

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL
REVENUE,

Petitioner,

CTA EB NO. 3167
(CTA Case No. 10899)

Present:
RINGPIS-LIBAN, P.J.,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO,
CUI-DAVID,
FERRER-FLORES,
ANGELES,
TESTON, *and*
CENTENO-DIJAMCO, II.

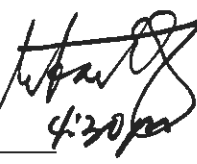
- versus -

CAL-COMP PRECISION (THAILAND)
LIMITED,

Respondent.

Promulgated:

AUG 13 2026



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DECISION

RINGPIS-LIBAN, P.J.:

Before this Court is the Petition for Review¹ filed by petitioner within the extended period on June 16, 2025, assailing the Decision² dated November 19, 2024, and Resolution³ dated May 8, 2025, promulgated by the First Division of this Court in CTA Case No. 10899, entitled *CAL-COMP Precision (Thailand) Limited vs. Commissioner of Internal Revenue*.

The dispositive portion of the Decision reads:

“**WHEREFORE**, the foregoing premises considered, the instant Petition for Review filed on 24 June 2022 by petitioner Cal-Comp Precision (Thailand) Limited is hereby **GRANTED**. Accordingly, respondent Commissioner of Internal Revenue is

¹ Rollo, pp. 9-27, with Annexes.
² Ibid., pp. 34-61.
³ Ibid., pp. 63-70.



ORDERED TO REFUND OR ISSUE A TAX CREDIT CERTIFICATE to petitioner the total amount of **P33,104,921.71**, representing the erroneously paid capital gains tax on its sale of Cal-Comp (Philippines), Inc.'s shares to Cal-Comp Precision (Singapore), by virtue of its exemption pursuant to the Philippines-Thailand Tax Treaty.

SO ORDERED.”

The dispositive portion of the Resolution reads:

“**WHEREFORE**, the foregoing premises considered, the “Motion for Reconsideration [Decision dated 19 November 2024]” filed by respondent Commissioner of Internal Revenue on 09 December 2024 is hereby **DENIED** for lack of merit.

SO ORDERED.”

THE PARTIES

Petitioner Commissioner of Internal Revenue (CIR), is the head of the Bureau of Internal Revenue (BIR) who is vested with the authority to carry out the functions, duties, and responsibilities of the said office including, inter alia, to decide disputed assessments, refunds of internal revenue taxes, fees and other charges, and penalties imposed in relation thereto, or other matters arising under the National Internal Revenue Code (NIRC) of 1997, as amended, or other laws or portions thereof administered by the BIR.⁴

Respondent Cal-Comp Precision (Thailand) Limited is a nonresident foreign corporation (NRFC) duly organized and existing under the laws of Thailand, with principal place of business at 4 Moo 8 Sethakij Road, Klomg Maduea Sub-district, Krathumbaen District, Samutsakhon 74110, Thailand. Based on the Certification of Non-Registration of Company from the Securities and Exchange Commission (SEC), respondent is not registered as a corporation, partnership or a One Person Corporation (OPC) in the Philippines.⁵

THE FACTS

The facts as found by the CTA Division are as follows:⁶

⁴ Decision, p. 2.

⁵ Ibid.

⁶ Ibid., pp. 35-41.

On 02 June 2020, petitioner and Cal-Comp Precision (Singapore) Limited (CPSG) executed a Share Transfer Agreement (STA) where petitioner transferred its legal and beneficial ownership of all its CPPH's shares in CPSG's favor, for a total consideration of \$55,097,897.46 or P2,795,667,317.12. Comp Precision (Philippines) Inc. (CPPH) is a corporation duly organized under the Philippine laws with principal office address at Lot 11 HY, Dimacali Avenue, FPIP II-SEZ, Barangay Sta. Anastacia, Sto. Tomas, Batangas. Petitioner owned about 24,645,681 of its common shares of stock with a par value of P100.00 *per share*.

The STA between petitioner and CPSG was notarized on 24 June 2020. As a result of the sale to CPSG, petitioner paid both Documentary Stamp Tax (DST) and CGT amounting to P18,484,260.75 and P33,104,921.71 (on the resulting net gain), respectively, on 26 June 2020.

