REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-versus-

PHILIPPINE AIRLINES, INC.,
Respondent.

CTA EB No. 775
(CTA Case No. 7828)

Present:
Acosta, *P.J.,*
Castañeda, Jr.,
Bautista,
Uy,
Casanova,
Palanca-Enriquez,
Fabon-Victorino,
Mindaro-Grulla, and
Cotangco-Manalastas, *JJ.*

Promulgated:

JUL 24 2012 Cas Apolinario 1:30 p.m.

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DECISION

CASTAÑEDA, JR., *J.*:

This is a Petition for Review filed by petitioner Commissioner of Internal Revenue before the Court of Tax Appeals (CTA) *En Banc* assailing the Decision[1] dated January 4, 2011 and the Resolution[2] dated April 15, 2011 promulgated by

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[1] *Rollo*, pp. 16-28. Penned by Associate Justice Olga Palanca-Enriquez with Associate Justice Lovell R. Bautista and Associate Justice Amelia Cotangco-Manalastas, concurring.
[2] *Rollo*, pp. 29-33.

the CTA Third Division in the case entitled "*Philippine Airlines, Inc. vs. Commissioner of Internal Revenue,*" docketed as CTA Case No. 7828.

The assailed Decision GRANTED the Petition for Review filed by respondent Philippine Airlines, Inc. which sought the refund or issuance of a tax credit certificate in the amount of P826,639.45 allegedly representing the 5% final VAT erroneously withheld by Overseas Workers Welfare Administration (OWWA) under the Charter Agreement with the respondent.

THE FACTS

The facts of the case as found by the CTA Third Division are as follows: [3]

> Petitioner (herein respondent) Philippine Airlines, Inc. (PAL) is a domestic corporation organized in accordance with the laws of the Republic of the Philippines with principal office at 8th Floor, PNB Financial Center, Pres. Diosdado Macapagal Ave., CCP Complex, Pasay City, where it may be served with summons.
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> Respondent (herein petitioner) Commissioner of Internal Revenue is the Commissioner of the Bureau of Internal Revenue (BIR), which is the government agency in charge of the assessment and collection of all national internal revenue taxes, fees, and charges, of the National Internal Revenue Code (NIRC).
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> On August 21, 2008, PAL filed with the Office of the Commissioner of the Internal Revenue, a formal written request for a refund of the amount of PHP826,639.45, representing the 5% Final VAT withheld by the Overseas Workers Welfare Administration (OWWA) from PHP16,532,789.00 billed by PAL to OWWA under its Charter Agreement.
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> As culled from the records, it further appears that on July 31, 2006, petitioner PAL entered into a Charter Agreement with OWWA to transport 288 passengers from Manila to Damascus and Bangkok, and back to Manila, for the charter price of U.S.$315,000.00 or P16,411,500.00 (U.S.$=P52.10), plus U.S.$ 8YQ tax per passenger.
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> After actually transporting 291 passengers, petitioner PAL issued two invoices to OWWA, to wit:

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[3] *Rollo*, pp. 18-21.

INVOICE NUMBER	INVOICE DATE	INVOICE AMOUNT
30687	07/29/06	P16,411,500.00
30688	07/29/06	121,289.00
TOTAL AMOUNT DUE		**P16,532,789.00**

Invoice numbers 30687 and 30688 were paid by OWWA under PAL Official Receipt No. 13805, dated August 10, 2006, but with the following deductions made by OWWA:

INVOICE NUMBER			**O.R. AMOUNT**
	30687		P16,411,500.00
	30688		121,289.00
SUB-TOTAL			P16,532,789.00
LESS:	2% CREDITABLE INCOME TAX	P330,655.78	
	5% FINAL VAT (BIR Form No. 2306)	826,639.45	1,157,295.23
	TOTAL PAID		P15,375,493.77

Consequently, petitioner PAL tried to recover the 5% final VAT from OWWA since the transaction involving the transport of passengers from the Philippines to a foreign country by petitioner PAL, a VAT registered carrier, is subject to zero percent (0%) VAT, under *Section 108 (B) (6) of the NIRC of 1997, as amended.*

OWWA refused to pay the amount withheld because the same was already remitted to the BIR on September 6, 2006, as evidenced by BIR Tax Payment Deposit Slip issued by the Land Bank of the Philippines, Masagana Branch, and validated in their Alpha list of payees, subject to the Expanded Withholding Tax Report submitted to the BIR on January 24, 2007.

