1,' 'KKKKK,' 'KKKKK-1,' 'LLLLL' and 'LLLLL-1,' inclusive of sub-markings, and thereafter, petitioner was deemed to have formally rested its case.

The documentary evidence formally offered and admitted are as follows:

xxx xxx xxx

Initial presentation of respondent's evidence was set on March 7, 2011 and March 28, 2011. On the latter date, respondent's counsel manifested that there is as yet no Final Report on the audit examination conducted on the petitioner, thus, the parties were ordered by the Court to file their respective Memorandum. On April 27, 2011, petitioner complied with the same; while respondent failed to file her Memorandum despite notice.

Hence, in a Resolution dated May 10, 2011, the instant case was considered submitted for decision."

The Ruling of the Court in Division

On January 6, 2012, the Court in Division promulgated a Decision denying PRHC's Petition for Review by ruling that:

> **"WHEREFORE**, premises considered, the instant Petition for Review is hereby **DENIED** for lack of merit.
>
> **SO ORDERED.**"[4]

[4] *Ibid.*, p. 51.

On February 1, 2012, PRHC filed its "Motion for Reconsideration,"[5] seeking reconsideration of the Decision of the Court in Division dated January 6, 2012, without the CIR's comment despite due notice.

On October 9, 2012, the Court in Division issued an Amended Decision, the dispositive portion of which is as follows:

> **"WHEREFORE,** premises considered, petitioner's **Motion for Reconsideration** is hereby **PARTIALLY GRANTED** and the assailed Decision promulgated on January 6, 2012 is hereby **MODIFIED.** Accordingly, respondent is hereby **ORDERED TO REFUND** to petitioner the amount of **ONE MILLION EIGHT HUNDRED NINETY EIGHT THOUSAND SIX HUNDRED FIFTY FIVE PESOS AND 14/100 CENTAVOS** (Php1,898,655.14), representing its excess creditable withholding taxes for taxable year 2007.
>
> **SO ORDERED.**"[6]

The Issues

Hence, the present Petition for Review where CIR proffers the following grounds:

> I. THE HONORABLE COURT ERRED IN GRANTING THE CLAIM FOR REFUND BECAUSE THE PETITIONER FAILED TO PROVE THAT THE INCOME UPON WHICH THE WITHHOLDINGS WERE MADE ACT[UA]LLY FORMED PART OF THE GROSS INCOME; and
>
> II. RESPONDENT FAILED TO PROVE THE EXISTENCE OF ITS PRIOR YEAR['s] EXCESS CREDIT AND THAT THE HONORABLE COURT ERRED IN TAKING JUDICIAL NOTICE OF THE RECORD OF

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[5] *Ibid.*, pp. 119-126.
[6] *Ibid.*, pp. 20-21.

OTHER CASES IN ADJUDICATING CASES [*sic*] PENDING BEFORE IT.[7]

The CIR's Arguments

The CIR argues in the following manner:

a. That PRHC failed to prove that the income upon which the taxes were withheld was included in its return and that it failed to prove that it has sufficient prior year's excess credits to cover its income tax due for the year ending December 31, 2007; and

b. That Courts are not authorized to take judicial notice of the contents of the records of other cases pending before it in arriving at a Decision, therefore the reliance of PRHC on the Decision of the Court in Division in another case cannot be given credence in order to prove the existence of its prior year's excess credit.

PRHC's Arguments

PRHC argues in the following manner:

a. That the CIR failed to show that the appeal was timely filed as no date of receipt was stated as to when the period to appeal begins to run;

b. That it was able to prove that the income upon which the withholdings were made formed part of the gross income for the taxable year 2007; and

c. That the Court in Division can take judicial notice of other cases pending before it.

The Ruling of the Court En Banc

The Court *En Banc* finds the Petition for Review unmeritorious.

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[7] *Ibid.*, pp. 3-7.

In resolving the aforesaid issues, relevant is Section 18 of the 2005 Revised Rules of the CTA, as amended which reads:

> SEC. 18. *Appeal to the Court of Tax Appeals En Banc.* –
>
> xxx xxx xxx
>
> A party adversely affected by a resolution of a Division of the CTA on a motion for reconsideration or new trial, may file a petition for review with the CTA en banc.