On 20 June 2022, petitioner filed two (2) applications before the International Tax Affairs Division (ITAD) seeking for the refund of the allegedly erroneously paid CGT of P33,104,921.71. Petitioner filed the following: (1) "Tax Treaty Relief Application on Capital Gains", together with BIR Form No. 0901-C (Application for Treaty Purposes [Relief from Philippine Income Tax on capital Gains]); and, (2) "Request for Tax Refund in Relation to the Tax Treaty Relief Application on Capital Gains", together with BIR Form No. 1913 (Application for Refund of Excess Withholding Tax in Accordance with the Double Taxation Convention).

Petitioner anchored the aforesaid applications on its alleged tax exemption pursuant to Article 13(4) in relation to Article 13(5) of the "Convention between the Government of the Republic of the Philippines and the Government of the Kingdom of Thailand for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income" (Philippines-Thailand Tax Treaty) signed on 21 June 2013.

With the ITAD not acting on petitioner's applications, the latter then filed the instant Petition for Review before this Court on 24 June 2022. The petition was raffled to the Second Division and was docketed as CTA Case No. 10899.

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On 27 June 2022, Summons was issued to respondent. Thereafter on 30 August 2022 and within the allowed extended period, respondent filed his or her Answer.



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On 12 September 2022, respondent transmitted the BIR records (consisting of one [1] folder) to this Court. On 14 September 2022, the Court issued a Notice of Pre-Trial Conference and scheduled the hearing on 01 December 2022. Prior to the said hearing, respondent filed his or her Pre-Trial Brief on 24 November 2022, while petitioner filed its Pre-Trial Brief on 28 November 2022.

During the Pre-Trial proper, the Second Division granted the parties a period of 45 days to file their Joint Stipulation of Facts and Issues (JSFI). After the parties submitted their JSFI, the Court issued a Pre-Trial Order that adopted the parties' JSFI.

In the interim, the case was transferred to the First Division. In the trial that ensued thereafter, petitioner presented two (2) witnesses, namely: (1) Her, Shih-Chang (Shih-Chang), CPPH's Finance Director; and, (2) Nikkolai F. Canceran (Canceran), a partner in Punongbayan & Araullo (P&A), the firm that handled petitioner's tax treaty relief applications in the administrative level.

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Xxx xxx xxx. Moreover, after the First Division noted respondent's manifestation that he or she will no longer present any witness, it gave the parties thirty (30) days to file their respective memoranda after receipt of the resolution of petitioner's FOE.

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Thereafter, complying with the First Division's directive, petitioner filed its Memorandum on 16 November 2023, while respondent filed his or her Memorandum on 17 November 2023. In the Minute Resolution of 28 November 2023, the case was submitted for decision."

On November 19, 2024, the Court in Division issued the assailed Decision.

On December 9, 2024, petitioner filed by his Motion for Reconsideration seeking reconsideration of the Decision dated November 19, 2024.

On January 27, 2025, respondent filed its Comment/Opposition on the Motion for Reconsideration.



On May 8, 2025, the Court in Division issued the assailed Resolution.

On May 28, 2025, the Court *En Banc* received petitioner's "Motion for Extension of Time to File Petition for Review,"⁷ praying for an extension of fifteen (15) days from May 30, 2025 or until June 14, 2025, within which to file the Petition for Review.

On May 30, 2025, the Court *En Banc* issued a Minute Resolution,⁸ granting petitioner's "Motion for Extension of Time to File Petition for Review."

On June 16, 2026, petitioner filed the instant Petition for Review.⁹

On June 23, 2025, petitioner filed his "Submission"¹⁰ stating that due to inadvertence, only a photocopy of the May 8, 2025 resolution was attached to the Petition for Review filed on June 16, 2025. Hence, petitioner submits the original copy of the May 8, 2025 Resolution.

On July 25, 2025, the Court *En Banc* issued a Minute Resolution¹¹ which noted petitioner's "Submission" and directed petitioner to submit proof of authority to file the Petition for Review, within five (5) days from notice.