On August 21, 2008, petitioner PAL filed with respondent CIR an administrative claim for refund in the total amount of P826,639.45, representing the 5% final VAT withheld by OWWA from the P16,532,789.00 billed by petitioner PAL to OWWA under their Charter Agreement.

In view of respondent CIR's inaction, on September 3, 2008, petitioner filed its judicial claim for refund with this Court, docketed as C.T.A. Case No. 7828.

In her Answer, respondent CIR alleged by way of special and affirmative defenses:

> "xxx xxx
>
> 4. Petitioner's alleged claim for refund is subject to administrative routinary investigation/examination by the Bureau.

5. The amount of P826,639.45 being claimed by petitioner allegedly representing erroneously withheld 5% Final Value-Added Tax (VAT) by the Overseas Workers Welfare Administration (OWWA) was not properly documented.

6. In an action for refund, the burden of proof is on the taxpayer to establish its right to refund, and failure to sustain the burden is fatal to the claim for refund/credit.

7. Claims for refund are construed strictly against the claimant for the same partake the nature of exemption from taxation (*Commissioner of Internal Revenue vs. Ledesma, 31 SCRA 95*) and such, they are looked upon with disfavor (*Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 1211*)."

Petitioner PAL presented Aleth Maria B. Calderon, as witness, and documentary evidence, marked as *Exhibits "A" to "O",* inclusive of their submarkings, which were admitted by the Court, except for *Exhibit "A-4"* for failure of petitioner PAL to present the original.

On the other hand, respondent CIR submitted the case for decision, without presenting any evidence.

Thereafter, both parties were ordered to file their simultaneous memoranda, within thirty (30) days from notice. Both parties having complied thereto, the case was deemed submitted for decision on October 19, 2010.

On January 4, 2011, the Court in Division rendered a Decision granting the Petition for Review. The dispositive portion of the assailed Decision reads as follows:

WHEREFORE, premises considered, the instant Petition for Review is hereby **GRANTED.** Accordingly, respondent Commissioner of Internal Revenue is hereby **ORDERED TO REFUND** or to **ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner PAL in the total amount of **EIGHT HUNDRED TWENTY-SIX THOUSAND, SIX HUNDRED THIRTY-NINE AND 45/100 PESOS** (P826,639.45), representing the 5% final VAT erroneously withheld by OWWA under the Charter Agreement.

SO ORDERED.[4] Jc

[4] *Rollo*, pp. 27-28.

Aggrieved, Commissioner of Internal Revenue filed a Motion for Reconsideration on January 18, 2011. The CTA Third Division issued a Resolution on April 15, 2011, the dispositive portion reads as follows:

> **WHEREFORE**, premises considered, respondent CIR's "Motion for Reconsideration" is hereby **DENIED** for lack of merit.
>
> **SO ORDERED.**[5]

Hence, this Petition for Review *En Banc.*

THE ISSUE

Whether or not respondent is entitled to a refund in the amount of P826,639.45 representing the 5% final VAT erroneously withheld by OWWA under their Charter Agreement.

THIS COURT'S RULING

We affirm the ruling of the CTA Third Division in GRANTING the judicial claim for refund filed by respondent PAL in the amount of P826,639.45.

PAL has fully complied with the prescribed requisites for its entitlement to a tax refund.

