REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	CTA EB No. 1464 (CTA CASE No. 8638)
	Present:
- versus -	DEL ROSARIO, *PJ* CASTAÑEDA, JR. BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN, MANAHAN, *JJ.*
HONDA CARS MAKATI, INC., Respondent.	Promulgated: DEC 04 2017 11:22 a.m.

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DECISION

Fabon-Victorino, J.:

Before the Court is the Petition for Review dated June 15, 2016 filed by the Commissioner of Internal Revenue, assailing the Decision dated January 14, 2016 and the Resolution dated May 11, 2016, both rendered by the Court in Division.

The assailed Decision of January 14, 2016 partially granted respondent's claim for refund of its excess and unutilized creditable withholding taxes (CWT) to the extent substantiated in the amount of P21,389,498.56. The said Decision was effectively affirmed when petitioner's motion for reconsideration of the said Decision was denied for lack of merit in the equally assailed Resolution of May 11, 2016.

The following facts established during trial, as determined by the Court in Division, are undisputed:

Petitioner is the Commissioner of the Bureau of Internal Revenue (BIR) with authority to act upon and approve claims for refund or tax credit of overpaid or erroneously paid internal revenue taxes. He holds office at the 5th Floor, BIR National Office Building, Agham Road, Diliman, Quezon City.

Respondent Honda Cars Makati, Inc. (Honda) is a domestic corporation duly registered with BIR with Taxpayer Identification Number (TIN) 000-220-239-000. It is engaged in the sale, distribution, service, and repair of automobiles with the primary purpose, as stated in its Amended Articles of Incorporation, as follows:

> "To engage in the sale and distribution, service and repair of automobiles, motor cars, motor trucks, wagons, buggies, carriages and other mechanically propelled vehicles, and vehicle engines, parts, accessories, supplies, and other articles; to operate chain stores and general merchandising pertaining to motor vehicles, to build, maintain, lease or otherwise acquire, own, hold and operate warehouses, agencies, structures, services centers and showrooms which may be used in connection with the business of the Corporation; to buy, sell and generally deal in all kinds of merchandise, fixtures, and chattels relating to motor vehicles; to acquire and own patents, improvements and franchises, and to operate under such patents, improvements and franchises, any commercial dealings pertaining to the matters and things enumerated herein."

On April 15, 2011, respondent manually filed its Annual Income Tax Return (ITR) for the year 2010 with the BIR Large Taxpayers-Assistance Division II. On even date, it filed, through the BIR Electronic Filing and Payment System (EFPS), an electronic copy of its Annual ITR for the year 2010, with filing Reference No. 1211000D4683610.

On February 18, 2013, respondent filed with the BIR Large Taxpayers Excise Audit Division II a letter-request for refund or issuance of Tax Credit Certificate (TCC) in the amount of P25,812,793.00 allegedly representing its excess and unutilized CWT for the year 2010.

Petitioner failed to act on the said administrative claim for refund/tax credit prompting respondent to elevate the matter to the Court through a Petition for Review filed on April 12, 2013.

After trial, the Court in Division rendered the assailed Decision on January 14, 2016, the dispositive portion of which states, as follows:

> WHEREFORE, premises considered, the instant Petition for Review is hereby PARTIALLY GRANTED. Accordingly, (petitioner) is hereby ORDERED TO REFUND or TO ISSUE A TAX CREDIT CERTIFICATE in favor of (respondent) in the amount of P21,389,498.56 representing its excess and unutilized creditable withholding taxes for CY 2010.
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> SO ORDERED.

In the Resolution dated May 11, 2016, the Court in Division denied petitioner's plea for reconsideration, for lack of merit.

Hence, this appeal through a Petition for Review filed before the Court *En Banc* on June 16, 2016, or within the extended period granted.

The sole issue raised by petitioner reads as follows:

> Whether the Second Division of the CTA erred in ordering petitioner to partially refund or issue a tax credit certificate in favor of respondent in the amount of ₱21,389,498.56 allegedly representing its excess and unutilized creditable withholding taxes for CY 2010.