From the foregoing, before an appeal may be filed with the Court *En Banc* by an aggrieved party, such must be preceded by the filing of a timely motion for reconsideration or new trial with the Court in Division that rendered the questioned decision.[8]

However, in the instant case, CIR did not seek any reconsideration of the assailed Amended Decision. Based on the records of the case, PRHC filed a motion for reconsideration[9] of the Court in Division's Decision dated January 6, 2012.[10] On October 9, 2012, the Court in Division issued an Amended Decision.[11] On January 31, 2013, CIR filed the instant Petition for Review with the Court *En Banc.*

In the case of *CIR vs. Asiatrust Development Bank, Inc.,*[12] the Court *En Banc* held that: "an assailed Amended Decision is not a mere resolution which did not change the original Decision, but a new one which substantially modified the original Decision, thus a need on the CIR's part to seasonably file a motion for reconsideration before seeking relief from the Court *En Banc*. Her failure to do so is fatal to her cause for procedural rules must not be belittled as they are necessary for efficiency and order of our justice system."

Thus, the Court *En Banc* has no option but to deny the Petition for Review.

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[8] CIR vs. Asiatrust Development Bank, Inc., CTA EB Case No. 614 & 677 (CTA Case No. 6209), November 16, 2011.
[9] *Rollo*, pp. 119-126.
[10] *Ibid.*, pp. 90-117.
[11] *Ibid.*, pp. 11-21.
[12] CIR vs. Asiatrust Development Bank, Inc., CTA EB Case No. 614 & 677 (CTA Case No. 6209), November 16, 2011.

Furthermore, the Court *En Banc* finds no reason to depart from the Court in Division's Amended Decision dated October 9, 2012, which ruled as follows:

> "[Pe]titioner was able to prove the fact of withholding amounting to Php1,904,055.18 since this amount is properly substantiated with Certificates of Creditable Tax Withheld at Source. Relative to the third requirement, the Court found that petitioner declared in its 2007 ITR the income payment from rentals in the amount of Php1,259,913.99 (save for minor difference of Php1.99) upon which the claimed creditable taxes of Php62,995.70 (out of the substantiated creditable taxes in the amount of P1,904,055.18) were withheld. This Court, however, noted a discrepancy between petitioner's gross income of Php18,575,913.00 from sale of services as reported in its 2007 ITR vis-à-vis the gross income from sale of services of Php13,742,062.63 (upon which the creditable taxes of Php1,841,059.48 was withheld) as shown per Certificates of Creditable Tax Withheld at Source. Petitioner failed to present documentary proofs for the Court to verify that the income payments of Php13,742,062.63 formed part of the Php18,575,913.00 gross income as declared in the 2007 ITR. Thus, while petitioner complied with the requisites for refund of excess CWT only to the extent of Php62,995.70, nevertheless, considering that petitioner had an income tax liability of Php382,132.00 in 2007 and for petitioner's failure to substantiate its prior year's excess credits of Php4,843,309.00, this Court concluded that there is no excess CWT for 2007 which may be refunded.
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> xxx xxx xxx
>
> More specifically, to show that petitioner's gross income from sale of services of Php13,742,062.63 formed part of petitioner's gross income of Php18,575,913.00 in its 2007 Annual ITR, petitioner offered its Schedule of Commission Income; Schedule of Management Fee; Schedule of Reimbursable Fee; Journal Vouchers, Summary of Other Income-Reimbursable Fee, Summary of Management Fee, Summary of Commission, Schedule of Professional Fees, Debit Note, Credit Note, Sales

Invoices, Statements of Accounts; Official Receipts; Cash Receipts Book; Summary of the Journal Vouchers; Reconciliation of Income from Sale of Services and Judicial Affidavit of Ms. Kampitan.

Upon examination of the aforesaid documents, as well as the Certificates of Creditable Tax Withheld at Source and the Summary Alphalist of Withholding Agents of Income Payments subjected to Withholding Tax, this Court finds that petitioner has sufficiently proven that the income payments upon which the claimed creditable taxes were withheld were declared in its 2007 Annual ITR, save for the amount of Php42,575.85, the corresponding creditable tax withheld of which amounts to Php5,400.04, to wit:

xxx xxx xxx

Thus, the amount of Php1,904,055.18 found to be properly substantiated with Certificates of Creditable Tax Withheld at Source shall be reduced by Php5,400.04 resulting to a valid creditable tax withheld of Php1,898,655.14, computed as follows:

xxx xxx xxx

With regard to the second ground, petitioner claims that in its Annual ITR for the year ended December 31, 2006, it had an unutilized creditable taxes withheld at source in the amount of Php6,449,963.00. As duly disclosed in Note 9 of the petitioner's Audited Financial Statements for the year ended December 31, 2007, the amount of Php1,606,654.00 represented petitioner's unutilized creditable taxes withheld at source for the taxable year ended December 31, 2006 for which it intended to file and claim a tax refund for the said amount. When the amount disclosed as to be refunded is deducted from the total creditable withholding taxes for the year 2006, petitioner still has Php4,843,309.00 prior year's excess credit which can be carried over to the taxable year 2007 against which its income tax liability of Php382,132.00 can be offset or credited. In the Judicial Affidavit of Ms. Kampitan, petitioner's witness avers that the prior year's excess credit in the amount Php4,843,309.00 represented the balance of petitioner's unutilized tax credits for the year 2002 and prior years. In support of her averment, Ms. Kampitan made reference to the Decision of the Third Division of this Court in CTA Case No. 7442 entitled '*PRHC Property Managers, Inc. vs. Commissioner of Internal Revenue*' which was promulgated on October 23, 2008 and with Entry of Judgment dated November 14, 2008.

As a general rule, courts are not authorized to take judicial knowledge of the contents of the record of other cases in the adjudication of cases pending before them, even though the trial judge in fact knows or remembers the contents thereof, or even when said other cases have been heard or are pending in the same court and notwithstanding the fact that both cases, may have been heard or are really pending before the same judge. However, in the absence of objection and as a matter of convenience to all parties, a court may properly treat all or any part of the original record of a case filed in its archives as read into record of a case pending before it, when with the knowledge of the opposing party, reference is made to it for the purpose by name and number or in some other manner by which it is sufficiently designated.

Thus, in the absence of any opposition from respondent, this Court will take judicial notice of the relevant records of CTA Case No. 7442 in determining whether petitioner's prior year's excess credit in the amount Php4,843,309.00 represented the balance of petitioner's unutilized tax credits for the year 2002 and prior years.

A careful scrutiny of petitioner's Annual ITRs for the years 2002 to 2007 indeed reveals that the prior year's excess tax credit of Php4,843,309.00 in the 2007 ITR represents the prior year's excess credits reflected in the 2003 ITR amounting to Php5,679,812.00 against which the taxes due for the years 2003 and 2006 were applied, as illustrated below:

xxx xxx xxx

> In CTA Case No. 7442 involving its claim for tax credit certificate or refund of excess creditable withholding taxes for the year 2003, petitioner presented various creditable withholding tax certificates in support of its prior year's tax credits. However, out of the reported prior year's excess credit of Php5,679,812.00, petitioner was able to substantiate only the amount of Php1,777,740.00 representing its total creditable withholding taxes for the year 2002. After deducting the taxes due for the years 2002, 2003, and 2006 in the amounts of Php82,783.00, Php310,682.00 and Php525,821.00, respectively, petitioner still have an excess prior year's tax credits of Php858,454.00 from which the tax due for year 2007 in the amount of Php382,132.00 may be offset. Thus, petitioner's substantiated claim of Php1,898,655.14 is undiminished by any income tax liability for the year 2007 xxx xxx xxx. "

It is well settled that findings of facts of the Court in Division are final and conclusive and may not be reviewed on appeal, unless the conclusion is a finding grounded entirely on speculation, surmises or conjectures; when the inference made is manifestly absurd, mistaken or impossible; when there is grave abuse of discretion in the appreciation of facts; when the findings of fact are conflicting; and when the Court in Division, in making its findings, went beyond the issues of the case and the same are contrary to the admissions of both appellant and appellee.[13]

In the instant case, the Court *En Banc* finds none of the abovementioned exceptions to justify the re-evaluation of the findings of fact made by the Court in Division. On the contrary, such findings are well-supported by the evidence on record. Over-all, petitioner failed to demonstrate any reversible error committed by the Court in Division.

Hence, unless petitioner has shown that the Court in Division gravely abused its discretion in the appreciation of facts or in arriving at its Amended Decision, the Court *En Banc* finds no cogent reason to rule the contrary.

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[13] E.Y Industrial Sales, Incs., and Engracio Yap vs. Shen Dar Electricity and Machinery Co., Ltd., G.R. No. 184850, October 20, 2010, 634 SCRA 363.

WHEREFORE, in view of the foregoing, the instant Petition for Review is hereby **DENIED** for lack of merit. The Amended Decision dated October 9, 2012, is hereby **AFFIRMED** in *toto.*

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

(On Leave)
AMELIA R. COTANGCO-MANALASTAS
Associate Justice

Ma. Belen M. Ringpis-Liban
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CERTIFICATION

Pursuant to Section 13 of Article VIII of the Constitution, it is hereby certified that the above Decision has been reached in consultation with the members of the Court *En Banc* before the case was assigned to the writer of the opinion of this Court.

ROMAN G. DEL ROSARIO
Presiding Justice