On July 31, 2025, the Court received petitioner's "Compliance" with attached Memorandum of Agreement dated March 17, 2010, between the Bureau of Internal Revenue (BIR) and the Office of the Solicitor General (OSG).

On September 11, 2025, the Court *En Banc* issued a Minute Resolution¹² white noted the "Compliance" and directed respondent to file Comment, not a Motion to Dismiss, within ten (10) days from notice.

On September 23, 2025, the Court *En Banc* received respondent's "Comment/Opposition [Re: Petitioner's Petition for Review dated 13 June 2025]."¹³

On October 28, 2025, the Court *En Banc* noted respondent's "Comment Comment/Opposition [Re: Petitioner's Petition for Review dated 13 June 2025]," and ordered the instant case submitted for decision.¹⁴

⁷ CTA EB No. 3167, pp. 1-5.

⁸ Ibid., p. 8.

⁹ Ibid., pp. 9-27, with Annexes. The last day to file the Petition for Review was on June 14, 2025, a Saturday. Hence, the Petition for Review was filed on June 16, 2025, a Monday.

¹⁰ Ibid., pp. 72-75, with Annexes.

¹¹ Ibid., p. 87.

¹² Ibid., p. 99.

¹³ Ibid., pp. 101-119.

¹⁴ Ibid., p. 123.

THE ASSIGNMENT OF ERRORS

Petitioner raises the following errors of the Court in Division, *viz.*:

1. The Court in Division erred in assuming jurisdiction over respondent's original petition; and
2. The Court in Division erred in ruling that respondent is entitled to tax refund or issuance of a Tax Credit Certificate.

THE ARGUMENTS

Petitioner claims that the Court in Division erred in assuming jurisdiction over respondent's Petition for Review due to respondent's failure to exhaust administrative remedies before elevating the case to the Court. There was no allegation that there has been a denial of the claim for administrative refund of respondent. Moreover, there was no inaction on the part of petitioner because at the time of filing of the Petition for Review, mere three (3) days have passed from the filing of the Tax Treaty Relief Application (TTRA) and administrative claim for refund. Petitioner has yet to decide respondent's administrative claims. Hence, the Court in Division erred in assuming jurisdiction over respondent's premature filing of judicial claim for refund.

Furthermore, petitioner insists that the Court in Division erred in ruling that respondent is entitled to a refund or issuance of a tax credit certificate since respondent failed to prove its entitlement to tax treaty relief. Respondent did not provide supporting documents which would show that Cal-Comp (Philippines), Inc. (CPPH) is a company that does not principally consists of immovable property situated in the Philippines as of the date of sale. Thus, it failed to substantiate its administrative claim for entitlement to treaty benefits and refund filed before petitioner.

Conversely, respondent submits that the Court properly assumed jurisdiction over its original Petition for Review before the Court in Division. There is no requirement both in law and regulations that respondent must wait for the decision of the BIR before it can file the Petition for Review with the Court. Thus, the doctrine of exhaustion of administrative remedies shall not apply in this case.

Respondent also opines that the Court in Division correctly ruled that respondent is entitled to the tax refund or issuance of a tax credit certificate. It submitted to the Court in Division the Certificate of Entitlement dated September 16, 2022, issued by the International Tax Affairs Division of the BIR, which confirmed that respondent is entitled to treaty benefits for the transaction subject of this case.



Respondent further asserts that the instant Petition for Review is a mere rehash of petitioner's Motion for Reconsideration filed before the Court in Division. There were no substantial issues raised in the instant Petition for Review, or arguments raised which were not addressed by the Court in Division in assailed Decision and assailed Resolution.

THE RULING OF THE COURT *EN BANC*

Timeliness of the Petition for Review

On November 22, 2024, petitioner received the assailed Decision dated November 19, 2024. On December 9, 2024, petitioner filed a Motion for Reconsideration of the said Decision. On May 8, 2025, the Court in Division issued the assailed Resolution denying petitioner's motion. Said Resolution was received by petitioner on May 15, 2025.