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In his appeal, petitioner invokes Section 112 of the National Internal Revenue Code (NIRC), as amended, which pertains to claims for refund/tax credit of creditable input taxes to bolster its stance.

Petitioner claims that respondent failed to comply with the 120/30-day periods mandated under Section 112 of the NIRC warranting the dismissal of the latter's judicial claim for refund/tax credit.

Allegedly, Section 112 of the NIRC provides that respondent can only appeal to the Court in Division via petition for review within 30 days from receipt of an adverse decision or from the lapse of the 120 days for petitioner to act on the administrative claim. In this case however, there is nothing to elevate on appeal to the Court in Division as it is as if no administrative claim has been filed for failure of respondent to submit complete supporting documents in its administrative claim for refund/tax credit as required under Section 112 of the NIRC, as amended, giving him no basis to rule or render decision on its administrative claim. By depriving him of the opportunity to evaluate and decide on the claim due to incomplete supporting documents, respondent effectively failed to exhaust administrative remedies. Without a valid administrative claim to review, and with a condition precedent not complied with, the Court did not acquire jurisdiction over the judicial claim of respondent, says petitioner.

In response,[1] respondent argues that petitioner is erroneously invoking Section 112 of the NIRC, as amended which covers claims for refund of unutilized input VAT. It points out that the subject of its claim for refund is its excess and unutilized creditable withholding taxes (CWT).

Nevertheless, a slew of jurisprudence already holds that judicial claims for refund should not be denied merely on the ground that the taxpayer-claimant failed to submit complete supporting documents at the administrative level.

[1] Comment (Re: Petition For Review Dated June 15, 2016) dated August 12, 2016.

In fact, the taxpayer-claimant is allowed to elevate its claim for refund with the Court even if the petitioner has yet to issue a decision on the administrative claim if the prescriptive periods for filing judicial claims is about to lapse.

Even in cases of refunds under Section 112 of the NIRC being erroneously invoked by petitioner, non-submission of complete supporting documents at the administrative level is not fatal to the taxpayer's judicial claim for refund.

Respondent further states that complete supporting documents should be understood to refer to those documents in support of the claim to be determined by the taxpayer and not by petitioner, who may require documents which the taxpayer cannot submit, rendering any administrative claim pointless and ineffective.

The instant Petition was submitted for decision on December 2, 2016.[2]

THE RULING OF THE COURT

First, it must be emphasized that the instant case involves a claim for refund of excess and unutilized creditable withholding taxes (CWT) for the year 2010 filed by respondent under Section 76 of the NIRC, as amended.

While it appears that petitioner erroneously invokes Section 112 of the NIRC, as amended, the Court is not bound to rule solely on the basis of the law cited by a party in a case. Were it otherwise, the tax court's appellate power of review shall be rendered useless. An absurd situation would arise leaving the CTA with only two options, to wit: (a) affirming the CIR's legal findings; or (b) altogether absolving the taxpayer from liability if the CIR relied on misplaced legal provisions. The foregoing is not what the law intends.[3]

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[2] Resolution dated December 2, 2016.
[3] Pilmico-Mauri Foods Corp., vs. Commissioner of Internal Revenue, G.R. No. 175651, September 14, 2016.

Thus, the need to rule on the merits of the present appeal filed by petitioner CIR.

Jurisprudence has long held that under Section 8 of RA 1125, the CTA is described as a court of record. Given that cases filed with the CTA are litigated *de novo*, party litigants must prove every minute aspect of their cases. Evidence submitted to substantiate administrative claim for refund/tax credit, but not presented, identified and formally offered in evidence during the trial of the case in Court shall not be considered and given evidentiary weight.[4] In other words, only evidence presented before the Court, and not those at the administrative level, which will be taken into consideration in ruling the present judicial claim for refund of excess and unutilized CWT.

