REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	**CTA *EB* NO. 1921** (CTA Case No. 9011)
	Present:
-*versus*-	**DEL ROSARIO,** *P.J.*, **CASTAÑEDA, JR., UY, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA,** *and* **MODESTO-SAN PEDRO,** *JJ.*
	Promulgated:
DOLE FOOD COMPANY, INC., *Respondent.*	FEB 03 2020 3:25 p.m.

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DECISION

MANAHAN, J.:

This resolves the *Petition for Review*[1] (PFR) filed by the Commissioner of Internal Revenue (CIR) on September 13, 2018 pursuant to Section 3(b), Rule 8 of the Revised Rules of the Court of Tax Appeals (RRCTA), as amended,[2], which prays for the reversal and setting aside of the April 13, 2018 *Decision*[3] and August 6, 2018 *Resolution*[4] promulgated by the Third Division of the Court of Tax Appeals (CTA) in CTA Case No. 9011 entitled "*Dole Food Company, Inc. vs. Commissioner*

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[1] *Rollo*, CTA EB No. 1921, pp. 7-16.

[2] Rules of the Court of Tax Appeals – approved by the Supreme Court on November 22, 2005 (A.M. No. 05-11-07-CTA); Amendments to the 2005 Rules of Court of the Court of Tax Appeals – approved by the Supreme Court on September 16, 2008 (A.M. No. 05-11-07-CTA; and Additional Amendments to the 2005 Revised Rules of the Court of Tax Appeals – approved by the Supreme Court on February 10, 2009 (A.M. No. 05-11-07-CTA).

[3] *Rollo*, pp. 22-38.

[4] *Id.*, pp. 39-45.

of Internal Revenue", and the rendition of judgment denying respondent's claim for refund.

The dispositive portions of the assailed *Decision* and *Resolution* read:

Decision[5] dated April 13, 2018:

> "**WHEREFORE**, the Petition for Review filed by Dole Food Company, Inc. on March 19, 2015, is hereby **GRANTED**. Accordingly, respondent is hereby **ORDERED TO REFUND** in favor of petitioner the amount of **₱166,733,230.00** representing erroneously paid capital gains tax from the sale of petitioner's shares of stock in Dole Philippines, Inc. to Dole Asia Holdings Pte. Ltd.
>
> **SO ORDERED**."

Resolution[6] dated August 6, 2018:

> "**WHEREFORE**, the *Motion for Reconsideration Re: Decision dated April 13, 2018* filed by respondent Commissioner of Internal Revenue is hereby **DENIED**, for lack of merit.
>
> **SO ORDERED**."

The Facts

As culled from the records of this case, petitioner CIR is the Commissioner of the Bureau of Internal Revenue (BIR) vested with power to act upon and approve claims for refund or tax credit as provided by law. He holds office at the 5th Floor, BIR National Office Building, Agham Road, Diliman, Quezon City.[7]

Respondent Dole Food Company, Inc. (DFCI), on the other hand, is a non-resident foreign corporation organized and existing under the laws of Delaware, United States of America. Its principal address is 2711 Centerville Road, Suite 400, Wilmington City, New Castle County, Delaware, USA.[8]

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[5] *Supra*, Note 3.
[6] *Supra*, Note 4.
[7] *Rollo*, Decision dated April 13, 2018, p. 23.
[8] *Id.*, p. 22.

Respondent DFCI owns 11.87% of the total shareholdings of Dole Philippines, Inc. (DPI), equivalent to 28,170,000 Common B shares out of DPI's authorized capital stock of 252,812,000 common shares.[9]

DPI is a domestic corporation, with principal office address at Polomolok, South Cotabato and business address at 5th floor, 6750 Office Tower, Ayala Avenue, Makati City. It is engaged in the business of production, processing, marketing, export and sale of pineapple products, bananas and other agricultural products.[10]

