REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

EN BANC

CROMA MEDIC, INC.,
Petitioner,

CTA EB NO. 2213
(CTA Case No. 9584)

- versus -

Present:

DEL ROSARIO, *P.J.*,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO,
CUI-DAVID,
FERRER-FLORES, *and*
ANGELES, *JJ.*

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
JAN 23 2024
2:07 p.m.

x - x

RESOLUTION

BACORRO-VILLENA, J.:

For the Court's resolution is petitioner Croma Medic, Inc.'s (**petitioner**'s/**CMI**'s) "Motion for Reconsideration"[1] (**MR**), with respondent Commissioner of Internal Revenue's (**respondent**'s/**CIR**'s) "Comment/Opposition (Re: Petitioner's Motion for Reconsideration dated 04 July 2023)"[2] (**Comment/Opposition**).[3]

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[1] Filed on 04 July 2023, *Rollo*, pp. 148-194, with annexes.
[2] Id., pp. 198-202.
[3] Filed *via* registered mail on 14 August 2023 and received by the Court on 23 August 2023.

In the present MR, petitioner seeks the reversal of the Court *En Banc*'s Decision in the above-captioned case dated 13 June 2023[4] (**assailed Decision**). The dispositive portion of which reads:

> ...
>
> **WHEREFORE**, premises considered, the present Petition for Review filed by petitioner Croma Medic, Inc. on 21 January 2020 is hereby **DENIED** for lack of merit. Accordingly, the Special Second Division's Decision dated 16 August 2019 and Resolution dated 18 December 2019, respectively, in CTA Case No. 9584 entitled *Croma Medic, Inc. v. Commissioner of Internal Revenue*, are hereby **AFFIRMED** as to the result.
>
> **SO ORDERED.**
>
> ...

Petitioner argues that the Court *En Banc* committed the following reversible errors:

1. Contrary to the Court *En Banc*'s findings, petitioner was able to present evidence of compliance with the residency requirement of BEPHA Beteiligungsgesellschaft fur Pharmawerte mbH ("**BEPHA**", for brevity), the recipient of the subject dividends, pursuant to Article 10(1) of the *Double Taxation Avoidance Agreement between the Philippines and Germany* (**Philippines-Germany Tax Treaty**), as amended[5], and this fact is supported by no less than the Acknowledgment Receipt dated 03 June 2016 (admitted in evidence as Exhibit "P-6"[6]);

2. Petitioner likewise was able to establish and prove that BEPHA, the recipient of the subject dividends, does not carry on business in the Philippines pursuant to Article 10(4) of the Philippines-Germany Tax Treaty, as amended, as evidenced by the same Acknowledgment Receipt dated 03 June 2016 admitted in evidence as Exhibit "P-6"; and,

3. Respondent even acknowledged the receipt of the original of the documents proving petitioner's compliance with the residency requirement of BEPHA and the fact that BEPHA

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4 *Rollo*, pp. 120-143.
5 Exhibit "P-2", Division Docket, pp. 38-80.
6 Id., p. 86.

> does not carry on business in the Philippines pursuant to Articles 10(1) and (4) of the Philippines-Germany Tax Treaty, as amended, that even led the Bureau of Internal Revenue (**BIR**) to, though belatedly, approve its Tax Treaty Relief Application (**TTRA**) for Dividend Income (BIR Form No. 0901-D)[7] filed with the BIR International Tax Affairs Division (**ITAD**).

Petitioner essentially contends that the Court *En Banc* might have overlooked its compliance with the stipulations of the Philippines-Germany Tax Treaty, as amended[8]. Such compliance is purportedly substantiated by the BIR's Acknowledgement Receipt dated 03 June 2016 (*i.e.*, Exhibit "P-6"[9]), which confirms receipt of the original documents that petitioner submitted relating to its TTRA on the subject dividend declaration of ₱32,000,000.00 in BEPHA's favor. These documents include BEPHA's 'Consularized Certificate of Residency' and 'Certificate of Non-Registration of Company'. Thus, petitioner maintains that it was able to provide adequate proof that BEPHA is a resident of Germany and that it does not carry business in the Philippines. Petitioner also points out that respondent never contested or disputed these submissions during the proceedings before the Court in Division.

Petitioner further claims that during the pendency of the instant petition before the Court *En Banc*, respondent issued a Letter dated 28 February 2020[10] (**Approval Letter**). This letter confirmed petitioner's compliance with the requirement of residency, among other requirements, necessary to be eligible for a tax refund on the final withholding tax (**FWT**) remitted by petitioner on the dividends. It even categorically approved its refund claim. However, the Court *En Banc* denied admission of the said Approval Letter in its Resolution dated 09 June 2021[11] for being "merely corroborative of the findings made by the Court in Division and, as such, will not alter the Decision dated 16 August 2019."

