REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC
****

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**CTA EB No. 1924** (CTA Case No. 9189)
	Present:
- versus -	**DEL ROSARIO,** P.J., **CASTAÑEDA, JR., UY, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA,** and **MODESTO-SAN PEDRO,** JJ.
	Promulgated:
NUBE STORAGE SYSTEMS, INC., Respondent.	DEC 04 2019 2:32 p.m.

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DECISION

UY, J.:

This is a *Petition for Review* filed by the Commissioner of Internal Revenue, petitioner, on August 23, 2018 against Nube Storage Systems Inc., respondent,[1] praying that the Court *En Banc* reverse and set aside the Decision dated February 1, 2018[2] and the Resolution dated August 1, 2018[3], both rendered by the Third Division of this Court (Court in Division) in CTA Case No. 9189, entitled *"Nube Storage Systems, Inc., Petitioner, versus Commissioner of Internal Revenue, Respondent".* The dispositive

[1] EB Docket, pp. 1 to 7.
[2] Penned by Associate Justice Esperanza R. Fabon-Victorino, concurred by Associate Justices Lovell R. Bautista (Retired) and Ma. Belen M. Ringpis-Liban; EB Docket, pp. 10 to 20.
[3] *Ibid*; EB Docket, pp. 22 to 25.

portions thereof respectively read as follows:

<u>**Decision dated February 1, 2018**</u>**:**

"**WHEREFORE,** premises considered, the instant Petition for Review is hereby **GRANTED**. Accordingly, respondent is hereby **ORDERED TO REFUND** the amount of ₱2,475,000.00 in favor of petitioner representing overpaid DST on the original issuance of petitioner's shares of stock.

SO ORDERED."

<u>**Resolution dated August 1, 2018**</u>**:**

"**WHEREFORE**, the Motion for Reconsideration dated February 21, 2018 filed by respondent Commissioner of Internal Revenue is **DENIED**, for lack of merit.

SO ORDERED."

THE FACTS

Petitioner is the Commissioner of the Bureau of Internal Revenue (BIR) with the power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto or other matters arising under the National Internal Revenue Code (NIRC), as amended, as well as other laws administered by the BIR.

On the other hand, respondent Nube Storage Systems, Inc., is a domestic corporation, with office address at Building M, J.Y. & Sons Compound, Veterans Road, Western Bicutan, Taguig City.

On October 9, 2013, respondent was incorporated with authorized capital stock of ₱5,000,000.00, divided into 50,000 fully subscribed shares with par value of ₱100.00 per share. Respondent paid the corresponding documentary stamp tax (DST) on the said subscription of shares of stock in the amount of ₱2,500,000.00. The payment of DST was reflected in the DST Declaration/Return filed on November 5, 2013.

On December 11, 2013, respondent filed with petitioner a claim for refund in the amount of ₱2,475,000.00, which it allegedly overpaid for DST.

Claiming inaction of petitioner on its refund claim, respondent filed a *Petition for Review* on November 5, 2015 before the Court in Division of this Court entitled *"Nube Storage Systems, Inc., Petitioner, versus Commissioner of Internal Revenue, Respondent"*, docketed as CTA Case No. 9189.

On January 21, 2016, petitioner filed his *Answer* in CTA Case No. 9189, contending, among others, that the burden of proof to establish its right to refund lies on respondent, who must substantiate its claim in accordance with the pertinent laws and established jurisprudence on the matter. Allegedly, collection and payment of taxes are presumed made in accordance with law, hence, not refundable. Moreover, claims for refund are strictly construed against the taxpayer claimant since it partakes the nature of exemption from tax.

After the filing of their respective pre-trial briefs, the parties submitted their *Joint Stipulation of Facts and Issues* on July 13, 2016. On August 3, 2016, the Court in Division issued a Pre-Trial Order thereby terminating the pre-trial conference.

In support of its claim, respondent presented Anna Francesca C. Respicio, Senior Associate of Tan Venturanza Valdez Law Firm, as its lone witness.

In the Resolution dated December 5, 2016, the Court in Division admitted all the exhibits formally offered by respondent who thereafter rested its case.

During the hearing for the reception of evidence for petitioner, his counsel manifested that he had no witness to present.

Subsequently, petitioner filed a *Manifestation (In Lieu of Submission of Memorandum)* on February 7, 2017, while respondent filed his Memorandum on February 13, 2017.