On February 19, 2013, a Share Transfer Agreement was entered into by and between respondent DFCI and Dole Asia Holdings Pte. Ltd. (DAHL), a Singaporean private limited company, with principal office address at One Raffles Quay Level #37-01, North Tower, Singapore. In the said Agreement, respondent DFCI sold and transferred to DAHL all its rights, title and interests in and to the 28,170,000 Common B Shares in DPI, for a purchase price of P1,949,082,300.00.[11]

Thereafter, or on March 4, 2013, respondent DFCI filed an Application for Tax Treaty Relief with the BIR International Tax Affairs Division (ITAD) requesting confirmation of the exemption of the sale of its DPI shares to DAHL from capital gains tax (CGT) pursuant to the Republic of the Philippines - United States Tax Treaty (RP-US Tax Treaty).[12]

On March 21, 2013, respondent DFCI filed its CGT return and correspondingly paid the amount of P166, 733,230.00[13]

On April 5, 2013, respondent DFCI secured the Certificate Authorizing Registration (CAR) and Tax Clearance on the subject sale of shares.[14]

On October 1, 2014, on the belief that the sale and transfer of its DPI shares to DAHL was exempt from CGT under the RP-US Tax Treaty, respondent DFCI filed with the

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[9] *Rollo*, Decision dated April 13, 2018, p. 23.
[10] *Id.*
[11] *Id.*
[12] *Id.*
[13] *Id.*
[14] *Id.*

BIR an Application for Tax Credits/Refunds to recover its alleged erroneously paid CGT.[15]

On March 19, 2015, respondent DFCI filed a Petition for Review claiming inaction on the part of petitioner CIR on its claim for refund or issuance of tax credit certificate (TCC).

After the trial of the case in the Court in Division, the latter ruled in favor of respondent DFCI's claim for refund under the assailed decision. Hence, petitioner CIR moved for the reconsideration of said decision. However, the Court in Division denied anew petitioner CIR's motion under the assailed resolution.

Thus, petitioner CIR filed the instant PFR[16] on September 13, 2018. On November 22, 2018, respondent DFCI was ordered by this Court to submit its Comment on the said petition.[17]

On January 4, 2019, respondent DFCI submitted a *Memorandum*[18] as its comment on said PFR. On January 4, 2019, petitioner CIR filed a *Manifestation*[19] stating that he is adopting his arguments raised in the PFR as his Memorandum.

Thus, in view of such submissions, this Court deemed the case submitted for decision.[20]

The Issues

The sole issue that can be derived from the cited grounds[21] in the instant petition is:

> Whether the Court in Division erred in granting respondent's claim for refund of the alleged erroneously paid CGT on the sale of respondent DFCI's shares of stock in DPI to DAHL.

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[15] *Rollo*, Decision dated April 13, 2018, p. 23
[16] *Supra*, Note 1.
[17] *Rollo*, Resolution dated November 22, 2018, pp. 69-70.
[18] *Id.*, pp. 71-100.
[19] *Id.*, pp. 101-102.
[20] *Id.*, Resolution dated February 7, 2019.
[21] *Id.*, Petition for Review, pp. 9-10.

Arguments of Petitioner[22]

Petitioner CIR argues that respondent DFCI failed to duly substantiate its claim for refund in the administrative level by failing to submit its financial statements (FS) for the year 2012.

Petitioner CIR further argues that the value of the property, plant and equipment must be based on their fair market value at the time of the sale and Certification No.16-016 dated December 8, 2016 must not be given weight or credit considering that respondent DFCI failed to present the custodian of said document.

Arguments of Respondent[23]

Respondent DFCI, in its comment, argues that the gains realized in the sale of shares of stock transaction are exempted from CGT under the RP-US Tax Treaty.

It also argues that it timely filed an administrative and judicial claim for refund of erroneously paid and collected capital gains tax and even petitioner CIR himself through the ITAD had confirmed the exemption of the Share Transfer Agreement between respondent DFCI and DAHL from CGT.

Ruling of the Court *En Banc*

This Court shall determine first whether the instant petition is within the Court's jurisdiction.