First. The claim for refund was timely filed. Applying the two-year prescriptive period under Section 229 of the 1997 NIRC for recovery of erroneously paid tax, the two-year period begins to run on September 6, 2006 when OWWA remitted to the BIR the amount of P826,639.45. Both the

[5] *Rollo*, page 33.

administrative and judicial claims were filed within the two-year period, the administrative claim for refund was filed before the BIR on August 21, 2008;[6] while judicial claim for refund was filed with the CTA on September 3, 2008.[7]

Second. PAL's transaction with OWWA in transporting passengers from the Philippines to a foreign country is subject to zero-rated sale of service under Section 108 (B) of the 1997 NIRC, *as amended*. The law expressly provides:

> SEC. 108. *Value-added Tax on Sale of Services and Use or Lease of Properties.* –
>
> (A) xxx xxx xxx
>
> (B) *Transactions Subject to Zero Percent (0%) Rate.*- The following services performed in the Philippines by VAT-registered persons shall be subject to zero percent (0%) rate:
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> xxx xxx xxx
>
> (6) Transport of passengers and cargo by air or sea vessels from the Philippines to a foreign country, and
>
> xxx xxx xxx

Records showed that PAL is a VAT registered air carrier[8] and it transported passengers from the Philippines to a foreign country,[9] hence covered by the above-cited provision.

Third. The fact of withholding and remittance to the BIR of the 5% final VAT amounting to P826,639.45 was proven and supported by evidence

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[6] Exhibit "L", pp. 38-39.
[7] Division Docket, pp. 1-8.
[8] Exhibits "M" and "M-1", pp. 158-159.
[9] Exhibit "A", pp. 9-18.

submitted by the respondent. We quote the findings of the CTA Third Division in the Resolution dated April 15, 2011:

> To substantiate its claim for refund of the erroneously withheld 5% final VAT, petitioner submitted the following documentary evidence:
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> 1) BIR Form 2306 for the period August 1, 2006 to August 31, 2006 with payor's name appearing as OWWA, duly stamped received by petitioner PAL on September 7, 2006, to prove that OWWA remitted to the BIR P826,639.45, the 5% Final VAT it withheld when OWWA paid the charter price to PAL on August 10, 2006 (Exhibit "E");
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> 2) Certified true copy of OWWA's Monthly Remittance Return of Value-Added Tax and other Percentage Taxes Withheld (BIR Form No. 1600) for the month of September 2008, to prove that part of the P1,129,766.04 remitted to the BIR consists of VAT withholding on purchase of services amounting to P1,089,259.66 (Exhibit "I-2");
>
> 3) Certified true copy of the Summary of Taxes Withheld from Creditors for the month of August 2006, showing the name of Philippine Airlines, Inc. under the payee column and the figure 826,639.45 under the 5% VAT-L column, to prove that the 5% Final VAT of P826,639.45 withheld by OWWA from the Charter Price it paid to PAL, was part of the P1,089,259.66 VAT withholding on purchase of services remitted by OWWA to the BIR (Exhibit "1-3");
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> 4) Certified true copy of OWWA's Annual Information Return of Creditable Income Taxes Withheld (Expanded) (BIR Form 1604-E) for the year 2006, to show the amount of creditable income taxes withheld by OWWA for the calendar year 2006, which OWWA remitted to the BIR (Exhibit "I-4"); and
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> 5) OWWA's Alpha list of Payees subjected to Expanded Withholding Tax as of December 31, 2006, to prove that the P330,655.78 creditable income tax withheld by OWWA from the Charter Price paid to PAL, as shown in PAL Official Receipt No. 000-0013805 dated August 10, 2006, is part of the creditable income taxes withheld by OWWA, which it remitted to the BIR (Exhibit "I-5"). ge

Judicial claims are litigated de novo and decided based on what has been presented and formally offered by the parties during the trial.

Petitioner's sole argument in the petition was the respondent's failure to submit complete documentary evidence in filing its administrative claim for refund. The argument was anchored in the case of *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue* [10] ("*Atlas*" case) where the Supreme Court denied the claim for refund.

Upon examination of the *Atlas* case, We found petitioner's argument misplaced. In the said case, what the Supreme Court found fatal to the taxpayer's cause was its failure to submit sufficient evidence such as invoices and receipts in support of its claim before the CTA. In contrast with the present case, petitioner's allegation was the failure of respondent to submit complete documents before the BIR and not before the CTA.

