REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

CTA EB No. 2147
(CTA Case No. 9392)

Present:

Del Rosario, *P.J.,*
Castañeda, Jr.,
Uy,
Fabon-Victorino,
Mindaro-Grulla,
Ringpis-Liban,
Manahan,
Bacorro-Villena, and
Modesto-San Pedro, *JJ.*

- versus –

MSCI HONG KONG LIMITED,
Respondent.

Promulgated:

FEB 27 2020 11:08 a.m.

x---x

DECISION

CASTAÑEDA, JR., *J.:*

Before the Court *En Banc* is a Petition for Review[1] filed under Section 4(b), Rule 8 of the Revised Rules of the Court of Tax Appeals (RRCTA). It seeks the reversal of the Decision dated February 20, 2019,[2] (Assailed Decision) as well as the Resolution dated August 27, 2019[3] (Assailed

---

[1] Court *En Banc's* Docket, pp.6-15.
[2] *Id.*, pp. 19-43.
[3] *Id.*, pp. 45-47.

Resolution) of the Special Third Division (Court in Division)[4] of this Court in CTA Case No. 9392, entitled *MSCI Hong Kong Limited v. Commissioner of Internal Revenue.*

The respective dispositive portions of the assailed Decision and Resolution are quoted hereunder:

Assailed Decision:

> "**WHEREFORE**, the instant Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, respondent Commissioner of Internal Revenue is hereby **DIRECTED** to **REFUND** or to **ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner MSCI Hong Kong Limited in the reduced amount of **₱5,377,036.52**, representing its unutilized and excess input VAT attributable to its zero-rated sales for the four quarters of calendar year 2014.
>
> **SO ORDERED.**"

Assailed Resolution:

> "It cannot be denied that the matters put forward by respondent in his Motion or Partial Reconsideration have been squarely addressed and meticulously passed upon by the Court in the impugned Decision of dated February 20, 2019. At the risk of being repetitive, let it be stressed that petitioner was able to satisfactorily discharged its burden of demonstrating its right for refund, albeit partially, of excess and unutilized input taxes imputable to its zero-rated sales covering the four (4) quarters of CY 2014 in the sum of ₱5,377,036.52 (out of ₱7,338,142.90). There being no formidable argument warranting a reversal, much less a modification of the impugned Decision dated February 20, 2019, respondent's *Motion for Partial Reconsideration* dated March 13, 2019 is **DENIED**.
>
> **SO ORDERED.**" *gr*

[4] Composed of Associate Justice Esperanza R. Fabon-Victorino, Chairperson and Associate Justice Ma. Belen M. Ringpis-Liban as member.

THE FACTS

The facts of the present case, as found by the Court in Division in its Decision dated February 20, 2019, are as follows:[5]

> "Petitioner MSCI Hong Kong Limited is a Philippine branch office of a multi-national company registered in Hong Kong, with business address at 29th Floor Zuellig Building, Makati Avenue corner Paseo de Roxas, Makati City. It is engaged in the business of performing index benchmarking, portfolio risk and performance analytics, and research support services.
>
> Petitioner is registered with the Securities and Exchange Commission (SEC) as a regional operating headquarters (ROHQ) with SEC Registration No. FS201404144 dated March 3, 2014, and with the Bureau of Internal Revenue (BIR) with Taxpayer Identification Number (TIN) 008-724-942-000.
>
> Respondent, on the other hand, is the Commissioner of Internal Revenue (CIR) 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) or other laws or portions thereof administered by the BIR. He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.
>
> Pursuant to a Service Agreement dated April 1, 2014, petitioner rendered administration, sales support and marketing, analytics, management and index research and production services in the Philippines to MSCI, Inc., a corporation established and registered in Delaware, United States of America (USA), with headquarters in New York, USA. For the services rendered to MSCI, Inc., petitioner was paid service fees amounting to ₱195,786,948.60.
>
> On various dates, petitioner filed with the BIR its original and amended Quarterly VAT Returns for the four quarters of CY 2014, showing VAT zero-rated sales for the four quarters of CY 2014 amounting to ₱195,786,948.60.
>
> On March 31, 2016, petitioner filed an Application for Tax Credits/Refund with the BIR Revenue District Office (RDO) No. 50 for its alleged unutilized input VAT for the four

---

[5] Court *En Banc's* Docket, pp. 19-24 (Citations omitted).

quarters of CY 2014 in the total amount of ₱7,338,142.90 appending thereto documents relevant to its claim.

On April 19, 2016, petitioner received Letter of Authority (LOA) No. LOA-050-2016-0000010 (eLA201200035798) dated April 15, 2016, for examination of its books of accounts and other accounting records for VAT for the period covering January 1 to December 31, 2014.

On June 27, 2016, petitioner received a letter signed by Revenue District Officer of BIR RDO No. 50, Rosita U. Meniano, denying the cited administrative claim for refund/tax credit.