From receipt of the said Resolution on May 15, 2025, petitioner had until May 30, 2025 within which to file the Petition for Review before the Court *En Banc*. However, on May 28, 2025, petitioner filed a "Motion for Extension of Time to File Petition for Review,"¹⁵ praying for an additional period of fifteen (15) days for May 30, 2025, or until June 14, 2025 within which to file the Petition for Review.

The "Petition for Review" was filed on June 16, 2025. Hence, this Petition for Review was timely filed.

The Court in Division correctly granted the Petition for refund of erroneously paid CGT in the total amount of Php33, 104,921.71.

The issues raised in this Petition are mere reiterations of the same issues which had already been duly considered, passed upon and resolved by the First Division in the assailed Decision and assailed Resolution. In fact, petitioner's instant Petition for Review is an exact replica of the pleadings he filed with the Court in Division - in particular, his Motion for Reconsideration of the Decision. Nevertheless, this Court shall discuss the issues anew if only to reinforce the earlier disquisition of the Court in Division.

Time and again this Court has declared that in order to recover tax erroneously paid or illegally collected, the taxpayer-claimant must comply with

¹⁵ Rollo, pp. 1-4.

the following requisites under Sections 204(C)¹⁶ and 229¹⁷ of the NIRC of 1997, as amended:

- 1) the tax has been erroneously or illegally collected, or the penalty has been collected without authority, and/ or any sum has been excessively or in any manner wrongfully collected, and
- 2) the claim for refund or credit has been filed within two (2) years from the date of payment of tax, or penalty, regardless of any supervening cause that may arise after payment.

The Decision of the Court in Division in the assailed Decision is apt and correct as to its finding that both its administrative and judicial claims for refund were seasonably instituted by respondent. Respondent does not need to await petitioner's Decision on the claim for refund before he or she can file the judicial claim. The law does not impose any definite waiting period within which the CIR must first act on the administrative claim before a judicial claim may be instituted. Thus, respondent did not violate the doctrine of exhaustion of administrative remedies.

As pointed out by the Court in Division in the assailed Decision:¹⁸

“In the case at bar, the CGT was paid on 26 June 2020 as shown in the machine validation portion of the deposit slip. Counting two (2) years therefrom, petitioner's last day to file its administrative and judicial claims was on 26 June 2022. Thus, petitioner seasonably filed its claims for refund when it filed its administrative and judicial claims on 20 June 2022 and 24 June 2022, respectively.”

¹⁶ “SEC. 204. Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes. - The Commissioner may -

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(c) Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two (2) years after the payment of the tax or penalty: Provided, however, that a return filed showing an overpayment shall be considered as a written claim for credit or refund.”

¹⁷ “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 supervening cause that may arise after payment: Provided, however, That the Commissioner may, even without 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.”

¹⁸ Decision, p. 12.

In *Commissioner of Internal Revenue v. Estate of Mr. Charles Marvin Romig, represented by its Sole Heir Mrs. Marice/ Narciso Romig*¹⁹ the Supreme Court categorically held that:

“It is of no moment that there is only a short interval between the filing of the two claims. The law merely requires that both claims are filed within the two-year period. In *Commissioner of Internal Revenue v. Carrier Air Conditioning Philippines, Inc.*, where therein petitioner similarly argued that the judicial claim for refund, which was filed barely 10 days from the filing of the administrative claim, was premature and violative of the doctrine of exhaustion of administrative remedies, this Court held that, 'from the plain language of the law, it **does not matter how far apart the administrative and judicial claims were filed, or whether the [CIR] was actually able to rule on the administrative claim, so long as both claims were filed within the two-year prescriptive period.**' Moreover, the Court agrees with the finding of the CTA Second Division and CTA En Banc that the Estate's immediate resort to court action was justified, considering that the prescriptive period was about to expire.” (*Emphasis supplied*)

We are one with the Court in Division in its finding that CPTH is a tax resident of Thailand and that CPPH's assets do not consist principally of immovable property. The net capital gain derived from the sale of the common shares of stock of CPPH to CPSG is outside the taxing jurisdiction of the Philippines, pursuant to Article 13(4) in relation to Article 13(5) of the Philippines-Thailand Tax Treaty.²⁰

As aptly discussed in the Assailed Resolution:²¹

As for [petitioner's] second argument, apart from the repeated allegation, he or she does not present any contrary proof that CPPH's assets principally consist of immovable properties in the Philippines. He or she only insists that [respondent] should have presented documents as of the date of sale, *i.e.*, 02 June 2020. However, Section 4 of RR No. 4-86 allows for the presentation of

¹⁹ G.R. No. 262092, October 9, 2024. Citations omitted.

