REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

## EN BANC

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| **COMMISSIONER OF INTERNAL REVENUE,** *Petitioner,* | **CTA EB NO. 2787** (CTA Case No. 9759) |
| | Present: |
| *- versus -* | **DEL ROSARIO,** *P.J.,* **RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, MODESTO-SAN PEDRO, REYES-FAJARDO, CUI-DAVID, FERRER-FLORES,** *and* **ANGELES,** *JJ.* |
| **DIDLEY BOW INVESTMENTS HOLDINGS B.V.,** *Respondent.* | Promulgated: SEP 20 2024 9:32a.m. |

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## DECISION

**ANGELES, J.:**

Before the Court *En Banc* is a *Petition for Review*[1] filed on August 16, 2023 by petitioner Commissioner of Internal Revenue (CIR) pursuant to Section 3(b), Rule 8 of the Revised Rules of the Court of Tax Appeals (RRCTA), as amended, seeking the reversal of the *Decision*[2] dated March 2, 2023, and *Resolution*[3] dated July 5, 2023, both promulgated by the Special Third Division of this Court in CTA Case No. 9759, entitled "*Diddley Bow Investments Holdings B.V. vs. Commissioner of Internal Revenue*".

[1] Petition for Review dated August 15, 2023, EB Docket, pp. 5-11.
[2] Decision dated March 2, 2023, EB Docket, pp. 15-28.
[3] Resolution dated July 5, 2023, EB Docket, pp. 31-33.

## THE PARTIES

Petitioner is the duly appointed CIR, vested with authority, among others, to act upon and approve claims for refund or tax credit of overpaid or erroneously paid internal revenue taxes, including final income tax withheld on interest income received by non-residents. He holds office at the 5th Floor, Bureau of Internal Revenue (BIR) National Office Building, Agham Road, Diliman, Quezon City.[4]

Respondent Diddley Bow Investment Holdings B.V. (DBI)[5] is a corporation established or incorporated in the Netherlands with address at Oude Lindestraat 70, 6411 EJ Herleen, the Netherlands. It is not registered as a corporation or partnership with the Philippine Securities Exchange Commission (SEC), and it is not engaged in trade or business in the Philippines.[6]

## THE FACTS

DBI, through its custodian, JP Morgan Chase Bank N.A., and its sub-custodian, Hongkong & Shanghai Banking Corp. (HSBC), invested in various Treasury Bonds (T-Bonds), with maturities of more than one (1) year. The yield of the T-Bonds was represented by coupons, which are computed as a percentage of the face value of the T-Bonds on a *per annum* basis and payable semi-annually.[7]

During the period from January to August 2016, DBI derived interest income from its investments in T-Bonds in the total amount of ₱41,947,155.00, which was subjected to final withholding tax (FWT) at the rate of twenty percent (20%), equivalent to a total amount of ₱8,389,431.00. The FWT on DBI's interest income from Philippine T-Bonds were withheld and remitted to the BIR by the Bureau of Treasury (BoTr).[8]

On October 2, 2017, DBI filed with the BIR an administrative claim for the refund of or the issuance of a tax credit certificate (TCC) in the amount of ₱8,389,431.00, representing the FWT erroneously withheld on the interest income derived by DBI during the period from January 26, 2016 to August 17, 2016.[9]

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[4] *Supra* note 2, p. 16.
[5] Petitioner in CTA Case No. 9759 is Diddley Bow Investment Holdings B.V.
[6] *Supra* note 2, p. 15.
[7] Supra note 2, par. 1, Antecedents (Administrative Level), Decision dated March 2, 2023, EB Docket, p. 16.
[8] Supra note 2, par. 2, Antecedents (Administrative Level), Decision dated March 2, 2023, EB Docket, p. 16.
[9] Supra note 2, par. 3, Antecedents (Administrative Level), Decision dated March 2, 2023, EB Docket, p. 16.

To preserve its judicial claim for refund, DBI filed a *Petition for Review*[10] on January 26, 2018, docketed as CTA Case No. 9759, praying that judgment be rendered ordering the CIR to refund or issue in favor of DBI a TCC in the amount of ₱8,389,431.00, allegedly representing FWT erroneously withheld on the interest income derived by DBI from January 26, 2016 to August 17, 2016.

After trial on the merits, the Special Third Division of this Court promulgated the assailed *Decision* dated March 2, 2023, granting DBI's claim for refund or issuance of a TCC, as follows:

> **WHEREFORE**, in light of the foregoing considerations, the present *Petition for Review* is **GRANTED**. Accordingly, respondent is **ORDERED** to refund or issue a TCC in favor of petitioner the amount of ₱8,389,431.00, representing erroneously collected FWT on the interest income earned in various T-Bonds issued by the BoTr from January 2016 to August 2016.
>
> **SO ORDERED.**

The *Motion for Reconsideration*[11] filed via registered mail by the CIR on March 31, 2023 was denied in the assailed *Resolution* dated July 5, 2023, the dispositive portion of which provides:

> **WHEREFORE**, premises considered, respondent's *Motion for Reconsideration of Decision dated March 2, 2023*, is **DENIED** for lack of merit.
>
> **SO ORDERED.**

On August 1, 2023, the CIR filed a *Motion for Extension of Time to File Petition for Review*[12], requesting for an extension of time of until August 16, 2023, within which to file the petition for review, which was granted pursuant to the *Minute Resolution* dated August 2, 2023[13]. The CIR then filed the instant *Petition for Review* on August 16, 2023.