The Court of Tax Appeals is a court of special jurisdiction and can only take cognizance of such matters as are clearly within its jurisdiction.[24] The jurisdiction of the CTA regarding claims for refund is provided under Section 7(a)(2) of Republic Act (RA) No. 1125, as amended by RA Nos. 9282 and 9503, which provides:

"SEC. 7. *Jurisdiction*. – The CTA shall exercise:

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[22] *Id.*, pp. 12-19.
[23] *Rollo*, Comment, pp. 55-63.
[24] *Commissioner of Internal Revenue vs. Silicon Philippines, Inc. (formerly Intel Philippines Manufacturing, Inc.)*, G.R. No. 169778, March 12, 2014.

(a) Exclusive appellate jurisdiction to review by appeal, as herein provided:

(1) xxx xxx;

(2) **Inaction by the Commissioner of Internal Revenue in cases involving** disputed assessments, **refunds of internal revenue taxes**, fees or other charges, penalties in relations thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code provides a specific period of action, in which case the inaction shall be deemed a denial;" (*Emphasis supplied*)

Similarly, Section 3(a)(2) of Rule 4 of the Revised Rules of the Court of Tax Appeals states:

"SEC. 3. *Cases within the jurisdiction of the Court in Division.* – The Court in Division shall exercise:

(a) Exclusive original over or appellate jurisdiction to review by appeal the following:

(1) xxx xxx;

(2) **Inaction by the Commissioner of Internal Revenue in cases involving** disputed assessments, **refunds of internal revenue taxes**, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code or other applicable law provides a specific period for action: *Provided*, that in case of disputed assessments, the inaction of the Commissioner of Internal Revenue within the one hundred eighty day-period under Section 228 of the National Internal Revenue Code shall be deemed a denial for purposes of allowing the taxpayer to appeal his case to the Court and does not necessarily constitute a formal decision of the Commissioner of Internal Revenue on the tax case; *Provided, further*, that should the taxpayer opt to await the final decision of the Commissioner of Internal Revenue on the disputed assessments beyond the one hundred eighty day-period abovementioned, the taxpayer may appeal such final decision to the Court under Section 3(a), Rule 8 of these Rules; and *Provided, still further*, that in the case of claims for refund of taxes erroneously or illegally collected, **the taxpayer must file a petition for review with the Court prior to the expiration of the two-year period**

> **under Section 229 of the National Internal Revenue Code**; (*Emphasis supplied*)

Based on the foregoing, the Court in Division shall exercise exclusive jurisdiction to review by appeal the inaction of petitioner CIR in cases involving claim for refund provided that the petition for review is filed within the two-year period prescribed under Section 229 of the 1997 National Internal Revenue Code (NIRC), as amended.

Basic hornbook principle is that jurisdiction over the subject matter of a case is conferred by law and determined by the allegations in the complaint which comprise a concise statement of the ultimate facts constituting the plaintiff's cause of action. The nature of an action, as well as which court or body has jurisdiction over it, is determined based on the allegations contained in the complaint of the plaintiff, irrespective of whether or not the plaintiff is entitled to recover upon all or some of the claims asserted therein. The averments in the complaint and the character of the relief sought are the ones to be consulted. Once vested by the allegations in the complaint, jurisdiction also remains vested irrespective of whether or not the plaintiff is entitled to recover upon all or some of the claims asserted therein.[25]

The records of the case reveal that petitioner received the Court in Division's assailed resolution, which resolved his motion for reconsideration, on August 15, 2018. Thus, petitioner has fifteen (15) days or until August 30, 2018 within which to file the required PFR.

However, petitioner filed a *Motion for Extension of Time to File Petition for Review*[26] on August 30, 2018 which was subsequently granted[27] by this Court giving him another 15 days or until September 14, 2018 within which to file said PFR. Petitioner filed the instant PFR on September 13, 2018. Thus, this Court has jurisdiction.

Now, on the substantive aspect of said petition.