It is in keeping with this principle that the Supreme Court held that the Court of Tax Appeals is not precluded from accepting respondent's evidence assuming these were not presented at the administrative level. xxx xxx. Thus, respondent "should prove every minute aspect of its case by presenting, formally offering and submitting...to the Court of Tax Appeals [all evidence] ...required for the successful prosecution of [its] administrative claim."[5]

Further, petitioner failed to name or identify the particular document(s) and its purpose(s) necessary for him to act on and determine the merits of respondent's claim for refund/tax credit filed with the BIR. To be sure, without specifics, the Court has no way of determining the relevance of the document(s) to the claim for refund/tax credit, thus, it cannot simply accept the unsubstantiated argument of petitioner. As held by the Supreme Court in one case where it refused to entertain any argument by petitioner on an alleged lack of supporting documents without specifying the same, thus:

> The Court cannot simply accept the allegation of the CIR that Metrobank failed to submit the relevant

[4] Commissioner of Internal Revenue vs. Manila Mining Corporation, G.R. No. 153204, August 31, 2005; Dizon vs. CTA, G.R. No. 140944, April 30, 2008; Commissioner of Internal Revenue vs. United Salvage and Towage (Phils.), Inc., G.R. No. 197515, July 02, 2014.
[5] Commissioner of Internal Revenue vs. Philippine National Bank, G.R. No. 180290, September 29, 2014.

> supporting documents within 60 days from the filing of its protest on 17 January 2003, when the CIR does not even identify what these documents are. If the Court does not know what particular documents Metrobank purportedly failed to submit in support of its protest, then the Court likewise cannot make a determination on the relevance of such documents. In addition, there appear to be sufficient documents submitted by Metrobank to the CIR to have enabled the latter to render on 2 March 2004 a Decision on the protest of the former.[6]

In addition, it is the taxpayer who determines what documents to submit to substantiate its administrative claim. For "the BIR can only inform the taxpayer to submit additional documents. The BIR cannot demand what type of supporting documents should be submitted. Otherwise, a taxpayer will be at the mercy of the BIR, which may require the production of documents that a taxpayer cannot submit."[7]

Moreover, not a hint appears on the record that petitioner found respondent's documents inadequate for him to make ruling, and that he required respondent to submit additional documents. Again, the Final Arbiter, in one case ruled that if the BIR finds the documents submitted by a taxpayer at the administrative level insufficient, it should inform the taxpayer about it and request for the submission of additional documents. Otherwise, once the matter is elevated to the Court, only the evidence submitted to the Court, pursuant to the Rules of Court, will determine the outcome of the claim. Thus:

> Granting that the BIR found that the documents submitted by Total Gas were inadequate, it should have notified the latter of the inadequacy by sending it a request to produce the necessary documents in order to make a just and expeditious resolution of the claim.
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> Indeed, **a taxpayer's failure with the requirements listed under RMO No. 53-98 is not fatal to its claim for tax credit or refund of excess unutilized excess VAT**. This holds especially true when

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[6] Metropolitan Bank and Trust Co. vs. Commissioner of Internal Revenue, G.R. No. 178797, August 04, 2009.
[7] Commissioner of Internal Revenue vs. First Express Pawnshop, G.R. Nos. 172045-46, June 16, 2009.

> the application for tax credit or refund of excess unutilized excess VAT has arrived at the judicial level. After all, in the judicial level or when the case is elevated to the Court, the Rules of Court governs. Simply put, the question of whether the evidence submitted by a party is sufficient to warrant the granting of its prayer lies within the sound discretion and judgment of the Court.[8]

While the foregoing jurisprudence do not all pertain to claims for refund of CWT as in this case, the principle involved finds equal application in the instant Petition.

Evident from all the jurisprudence cited that there must be a notice from petitioner about the inadequacy of the documents submitted to him and the request for submission of additional supporting documents to substantiate the administrative claim. Otherwise, what was actually submitted, at the discretion of the taxpayer, would be deemed complete.