Thereafter, CTA Case No. 9189 was submitted for decision by the Court in Division on February 20, 2017.

In the assailed Decision,[4] the Court in Division granted respondent's *Petition for Review*, and ordered petitioner to refund the amount of ₱2,475,000.70 to respondent, representing overpaid DST on the original issuance of respondent's shares of stock.

Thereafter, petitioner filed his *Motion for Reconsideration* on February 21, 2018.[5] In the assailed Resolution dated August 1, 2018,[6] the Court in Division denied petitioner's *Motion for Reconsideration* for lack of merit.

On August 23, 2018, petitioner filed the instant *Petition for Review* docketed as CTA EB No. 1924 praying that the Decision promulgated on February 1, 2018 and Resolution promulgated on August 1, 2018 be reversed and set aside and another one be rendered denying respondent's claim for refund/tax credit granted by the Court in Division in the amount of P2,475,000.00 allegedly representing its overpaid DST .[7]

In the Resolution dated September 25, 2018,[8] the Court *En Banc* ordered respondent to file its *Comment* on the *Petition for Review*, within ten (10) days from receipt thereof. On October 15, 2018, respondent filed its *Comment/Opposition Re: Petition for Review dated 23 August 2018* praying that this Court deny the instant Petition for Review dated 23 August 2018 for utter lack of merit .[9]

On November 14, 2018, the Court *En Banc* resolved to give due course to the *Petition for Review*, and ordered the parties to file their respective memoranda within thirty (30) days from notice.[10]

Respondent filed its *Memorandum* on December 27, 2018;[11] while petitioner failed to filed his memorandum despite due notice.[12]

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[4] EB Docket, pp. 10 to 20; Division Docket (CTA Case No. 9189), pp. 186 to 196.
[5] EB Docket, pp. 26 to 28; Division Docket (CTA Case No. 9189), pp. 198 to 200.
[6] EB Docket, pp. 22 to 25; Division Docket (CTA Case No. 9189), pp. 234 to 237.
[7] EB Docket, pp. 1 to 7.
[8] EB Docket, pp. 31 to 32.
[9] EB Docket, pp. 33 to 37.
[10] Resolution dated November 14, 2018, EB Docket, pp. 40 to 41.
[11] EB Docket, pp. 42 to 51.
[12] Records Verification Report dated January 11, 2019 issued by the Judicial Records Division of this Court, EB Docket, p. 65.

Thereafter, the instant case was submitted for decision on February 7, 2019.[13]

Hence, this Decision.

THE ISSUE

As gleaned from the allegations in the instant *Petition for Review*, the lone issue raised by petitioner for the Court *En Banc*'s resolution is as follows:

> "Whether or not respondent's Documentary Stamp Tax (DST) Declaration/Return dated November 5, 2013 (marked as Exhibit "P-3" in CTA Case No. 9189) should be given any probative value for allegedly being hearsay evidence."

Petitioner's arguments:

Petitioner argues that any probative weight given to the testimony of respondent's witness, Anna Francesca C. Respicio, should have been limited only to those facts wherein she has personal knowledge, pursuant to Section 36, Rule 130 of the Rules of Court.

According to petitioner, the signatory to the DST Declaration/Return dated November 5, 2013 (Exhibit "P-3") was not presented to testify on such relevant and material matters. Allegedly, it was incumbent on the part of respondent to present the signatory of the subject DST Declaration/Return or any person who had a hand in the preparation thereof to support its allegation.

Thus, any other attempt on the part of respondent to pass as absolute truth on the contents of the said DST Declaration/Return shall be considered as hearsay evidence.

Respondent's counter-arguments:

Respondent counter-argues that petitioner is not allowed to object to the admissibility of Exhibit "P-3", as the BIR is in possession

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[13] EB Docket, pp. 67 to 68.

of tax records of all taxpayers, including the controverted DST Declaration/Return.

Moreover, respondent points out that petitioner failed to raise its objection to the admission of Exhibit "P-3", nor to the testimony of its witness Anna Francesca C. Respicio at the earliest opportunity, thus, respondent is precluded from objecting to the said evidence on the ground of hearsay.

THE COURT *EN BANC'S* RULING

The instant *Petition for Review* lacks merit.

This Court is not governed strictly by technical rules of evidence.