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[7] Exhibit "P-5-a", id., p. 85.
[8] Exhibit "P-2", supra at note 5.
[9] Supra at note 6.
[10] Annex "A" to Petitioner's Manifestation and Motion to Admit New Evidence in Support of the Petition, *Rollo*, pp. 60-65.
[11] Id., pp. 74-77.

On the other hand, respondent, in his or her Comment/ Opposition[12], asserts that petitioner's argument cannot be given credence as the aforementioned Acknowledgement Receipt in itself does not in any way prove that BEPHA is a resident of Germany and that it is not doing business in the Philippines as required under Article 10(4) of the Philippines-Germany Tax Treaty, as amended. Furthermore, respondent points out that the document does not even show that petitioner submitted the same to the BIR. Also, nowhere in the said document does it indicate that the 'Consularized Certificate of Residency' and 'Certificate of Non-Registration of Company' (that the BIR allegedly received) pertain to that of BEPHA.

Respondent further argues that, as cases before the Court of Tax Appeals (**CTA**) are litigated *de novo*, it is incumbent upon petitioner to demonstrate compliance with each of the requisites for the grant of a refund. The absence of any such requisite is a valid ground for denying the refund claim. In this context, respondent emphasizes that, as found by the Court in Division, petitioner failed to present evidence that would show how much FWT were withheld and remitted by petitioner on the dividends it declared in BEPHA's favor. Additionally, the Court *En Banc* found that petitioner failed to establish that BEPHA is a non-resident foreign corporation (**NRFC**) entitled to avail of the preferential tax rates under the Philippines-Germany Tax Treaty, as amended.

We rule below.

Contrary to petitioner's contention and as explained in the assailed Decision, there is nothing in the records of this case that established that BEPHA, the beneficial owner of the subject dividends, is a resident of Germany or subject to tax in Germany. Again, this is because petitioner did *not* offer in evidence either BEPHA's Proof of Residency or Articles of Incorporation (**AOI**). As the records show clearly, it relied solely on its General Information Sheet[13] (**GIS**) declaration that BEPHA's nationality is German. Contrary to the Special Second Division's finding, petitioner's GIS and the unrebutted testimony of petitioner's lone witness[14] (Ocampo) indicating that

[12] Supra at note 2.
[13] Exhibit "P-1", Division Docket, pp. 28-37.
[14] Answer to Question No. 9, Judicial Affidavit of Elizabeth P. Ocampo dated 22 August 2017, id., p. 126.

BEPHA is a German company, do not suffice to establish that BEPHA is a resident of Germany. If anything, these are merely self-serving.

It was also clarified in the assailed Decision[15] that, even assuming for the sake of argument that there is enough evidence to establish that BEPHA is a resident of Germany, petitioner still failed to satisfy the requirements for entitlement to the said preferential tax on dividends. As it is, petitioner also did not offer any evidence to show that BEPHA does not do business in the Philippines, as required under Article 10(4) of the Philippines-Germany Tax Treaty.[16]

Moreover, the Court *En Banc* finds no merit in petitioner's contention that the BIR's Acknowledgement Receipt dated 03 June 2016 (*i.e.*, Exhibit "P-6"[17]) should suffice to establish that BEPHA is a resident of Germany and does not do business in the Philippines. As respondent correctly argued, although the said Acknowledgement Receipt lists the 'Consularized Certificate of Residency' and the 'Certificate of Non-Registration of Company', the receipt alone, without the original or certified true copies of the actual documents being presented as evidence, fails to substantiate the contents of those documents. At most, it only proves that the BIR received those documents.

Additionally, it is worth noting and as also pointed out by respondent, the 'Consularized Certificate of Residency' and the 'Certificate of Non-Registration of Company' listed in the aforementioned Acknowledgement Receipt do not expressly refer to BEPHA. This deficiency further demonstrates that petitioner failed to overcome its burden of proof in this case.

It must be emphasized that cases filed before the CTA are litigated *de novo*.[18] As such, parties are expected to litigate and prove every minute aspect of their case anew by presenting, formally offering, and submitting to the CTA all evidence required for the successful prosecution of its claim.[19] Consequently, petitioner must competently establish its claim for input value-added tax (**VAT**) refund or tax credit.

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15 Supra at note 4.

16 Exhibit "P-2", Division Docket, pp. 38-80.

17 Supra at note 6.

18 *Commissioner of Internal Revenue v. Univation Motor Philippines, Inc. (formerly Nissan Motor Philippines, Inc.)*, G.R. No. 231581, 10 April 2019.

19 Id.; *Philippine Airlines, Inc. v. Commissioner of Internal Revenue*, G.R. Nos. 206079-80, 17 January 2018.

Accordingly, petitioner should have offered in evidence during the trial BEPHA's 'Consularized Certificate of Residency' and 'Certificate of Non-Registration of Company', rather than merely relying on the aforementioned Acknowledgement Receipt to prove, as a matter of fact, that BEPHA is a resident of Germany and does not conduct business in the Philippines.