On July 26, 2016, petitioner filed the instant Petition for Review.

In his Answer, respondent argues that petitioner failed to demonstrate that the subject tax was erroneously or illegally collected, thus, the presumption in favor of correctness of the taxes paid and collected applies. Besides, petitioner not only failed to prove entitlement to refund/TCC but also to substantiate it with proper documents. Lastly, respondent invokes the principle that claims for refund are construed strictly against the claimant for it partakes the nature of exemption from taxation and as such, they are looked upon with disfavor.

After the pre-trial conference, the parties filed their Joint Stipulation of Facts and Issues (JSFI) upon which the Pre-Trial Order dated February 28, 2017 was based.

Trial ensued, during which petitioner presented Nerissa Tolentino and Katherine O. Constantino, as its witnesses.

Witness, **Nerissa Tolentino**, testified that as petitioner's Senior Associate for Finance since May 2014, she reviews and safekeeps petitioner's corporate and financial documents, including tax returns and financial statements; oversees petitioner's compliance with the BIR requirements; and coordinates with petitioner's external auditors and counsel regarding tax matters.

She further testified that petitioner is the Philippine branch office of a multinational company registered in Hong Kong. It is a ROHQ engaged in the business of performing index bench marking, portfolio risk and performance analytics and research support services and is a registered taxpayer with the BIR.

The instant case involves petitioner's claim for refund/TCC resulting from its excess and unutilized input VAT attributable to its zero-rated sales of services for CY 2014 in the amount of ₱7,338,142.90. Petitioner rendered administration, sales support and marketing, analytics, management and index research and production services in the Philippines to MSCI, Inc. pursuant to its Service Agreement with MSCI, Inc. dated April 1, 2014.

She also declared that MSCI, Inc. is a foreign entity registered in Delaware, USA, therefore, not engaged in business in the Philippines. On this account, it appointed petitioner to perform the services indicated in the Service Agreement for which it was paid service fees equivalent to the amount of the actual costs and expenses it incurred plus ten percent (10%) mark-up.

For the 1st to 4th quarters of CY 2014, petitioner generated sales amounting to ₱195,786,948.60. For the same period and in the course of rendering services to MSCI, Inc., it incurred excess and unutilized input VAT of ₱7,338,142.90. This occurred since petitioner did not have any sales subject to twelve percent (12%) VAT and did not have any exempt sales during the four quarters of CY 2014, as reflected in its Quarterly VAT Returns. Hence, its input taxes amounting to ₱7,338,142.90 were not utilized or applied against any output tax liability for the same or succeeding taxable periods.

The witness continued to state that on March 31, 2016, petitioner filed with BIR RDO No. 50 a letter and Application for Tax Credits/Refunds of its unutilized input VAT for the 1st to 4th quarters of CY 2014 in the total amount of ₱7,338,142.90, with complete supporting documents. On April 19, 2016, petitioner received LOA-050-2016-0000010 (eLA201200035798) dated April 15, 2016 from the BIR authorizing the examination of its books of accounts and other accounting record for VAT for the period January 1, 2014 to December 31, 2014. On June 27, 2016, petitioner received a letter signed by Rosita U. Meniano, Revenue District Officer of BIR RDO No. 50, denying its administrative claim for refund/TCC, on the ground that petitioner carried over the amount subject of the claim for refund/TCC to the succeeding taxable period. According to the witness, while it is true that petitioner carried over its excess input taxes for the 1st to 4th quarters of CY 2014 amounting to ₱7,338,142.90 to the

> succeeding taxable period, it did not credit its input taxes against any output taxes from the 1st to 4th quarters of CY 2015 there being no sales subject to 12% VAT. In fact, petitioner removed the said excess input taxes when it filed its Amended Quarterly VAT Return for the 4th Quarter of CY 2015.
>
> On July 26, 2016, petitioner elevated the said denial of its administrative claim for refund/TCC before the Court in Division.
>
> Independent Certified Public Accountant (ICPA), **Katherine O. Constantino** declared that she audited and evaluated petitioner's documents and records in support of its claim for refund/TCC for its excess and unutilized input VAT on its purchases of goods and services attributable to its zero-rated sales for the 1st to 4th quarters of CY 2014.
>
> Per her examination and as stated in his ICPA Report dated April 26, 2017, petitioner is entitled to its claim for refund of its excess and unutilized input VAT but in the reduced amount of ₱5,404,935.51. Such recommendation is based on the finding that some of petitioner's documents did not conform with the invoicing requirement as prescribed by law.
>
> After formal offer of its evidence, petitioner rested, per Resolutions dated August 18, 2017 and January 4, 2018.
>
> Respondent, on the other hand, did not present any evidence.
>
> On March 12, 2018, the case was submitted for decision after the parties filed their respective memoranda."

On February 20, 2019, the Court in Division rendered the Assailed Decision partially granting the Petition for Review.