Petitioner contends that respondent's documentary exhibit, particularly Exhibit "P-3" or the DST Declaration/Return filed on November 5, 2013 by petitioner,[14] should not have been given probative value by the Court in Division for being hearsay evidence, pursuant to Section 36, Rule 130 of the Rules of Court.

We disagree.

Section 8 of Republic Act No. 1125,[15] as amended by RA No. 9282,[16] provides as follows:

> "SEC. 8. *Court of record; seal; proceedings.* – The Court of Tax Appeals shall be a court of record and shall have a seal which shall be judicially noticed. It shall prescribe the form of its writs and other processes. It shall have the power to promulgate rules and regulations

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[14] Division Docket (CTA Case No. 9189), p. 149.
[15] AN ACT CREATING THE COURT OF TAX APPEALS.
[16] AN ACT EXPANDING THE JURISDICTION OF THE COURT OF TAX APPEALS (CTA), ELEVATING ITS RANK TO THE LEVELL OF A COLLEGIATE COURT WITH SPECIAL JURISDICTION AND ENLARGING ITS MEMBERSHIP, AMENDING FOR THE PURPOSE CERTAIN SECTIONS OF REPUBLIC ACT NO. 1125, AS AMENDED, OTHERWISE KNOWN AS THE LAW CREATING THE COURT OF TAX APPEALS, AND FOR OTHER PURPOSES.

> for the conduct of the business of the Court, and as may be needful for the uniformity of decisions within its jurisdiction as conferred by law, but **such proceedings shall not be governed strictly by technical rules of evidence**." *(Emphasis supplied)*

Based on the foregoing provision, it is clear that this Court's proceedings shall not be governed strictly by technical rules of evidence.

As a corollary, this Court's power to deviate from technical rules of evidence is discretionary and hence, not subject to review by the Supreme Court.[17] Thus, the Court in Division may choose not to abide strictly with the Rules of Evidence, particularly, the rule excluding hearsay as evidence. This holds especially true if the basis or the reason for the said rule is wanting in a particular case, such as in the instant case.

To be sure, the rule excluding hearsay as evidence is based upon serious concerns about the trustworthiness and reliability of hearsay evidence due to its not being given under oath or solemn affirmation and due to its not being subjected to cross-examination by the opposing counsel to test the perception, memory, veracity and articulateness of the out-of-court declarant or actor upon whose reliability the worth of the out-of-court statement depends.[18]

Such serious concerns, upon which the rule excluding hearsay as evidence is based, however, are not present in Exhibit "P-3", or any other tax return, for that matter.

It must be noted that Exhibit "P-3" was filed with a declaration under the penalties of perjury, equivalent to a solemn affirmation, by the signatory thereof, that the same was made in good faith, verified by the said signatory, to the best of his knowledge and belief, is true and correct.[19] In fact, tax returns filed with the BIR, such as Exhibit "P-3", enjoy the presumption that these are in accordance with law. Tax returns are also presumed correct since these are filed under the penalty of perjury.[20]

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[17] *Perez vs. Court of Tax Appeals, et al.*, G.R. No. L-9193, May 29, 1957.
[18] *Patula vs. People of the Philippines*, G.R. No. 164457, April 11, 2012.
[19] Division Docket (CTA Case No. 9189), p. 149.
[20] *SMI-ED Philippines Technology, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 175410, November 12, 2014.

In the same vein, as for the claim that Exhibit "P-3" not being subjected to cross examination by petitioner's counsel to test the perception, memory, veracity and articulateness of the out-of-court declarant, the same cannot be invoked by petitioner in this case. This must be so because the BIR, to which petitioner is the chief,[21] is the repository of all tax returns filed by taxpayers. Thus, petitioner must perforce know the veracity of Exhibit "P-3".

It has been jurisprudentially recognized that petitioner ought to know the tax records of all taxpayers[22] which includes the said Exhibit. Such being the case, petitioner has no excuse not to know the veracity of the said tax return.

Be that as it may, even granting that Exhibit "P-3" should not be given probative value, for being hearsay, the same is of no moment as further discussed hereinbelow.

The subject DST is shown to have been erroneously or illegally paid or collected.

Section 229 of the NIRC of 1997 provides as follows:

> "SEC. 229. *Recovery of Tax Erroneously or Illegally Collected.* – No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.
>
> In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any

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[21] Section 3, NIRC of 1997.
[22] *BPI-Family Savings Bank. Inc. vs. Court of Appeals, et al.,* G.R. No. 122480, April 12, 2000; and *Commissioner of Internal Revenue vs. Ironcon Builders and Development Corporation,* G.R. No. 180042, February 8, 2010.