In compliance with the *Minute Resolution* dated September 12, 2023[14], DBI filed its *Comment (Re: Petition for Review dated August 15, 2023)*[15] on October 5, 2023.

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[10] Petition for Review dated January 25, 2018, Division Docket, Vol. 1, pp. 10-19.
[11] Motion for Reconsideration of Decision dated March 2, 2023, Division Docket, Vol. 2, pp. 685-689.
[12] EB Docket, pp. 1-3.
[13] EB Docket, p. 4.
[14] EB Docket, p. 38.
[15] EB Docket, pp. 39-44.

Thereafter, the case was submitted for decision on October 17, 2023.[16]

## ISSUE

Petitioner raised the following error allegedly committed by the Court in Division, to wit:

> HEREIN PETITIONER SUBMITS THAT THE HONORABLE COURT ERRED IN GRANTING RESPONDENT'S JUDICIAL CLAIM FOR REFUND.[17]

## ARGUMENTS OF THE PARTIES

***Petitioner's Arguments:***

Petitioner CIR argues that *(a)* DBI's claim for refund is subject to administrative review; *(b)* the claim had been denied by the revenue officer for failure of respondent to submit the required documents in support of its claim; *(c)* taxes paid and collected are presumed to have been paid in accordance with law and regulations and, hence, not refundable; *(d)* claimants bear the burden of proof; and *(e)* tax refunds are in the nature of exemptions and are to be considered *strictissimi juris* against the entity claiming the same.

***Respondent's Counter-Arguments:***

Respondent DBI contends that *(a)* the grounds relied upon by the CIR in the instant *Petition* are the same arguments raised in his *Motion for Reconsideration*; and *(b)* DBI has fully substantiated its claim for refund in the amount of ₱8,389,431.00, representing its erroneously paid FWT.

## RULING OF THE COURT *EN BANC*

The *Petition for Review* is bereft of merit.

***The Court En Banc has jurisdiction to take cognizance over the Petition.***

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[16] EB Docket, p. 45.
[17] *Supra* note 1, p. 8.

Section 2, Rule 4 of the RRCTA provides for the cases within the jurisdiction of the Court *En Banc*, thus:

> 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)*

As the *Petition for Review* filed by the CIR before the Court *En Banc* prays for the reversal of the assailed *Decision* and *Resolution* both promulgated by the Court in Division, the Court *En Banc* has appellate jurisdiction to review by appeal the subject matter of the instant *Petition* pursuant to Section 2, Rule 4 of the RRCTA.

As to the timeliness of filing the *Petition*, Section 3(b), Rule 8 of the RRCTA, provides:

> SEC. 3. Who may appeal; period to file petition. –
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> xxx
>
> (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**. *(Emphasis supplied)*

A perusal of the records shows that on July 17, 2023, the CIR received the assailed *Resolution,* denying his *Motion for Reconsideration* filed before the Special Third Division of this Court.[18]

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[18] Notice of Resolution dated July 5, 2023, EB Docket, pp. 29-30.

On August 1, 2023, within the reglementary period, the CIR filed a *Motion for Extension of Time to File Petition for Review,* requesting for an additional period of fifteen (15) days from August 1, 2023, or until August 16, 2023, within which to file the petition for review. The *Motion* was granted pursuant to the *Minute Resolution* dated August 2, 2023.[19]

On August 16, 2023, the CIR timely filed the instant *Petition for Review.* Therefore, the Court *En Banc* has validly acquired jurisdiction to take cognizance over the present *Petition.*

At the onset, the Court *En Banc* must stress that the CIR's arguments in the *Petition for Review* are a verbatim rehash of those already raised in his *Motion for Reconsideration* before the Court in Division, and a mere reiteration of the arguments raised in his *Answer*[20], which have already been considered and addressed in the assailed *Decision* and *Resolution.*

***The Court in Division committed no error in granting respondent's judicial claim for refund.***

In the *Petition,* the CIR disagrees with the findings of the Court in Division and argues that DBI's claim for refund was denied due to failure of the latter to comply with the documentary requirements and failure to substantiate its administrative claim for tax refund. Moreover, the CIR posits that tax refunds, like tax exemptions, are construed strictly against the taxpayer, thus, the taxpayer needs to exercise diligence and prudence in establishing the legal bases for the refund and substantiate it by complying with the requirements laid down by law and revenue issuances of the BIR.