²⁰ Article 13. Gains

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4. Gains from the alienation of shares of a company, the property of which consists principally of immovable property situated in a Contracting State, may be taxed in that State. Gains from the alienation of an interest in a partnership or a trust, the property of which consists principally of immovable property situated in a Contracting State, may be taxed in that State.

5. Gains from the alienation of any property other than those mentioned in paragraphs 1,2 3,4 of this Article and paragraph 3 of article 12 (Royalties) shall be taxable only in the Contracting State of which the alienator is a resident.

²¹ Resolution, pp. 68-69. Citations omitted.

the most recent financial statement after the necessary adjustments are made to reflect transactions made during the period from the date of such financial statement to the date of the sale.

In this case, [respondent] submitted CPPH's AFS for the year ended 31 December 2019, CPPH's Interim FS as of 31 May 2020, and CPPH's Lapsing Schedule as of 31 May 2020 to establish that CPPH's assets do not consist principally of real property interests or immovable properties located in the Philippines. Although admittedly there is a two (2) day variance from the date of the Interim AFS and Lapsing Schedule, to the date of sale, [petitioner] did not present any evidence to show that significant transactions may have occurred on 01 June 2020 and 02 June 2020 to materially alter the composition of CPPH's the immovable assets. In civil cases, the burden of proof rests upon the plaintiff who must establish their case by preponderance of evidence. Preponderance of evidence is the evidence that is of greater weight, or more convincing, than the evidence offered in opposition to it. It is proof that leads the trier of facts to find that the existence of the contested fact is more probable than its non-existence. Once the plaintiff makes out a *prima facie* case in his or her favor in the course of the trial, however, the duty or the burden of evidence shifts to the defendant to controvert plaintiff's *prima facie* case, otherwise, a verdict must be returned in favor of plaintiff."

From all the foregoing, respondent has sufficiently established its entitlement to a refund or issuance of a tax credit certificate on the erroneously paid CGT. This Court finds no cogent reason to disturb the findings found by the Court in Division.

Petitioner cannot shield itself from the principle that claims for refund are to be construed *strictissimi juris* against the taxpayer and liberally in favor of the taxing authority, for respondent was able to successfully overcome this burden.

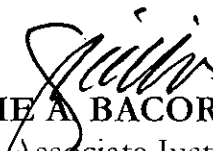
ACCORDINGLY, the Petition for Review is **DENIED** for lack of merit. The assailed Decision dated November 19, 2024 and the assailed resolution dated May 8, 2025 are **AFFIRMED**.

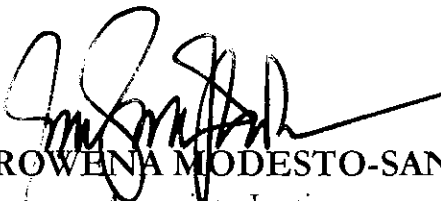
SO ORDERED.



MA. BELEN M. RINGPIS-LIBAN
Presiding Justice

WE CONCUR:


JEAN MARIE A. BACORRO-VILLENA
Associate Justice


MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice


MARIAN IVY F. REYES-FAJARDO
Associate Justice


LANEE S. CUI-DAVID
Associate Justice


CORAZON G. FERRER-FLORES
Associate Justice


HENRY S. ANGELES
Associate Justice

Took no part
PAOLO S. TESTON
Associate Justice

Took no part
DEBBIE JEAN I. CENTENO-DIJAMCO
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.



MA. BELEN M. RINGPIS-LIBAN
Presiding Justice