As regards respondent's Approval Letter[20], which the Court *En Banc* denied admission in its Resolution dated 09 June 2021[21], the Court *En Banc* subsequently affirmed such denial in its Resolution dated 13 June 2022[22]. We quote, for emphasis, the Court *En Banc*'s disquisition as to why the Approval Letter cannot be admitted as newly discovered evidence, *viz*:

> ...
>
> Unfortunately for petitioner, while **respondent's Approval Letter** (which proves the amount of dividend declared of **₱32,000,000.00**, taken together with **BEPHA's Email Confirmation**[23] which indicates that petitioner remitted and/or deposited to BEPHA's account only the amount of **₱30,400,000.00**) and **respondent's Certifications dated 04 May 2016**[24] **and 03 May 2017**[25] (which prove that petitioner paid the amount of **₱3,200,000.00** as Final Withholding Tax [**FWT**]) seemingly suggests that petitioner erroneously withheld and remitted to respondent the difference of ₱1,600,000.00[26], petitioner is still unable to show that the said **<u>amount paid actually pertains to the FWT on dividends</u>**.
>
> As explained in the assailed Decision[27], by failing to provide the Original Monthly Remittance Return of Final Income Taxes Withheld (BIR Form No. 1601F) for the month of March 2016, with the corresponding payment confirmation receipt filed through the Electronic Filing and Payment System (**eFPS**), the Court cannot

[20] Supra at note 10.
[21] Supra at note 11.
[22] *Rollo*, pp. 104-111.
[23] Exhibit "P-10", Division Docket, p. 90.
[24] Exhibit "P-4", id., p. 83.
[25] Exhibit "P-4-a", id., p. 361.
[26]

Amount of Dividend Declared	₱32,000,000.00
Less: Amount Remitted/Deposited to BEPHA's Account	30,400,000.00
Final Withholding Tax Required to be Withheld (5%)	**₱1,600,000.00**
Final Withholding Tax Paid/Remitted to Respondent (10%)	₱3,200,000.00
Less: Final Withholding Tax Required to be Withheld (5%)	1,600,000.00
Overpayment	**₱1,600,000.00**

[27] Division Docket, pp. 403-413; Penned by Hon. Associate Justice Juanito C. Castañeda, Jr. (Ret.) with Hon. Associate Justice Catherine T. Manahan, concurring.

> clearly ascertain how much final tax had petitioner withheld and remitted on its dividends.[28]
>
> ...

Based on the foregoing, the Court *En Banc* found no sufficient basis to grant a new trial on the ground of newly discovered evidence as petitioner failed to show that the subject Approval Letter is not merely corroborative of the findings made by the Court in Division and that it is of such weight that it would or could change the judgment if admitted.

Even assuming for the sake of argument that the Court *En Banc* admitted the aforementioned Approval Letter[29], this does not change the fact that petitioner did not present either the original or certified true copies of BEPHA's 'Consularized Certificate of Residency' and 'Certificate of Non-Registration of Company'. These documents which were submitted to the BIR (in relation to its TTRA concerning the subject dividend declaration of ₱32,000,000.00 in favor of BEPHA) are crucial. This is because the Court in Division, being a court of record[30], must necessarily review and evaluate the pieces of evidence presented at the administrative level.

Well-settled is the rule that tax refunds are in the nature of tax exemptions. As such, they are regarded as derogation of sovereign authority and to be construed *strictissimi juris* against the person or entity claiming the refund.[31] Tax refund cannot be allowed unless granted in the most explicit and categorical language and is strictly construed against the claimant who must discharge such burden convincingly.[32] Petitioner has the burden of proof to establish the factual basis of its claim for tax refund. Having failed to discharge said burden of proof, the instant refund claim must perforce be denied.

In sum, the Court *En Banc* finds no cogent reason to modify or disturb the assailed Decision.

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28 Emphasis and underscoring in the original text.
29 Supra at note 10.
30 Section 8 of Republic Act No. 1125, as amended.
31 *Commissioner of Internal Revenue vs. S.C. Johnson and Son, Inc.*, G.R. No. 127105, 25 June 1999.
32 *The Commissioner of Internal Revenue v. Acesite (Philippines) Hotel Corporation*, G.R. No. 147295, 06 February 2007.

WHEREFORE, with the foregoing, petitioner Croma Medic, Inc.'s Motion for Reconsideration, filed on 04 July 2023, is **DENIED** for lack of merit.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

Marian Ivy F. Reyes-Fajardo
MARIAN IVY F. REYES-FAJARDO
Associate Justice

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LANEE S. CUI-DAVID
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice

HENRY S. ANGELES
Associate Justice