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[25] *Philip L. Go et al. v. Distinction Properties Development and Construction, Inc.*, G.R. No. 194024, April 25, 2012.
[26] *Rollo*, pp. 1-4.
[27] *Id.*, Minute Resolution dated September 3, 2018, p. 6.

Petitioner faulted the Court in Division in considering DPI's FS for the period ending December 31, 2012 despite respondent's failure to submit the same during the filing of its administrative claim for refund.

Petitioner should be aware that this Court is not limited to or precluded from receiving sets of evidence that were not submitted by respondent during the filing of its administrative claim for refund. In *Philippine Airlines, Inc. v. Commissioner of Internal Revenue*[28], the Supreme Court ruled that this Court is not limited by the evidence presented by a claimant in its administrative claim at the BIR, hence, it may present new and additional evidence to this Court in support of its case for tax refund, to wit:

> This Court rules that the Court of Tax Appeals is not limited by the evidence presented in the administrative claim in the Bureau of Internal Revenue. The claimant may present new and additional evidence to the Court of Tax Appeals to support its case for tax refund.
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> Section 4 of the National Internal Revenue Code states that the Commissioner has the power to decide on tax refunds, but his or her decision is subject to the exclusive appellate jurisdiction of the Court of Tax Appeals:
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>> Section 4. *Power of the Commissioner to Interpret Tax Laws and to Decide Tax Cases.* -The power to interpret the provisions of this Code and other tax laws shall be under the exclusive and original jurisdiction of the Commissioner, subject to review by the Secretary of Finance.
>>
>> 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 this Code or other laws or portions thereof administered by the Bureau of Internal Revenue is vested in the commissioner, subject to the exclusive appellate jurisdiction of the Court of Tax Appeals.
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> Republic Act No. 9282, amending Republic Act No. 1125, is the governing law on the jurisdiction of the Court of Tax Appeals. Section 7 provides that the Court of Tax Appeals has exclusive appellate jurisdiction over tax refund claims in case the Commissioner fails to act on them:
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>> Section 7. *Jurisdiction.* - The CTA shall exercise:

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[28] G.R. No. 206079-80, January 17, 2018.

> (a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
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> (1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, *refunds of internal revenue taxes,* fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue or other laws administered by the Bureau of Internal Revenue;
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> (2) Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, *refunds of internal revenue taxes,* fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code provides a specific period of action, in which case the inaction shall be deemed a denial;
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> (3) Decisions, orders or resolutions of the Regional Trial Courts in local tax cases originally decided or resolved by them in the exercise of their original or appellate jurisdiction[.] (Emphasis supplied)

This means that while the Commissioner has the right to hear a refund claim first, if he or she fails to act on it, it will be treated as a denial of the refund, and the Court of Tax Appeals is the only entity that may review this ruling.

The power of the Court of Tax Appeals to exercise its appellate jurisdiction does not preclude it from considering evidence that was not presented in the administrative claim in the Bureau of Internal Revenue. Republic Act No. 1125 states that the Court of Tax Appeals is a court of record:

> Section 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 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.

As such, parties are expected to litigate and prove every aspect of their case anew and formally offer all their

> evidence. No value is given to documentary evidence submitted in the Bureau of Internal Revenue unless it is formally offered in the Court of Tax Appeals. Thus, the review of the Court of Tax Appeals is not limited to whether or not the Commissioner committed gross abuse of discretion, fraud, or error of law, as contended by the Commissioner. As evidence is considered and evaluated again, the scope of the Court of Tax Appeals' review covers factual findings.

Thus, petitioner is totally mistaken in his assertion that only those evidence which respondent submitted in its administrative claim for refund may be presented before this Court. A claimant may also present new or additional evidence that will solidify and further corroborate its claim for refund.

Petitioner alleged that the value of the properties stipulated in the Property, Plant and Equipment portion of DPI's FS which was considered by the Court in Division was stated at cost and not based on fair market value which should be the value to be used at the time of the sale of said shares of stock.