> supervening cause that may arise after payment: *Provided, however*, That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid."

Based on the foregoing provision, the recovery of erroneously or illegally collected taxes is allowed.

An *"erroneous or illegal tax"* is defined as one levied without statutory authority,[23] or upon property not subject to taxation or by some officer having no authority to levy the tax, or one which is some other similar respect is illegal.[24] In other words, for the subject DST to be refunded, it must be shown to have been paid or collected, and such payment or collection is erroneous or illegal. Parenthetically, it must be emphasized that nothing in the above-quoted provision states or even implies that the fact of payment can only be established through the presentation of the DST Declaration/Return. As a corollary, the fact of payment may be proven by other clear and convincing evidence.

The fact of payment of the DST by respondent for the subject transaction in the amount of ₱2,500,000.00 is established through the Chinabank BTr-BIR Deposit Slip dated November 5, 2013, marked as Exhibit "P-4".[25] Like Exhibit "P-3", Exhibit "P-4" was not objected to by petitioner when it was properly offered. Thus, Exhibit "P-4" became part of the evidence of the case *a quo*. Consequently, petitioner is bound by the outcome of the Court in Division's assessment of Exhibit "P-4".

In the assailed Decision, the Court in Division held as follows:

> "**[Respondent] paid and remitted the amount of ₱2,500,000.00 as DST due** on such issuance of shares, pursuant to Section 174 of the NIRC of 1997, as amended. **As proof thereof, [respondent] submitted its** duly stamped Documentary Stamp Tax

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[23] *Commissioner of Internal Revenue vs. Philippine National Bank*, G.R. No. 161997, October 25, 2005, citing Black's Law Dictionary, 8^{th} Ed., pp. 1496-1497.
[24] *Commissioner of Internal Revenue vs. Pilipinas Shell Petroleum Corporation*, G.R. No. 188497, April 25, 2012.
[25] Division Docket (CTA Case No. 9189), p. 150.

Declaration/Return (BIR Form No. 2000) and **Chinabank's BTR-BIR Deposit Slip dated November 5, 2013**.

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Applying the provision of Section 174 of the NIRC of 1997, as amended, and considering that the subscription of [respondent]'s shares of stock by its incorporators involves 50,000 common shares of stock with a par value of ₱100.00 per share, the DST due thereon should be ₱25,000.00, computed as follows:

Common shares issued/subscribed	50,000 shares
Multiply by Par value per share	₱ 100.00
Par Value of common shares issued/subscribed	₱5,000,000.00
Multiply by DST rate	x 1.00/200.00
DST due	₱ 25,000.00

As mentioned earlier, [respondent] paid and remitted DST of ₱2,500,000.00 to [petitioner], which was clearly beyond what was actually due for the transaction. In other words, [respondent] erroneously paid ₱2,500,000.00 instead of the correct amount due for DST of ₱25,000.00. Evidently, there was an erroneous overpayment of the DST in the amount of ₱2,475,000.00, as shown below:

DST Remitted	₱2,500,000.00
DST Due	(25,000.00)
Overpayment	**₱2,475,000.00**

All said, the Court finds [respondent] entitled to the claim for refund in the amount of ₱2,475,000.00 representing erroneously overpaid DST." *(Emphases supplied)*

Relative thereto, it must be stressed that the findings of fact by the Court in Division are not to be disturbed without any showing of grave abuse of discretion considering that the members of the

Division are in the best position to analyze the documents presented by the parties.[26]

Having clearly established the fact of payment of the DST for the subject transaction, and its overpayment, We see no grave abuse of discretion, nor find any reversible error, committed by the Court in Division, in the assailed Decision and Resolution.

WHEREFORE, in light of the foregoing considerations, the *Petition for Review* is **DENIED** for lack of merit. Accordingly, the Decision dated February 1, 2018 and the Resolution dated August 1, 2018, both rendered by the Court in Division in CTA Case No. 9189 are **AFFIRMED**.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

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[26] *Republic of the Philippines, represented by the Commissioner of Internal Revenue vs. Team (Phils.) Energy Corporation (formerly Mirant (Phils.) Energy Corporation)*, G.R. No. 188016, January 14, 2015.

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
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