In this case, the matter was elevated to the Court in Division because petitioner failed to act on the claim at his level. Further, there is nothing in the record that even suggests that respondent was notified of the insufficiency of the documents it submitted and that it should submit further documents for the purpose. It is therefore not remote that the administrative remedy resorted to by respondent was not at all considered for action by petitioner.

This is precisely the reason that the High Court held that the evidence, or the lack thereof at the administrative level will not matter, once the case has reached the Court, especially when such appeal was due to the inaction of petitioner, as held in the previously cited case, as follows:

> A distinction must, thus, be made between administrative cases appealed due to inaction and those dismissed at the administrative level due to the failure of the taxpayer to submit supporting documents. If an administrative claim was dismissed by the CIR due to the taxpayer's failure to submit complete documents despite notice/request, then the judicial claim before the CTA

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[8] Pilipinas Total Gas, Inc. vs. Commissioner of Internal Revenue, G.R. No. 207112, December 8, 2015.

> would be dismissible, not for lack of jurisdiction, but for the taxpayer's failure to substantiate the claim at the administrative level. When a judicial claim for refund or tax credit in the CTA is an appeal of an unsuccessful administrative claim, the taxpayer has to convince the CTA that the CIR had no reason to deny its claim. It, thus, becomes imperative for the taxpayer to show the CTA that not only is he entitled under substantive law to his claim for refund or tax credit, but also that he satisfied all the documentary and evidentiary requirements for an administrative claim. It is, thus, crucial for a taxpayer in a judicial claim for refund or tax credit to show that its administrative claim should have been granted in the first place. Consequently, a taxpayer cannot cure its failure to submit a document requested by the BIR at the administrative level by filing the said document before the CTA.
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> In the present case, however, Total Gas filed its judicial claim due to the inaction of the BIR. Considering that the administrative claim was never acted upon; there was no decision for the CTA to review on appeal per se. Consequently, the CTA may give credence to all evidence presented by Total Gas, including those that may not have been submitted to the CIR as the case is being essentially decided in the first instance. The Total Gas must prove every minute aspect of its case by presenting and formally offering its evidence to the CTA, which must necessarily include whatever is required for the successful prosecution of an administrative claim.[9]

As to the completeness of the documents presented as evidence before the Court, let it be stressed that "in the judicial level or when the case is elevated to the Court, the Rules of Court governs. Simply put, the question of whether the evidence submitted by a party is sufficient to warrant the granting of its prayer lies within the sound discretion and judgment of the Court."

Based on the evidence presented, respondent was able to meet all the requirements that will entitle it to a refund/tax credit albeit, partially.

On a final note, since the finding and ruling of the Court in Division pertaining to respondent's entitlement to its claim, including the substantiation aspect and the computation of

[9] Id.

the final amount to be refunded as contained in the assailed Decision dated January 14, 2016 and the Resolution dated May 11, 2016, are uncontested, they will no longer be discussed nor reiterated, pursuant to Section 8, Rule 51 of the 1997 Rules of Civil Procedure which expressly provides:

> SEC. 8. *Questions that may be decided.* -- No error which does not affect the jurisdiction over the subject matter or the validity of the judgment appealed from or the proceedings therein will be considered unless stated in the assignment of errors, or closely related to or dependent on an assigned error and properly argued in the brief, save as the court pass upon plain errors and clerical errors.[10]

In the instant case, as petitioner never bothered to make any argument on the merits of the claim aside from its general allegation on the alleged inadequacy of the documents submitted at the administrative level, the ruling on the matter is deemed final, as pertains to both parties, who never appealed this aspect of the ruling of the Court in Division.

WHEREFORE, the Petition for Review dated June 15, 2016 filed by the Commissioner of Internal Revenue is hereby **DENIED**, for lack of merit.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

We Concur:

ROMAN G. DEL ROSARIO
Presiding Justice

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[10] PNB vs. Spouses Rabat, G.R. No. 134406, November 15, 2000.

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

ON LEAVE
ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
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