Paragraph 15 of the International Accounting Standard (IAS) 16, which was adopted by the Philippine Financial Reporting Standard (PFRS), pertaining to Property, Plant and Equipment (PPE) provides that initially an item of PPE that qualifies for recognition as an asset is measured at its cost.

Likewise, paragraph 29 of IAS 16 provides that after such initial recognition, an entity shall choose either the *cost model* (paragraph 30) or the *revaluation model* (paragraph 31) as its accounting policy and shall apply that policy to an entire class of PPE. The first model is carried at cost less any accumulated depreciation and any accumulated impairment losses while, on the other hand, the second model is carried at revalued amount, being its fair value at the date of the revaluation less any subsequent accumulated depreciation and subsequent accumulated impairment losses.

However, petitioner did not provide any empirical evidence to support that respondent opted to use the revaluation model wherein the latter is supposed to carry its PPEs in its FS at fair market value.

Thus, this Court cannot disturb the factual findings of the Court in Division which initially tried the case. In *Heirs of Teresita Villanueva et al. v. Heirs of Petronila Syquia Mendoza et al.*[29], the Supreme Court ruled that findings of facts by the trial court are accorded respect because it is in a much better position to determine which party was able to present evidence with greater weight, to wit:

> Findings of fact made by a trial court are accorded the highest degree of respect by an appellate tribunal and, absent a clear disregard of the evidence before it that can otherwise affect the results of the case, those findings should not simply be ignored. Absent any clear showing of abuse, arbitrariness, or capriciousness committed on the part of the lower court, its findings of facts are binding and conclusive upon the Court. The reason for this is because the trial court was in a much better position to determine which party was able to present evidence with greater weight.

There being no allegation nor iota of evidence from petitioner of abuse, arbitrariness, or capriciousness being committed by the Court in Division, this Court has no reason to reverse the latter's findings.

Besides, the *lis mota* of this case is whether the claim for refund of the capital gains tax paid by respondent has any legal basis. The admission of the FS ending December 31, 2012 of DPI by the Court in Division was material to the determination of the total assets profile of DPI, and it was ruled in the assailed decision that the sale of DPI shares by respondent was covered by Article 14 (2) in relation to Article 1 of the Reservation Clause of the RP-US Tax Treaty.

As can be gleaned from the case records and aptly pointed out by the Court in Division, the real property assets of respondent only constituted 17.80% of DPI's total assets,[30] hence, giving rise to the application of the treaty provisions.

Thus, the gains from the sale of DPI shares by respondent to DAHL were taxable only in the United States where the alienator, *i.e.*, respondent, is a resident. The capital gains tax therefore paid by respondent to petitioner on the sale of share transaction was erroneous. Hence, the argument of the petitioner that the value of the Property Plant and

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[29] G.R. No. 209132, June 05, 2017.
[30] *Rollo*, CTA Case No, 9011, Decision, p. 36.

Equipment must be based on the fair market value at the time of sale and not on cost is irrelevant and immaterial to the case at hand.

Lastly, petitioner argues that Certification No.16-016 dated December 8, 2016 must not be given weight or credit considering that respondent DFCI failed to present the custodian of said document.

However, the Court in Division stated in its assailed resolution that nowhere in its decision did it hint that the basis was such certification which petitioner himself certified, *i.e.*, that the Share Transfer Agreement between respondent and DAHL is not subject to CGT.

A perusal of the assailed decision reveals that indeed such certification was not the basis for the grant of respondent's claim for refund but Article 14 and Article 1, Reservation Clause of the RP-US Tax Treaty. Thus, petitioner's argument has no legal leg to stand on.

WHEREFORE, premises considered, the instant Petition for Review is hereby **DENIED** for lack of merit. Accordingly, the assailed April 13, 2018 *Decision*[31] and August 6, 2018 *Resolution*[32] are hereby **AFFIRMED.**

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

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[31] *Supra*, Note 3.
[32] *Supra*, Note 4.

ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
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