Moreover, it has been settled in several CTA *En Banc* cases[11] that judicial claims should not be denied on the sole ground that the taxpayer allegedly failed to submit before the BIR the complete documents in support of its administrative claim for refund. In the case of *Philippine Bank of Communications vs.*

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[10] G.R. No. 145526, March 16, 2007, 518 SCRA 425.
[11] *Commissioner of Internal Revenue vs. Panay Power Company,* CTA EB No. 683, November 29, 2011, *Commissioner of Internal Revenue vs. Team Energy Corporation (formerly Mirant Pagbilao Corporation and Southern Energy Quezon, Inc.),* CTA EB No. 652, October 4, 2011, Consolidated cases of *CE Luzon Geothermal Power Company, Inc. vs. Commissioner of Internal Revenue*, CTA EB No. 553 and *Commissioner of Internal Revenue vs. CE Luzon Geothermal Power Company, Inc.*, CTA EB No. 554, July 20, 2010, *Commissioner of Internal Revenue vs. San Roque Power Corporation*, CTA EB No. 523, April 15, 2010, *Commissioner of Internal Revenue vs. CE Luzon Geothermal Power Company, Inc.*, CTA EB No. 474, September 1, 2009

Commissioner of Internal Revenue [12] We passed upon the issue on the non-submission of supporting documents in the administrative level as NOT fatal to a claim for refund. The pertinent portion of the Decision provides:

> Non-submission of supporting documents in the administrative level is not fatal to a claim for refund. Judicial claims are litigated de novo and decided based on what has been presented and formally offered by the parties during the trial. In the case of CIR vs. Manila Mining Corporation, it was explained that "Under Section 8 of RA 1125, the CTA is described as a court of record. As cases filed before it are litigated de novo, party litigants should prove every minute aspect of their cases." Finally, pieces of evidence submitted in the administrative proceeding have no evidentiary value unless presented and formally offered before the Court.

This Court is not barred from receiving, evaluating and appreciating evidence formally offered before it. Once the claim for refund has been elevated to the Court, the admissibility, materiality, relevancy, probative value and weight of evidence presented therein become subject to the Rules of Court.[13] The question of whether or not the evidence submitted by a party is sufficient to warrant the granting of a claim for refund lies within the sound discretion and judgment of the Court.[14]

The CTA being a court of record, the cases filed before it are litigated *de novo* and party litigants should prove every minute aspect of their cases.[15] Otherwise stated, judicial claims are being decided based on what has been

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[12] CTA EB Nos. 560 & 586, June 1, 2011.
[13] *Commissioner of Internal Revenue vs. Visayas Geothermal Power Company, Inc.*, CTA EB Case No. 282 (CTA Case Nos. 6790 & 6838), November 20, 2007, citing *Jideco Manufacturing Corporation vs. Commissioner of Internal Revenue*, CTA Case No. 6552, September 16, 2004.
[14] Consolidated cases of *CE Luzon Geothermal Power Company, Inc. vs. Commissioner of Internal Revenue*, CTA EB No. 553 and *Commissioner of Internal Revenue vs. CE Luzon Geothermal Power Company, Inc.*, CTA EB No. 554, July 20, 2010, *Commissioner of Internal Revenue vs. San Roque Power Corporation*, CTA EB No. 523, April 15, 2010.
[15] *Commissioner of Internal Revenue vs. Manila Mining Corporation*, G.R. No. 153204, August 31, 2005, 468 SCRA 571.

presented and formally offered by party litigants during the trial of the case before the Court and not on the mere allegation of non-submission of complete documents before the BIR.

WHEREFORE, premises considered, the Petition for Review *En Banc* is **DENIED** for lack of merit. Accordingly, the Decision dated January 4, 2011 and Resolution dated April 15, 2011 are **AFFIRMED.**

SO ORDERED.

JUANITO C. CASTAÑEDA, JR.
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

Cielito N. Mindaro-Grulla

CIELITO N. MINDARO-GRULLA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

CERTIFICATION

Pursuant to Section 13, 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 the Court.

ERNESTO D. ACOSTA
Presiding Justice