We are not persuaded.

As correctly pointed out by DBI in its October 5, 2023 *Comment,* the CIR, in insisting that DBI failed to submit documentary proof in support of its administrative claim for refund, did not even identify the pieces of documentary requirements which he alleged that DBI failed to provide.

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[19] *Supra* note 13.
[20] Division Docket, Vol. 1, pp. 78-80.

It should also be emphasized that the CIR did not even present any evidence to controvert DBI's judicial claim for refund. Based on records, on February 1, 2020, the CIR filed a *Manifestation*[21] via email, stating that he will no longer present any witness for CTA Case No. 9759. Moreover, records reveal that the CIR did not even file his memorandum before the Court in Division.[22]

In view of the basic rule that mere allegations are not evidence and not equivalent to proof[23], the CIR's allegation is essentially self-serving and devoid of any evidentiary weight. Thus, the findings of the Court in Division in the assailed *Decision* still remain uncontroverted.

As held in the assailed *Decision*, the interests accruing or arising from the T-Bonds are exempt from income taxation in the Philippines pursuant to Section 32(B)(5)[24] of the National Internal Revenue Code of 1997, in relation to Article 11(3)(a)[25] of the Republic of the Philippines-Netherlands Tax Treaty.[26] The Court *En Banc* also agrees with the assailed *Decision* that DBI was able to prove that the BoTr withheld twenty percent (20%) FWT on its interest income arising

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[21] Division Docket, Vol. 2, pp. 623-624.

[22] Records Verification Report dated April 6, 2022, Docket, Vol. 2, p. 664.

[23] Lauro Cardinez v. Spouse Prudencio, G.R. No. 213001, August 04, 2021, citing Government Service Insurance System vs. Prudential Guarantee and Assurance, Inc., G.R. No. 165585, November 20, 2013.

[24] SEC 32. Gross Income. –

(A) General Definition. – Except when otherwise provided in this Title, gross income means all income derived from whatever source, including (but not limited to) the following items:

xxx

(4) Interests;

xxx

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

xxx

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

[25] ARTICLE 11
INTEREST

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3. Notwithstanding the provisions of paragraph 2:

a) **interest arising in one of the States and paid in respect of a bond**, debenture or other similar obligation of the Government of that State or of a political subdivision or local authority thereof shall be **exempt from tax in that State**.

[26] Convention between the Kingdom of the Netherlands and the Republic of the Philippines for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income.

from the T-Bonds in the amount of ₱8,389,431.00, by presenting the following documents:

1. BoTr Statements of Taxes Withheld on the Coupon Due on the T-Bond Holdings of HSBC – Custody Account, which show the details of the T-Bonds recorded under the HSBC's Custody Account, including that of DBI, which earned interest during the period January 1, 2016 to December 31, 2016;

2. BoTr Journal Entry Vouchers, which show the records of the BoTr of remittances to BIR of the taxes withheld on interest in Government Securities;

3. Certificates of Final Tax Withheld at Source (BIR Form No. 2306) issued by the BoTr; and

4. Certificate from the Revenue Accounting Division of the BIR, confirming that the International Security Identification Numbers in relation to the DBI's claim were verified from the records of such Division and that the same were subjected to FWT.

Verily, the Court *En Banc* finds that based on the evidence presented and submitted, DBI has sufficiently established its entitlement to its claim for FWT refund in the amount of ₱8,389,431.00.

The Court emphasizes that while tax refunds are strictly construed against the taxpayer, the Government should not resort to technicalities and legalisms, much less frivolous appeals, to keep the money it is not entitled to at the expense of the taxpayers. Technicalities and legalisms, however exalted, should not be misused by the government to keep money not belonging to it and thereby enrich itself at the expense of its law-abiding citizens. If the State expects its taxpayers to observe fairness and honesty in paying their taxes, so must it apply the same standard against itself in refunding excess payments of such taxes. Indeed, the State must lead by its own example of honor, dignity and uprightness.[27]

Based on the foregoing and there being no new matter or substantial issue raised in the CIR's *Petition*, the Court finds no compelling reason to reverse, amend, or modify the assailed *Decision* and *Resolution*.

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[27] Commissioner of Internal Revenue v. Lucio L. Co, G.R. No. 241424, February 26, 2020.

**WHEREFORE,** premises considered, petitioner CIR's *Petition for Review* filed on August 16, 2023, is hereby **DENIED** for lack of merit.

Accordingly, the *Decision* dated March 2, 2023, and *Resolution* dated July 5, 2023, both promulgated in CTA Case No. 9759, are **AFFIRMED.**

**SO ORDERED.**

**HENRY S. ANGELES**
Associate Justice

*WE CONCUR:*

**ROMAN G. DEL ROSARIO**
Presiding Justice

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

**CATHERINE T. MANAHAN**
Associate Justice

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

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

Marian Ivy F. Reyes-Fajardo
**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