Aggrieved, petitioner Commissioner of Internal Revenue (CIR) filed a Motion for Partial Reconsideration[6] on March 13, 2019 which the Court in Division denied in the Assailed Resolution.

On October 4, 2019, the CIR filed via registered mail the present Petition for Review. *gr*

[6] *Id.*, pp. 48-56.

On November 21, 2019, respondent MSCI Hong Kong Limited filed its Comment (Re: Petition for Review dated October 4, 2019).[7]

In a Resolution[8] dated December 10, 2019, the Court *En Banc* noted the filing of respondent's Comment (Re: Petition for Review dated October 4, 2019) and declared that the present Petition for Review was deemed submitted for decision.

THE ISSUE

In the present Petition for Review, petitioner has raised the sole issue of whether the Court in Division erred in denying petitioner's Motion for Partial Reconsideration.[9]

THE COURT *EN BANC*'S RULING

After thorough evaluation of the factual antecedents of the present case, the arguments of the parties, as well as the relevant laws and jurisprudence on the matter, the Court *En Banc* finds that the present Petition for Review should be denied for being utterly devoid of merit. It is clear even upon cursory reading that petitioner merely recycled in the present Petition for Review the arguments he previously raised in his Motion for Partial Reconsideration. The Court in Division already sufficiently discussed and passed upon these matters in the Assailed Decision and Assailed Resolution. Nevertheless, Court *En Banc* will tackle some points if only to reinforce the discussion in the Assailed Decision.

In his Petition, petitioner argues that respondent's sale of services that do not qualify for zero-rating should be subjected to 12% output VAT.[10]

Petitioner's argument is unmeritorious.

In this regard, respondent correctly observed in its Comment that the Court in Division disallowed the sales amounting to US$26,084.20 or ₱1,156,979.30 as zero-rated sales because only the amount of US$4,400,758.14 was inwardly remitted as shown in the Transaction Credit Advances from Bank of America.[11] The fact that the abovementioned sales were disallowed as zero-rated sales does not necessarily follow that the same should be subject to 12% VAT absent any convincing proof to that effect.

[7] *Id.*, pp. 61-76.
[8] *Id.*, pp. 78-79.
[9] *Id.*, p. 8.
[10] *Id.*, p. 9.
[11] *Id.*, p. 64; Assailed Decision, p. 15, Court *En Banc*'s Docket, p. 33.

Petitioner also contends that the determination of respondent's output VAT liability is merely for the purpose of ascertaining respondent's entitlement of its unutilized input VAT claim for refund and not for imposing any deficiency tax.[12] Petitioner essentially wants this Court "to determine the corresponding output VAT liability on the Php1,156,979.30 representing respondent's sale of services which do not qualify for zero-rating".[13] Petitioner cited as basis for his argument the case of *Air Canada v. Commissioner of Internal Revenue*,[14] which, in turn, cited the earlier case of *SMI-ED Philippines Technology, Inc. v. Commissioner of Internal Revenue.*[15]

Petitioner is grievously mistaken.

In contending that this Court should determine the corresponding output VAT liability on the amount representing respondent's sale of services which did not qualify for zero-rating, petitioner presupposes that such amount is indeed subject to 12% VAT. But that is not the case. As stated earlier, the fact that the abovementioned sales were disallowed as zero-rated sales does not necessarily follow that the same should be subject to 12% VAT. It is true that in *SMI-ED Philippines,* the Supreme Court categorically ruled that in an action for refund of taxes allegedly erroneously paid, this Court may determine whether there are taxes that should have been paid in lieu of the taxes paid and that determining the proper category of tax that should have been paid is not an assessment but merely incidental to determining whether there should be a refund. However, a careful reading of the said decision reveals that it is inapplicable to the present case. The same holds true as regards *Air Canada* which merely cited *SMI-ED Philippines*. For proper perspective, the relevant portions of *SMI-ED Philippines* are quoted below:

> "Taxes are generally self-assessed. They are initially computed and voluntarily paid by the taxpayer. The government does not have to demand it. If the tax payments are correct, the BIR need not make an assessment.
>
> The self-assessing and voluntarily paying taxpayer, however, may later find that he or she has erroneously paid taxes. **Erroneously paid taxes may come in the form of amounts that should not have been paid. Thus, a taxpayer may find that he or she has paid more than the amount that should have been paid under the law. Erroneously paid taxes may also come in the form of tax payments for the wrong category of tax. Thus, a taxpayer may find that he or she has paid a certain kind of tax that he or she is not subject to.**

---

[12] Court *En Banc*'s Docket, pp. 9-12.
[13] *Id.*, p. 11.
[14] G.R. No. 169507, January 11, 2016, 778 SCRA 177 ("*Air Canada*").
[15] G.R. No. 175410, November 12, 2014, 739 SCRA 704, 707 ("*SMI-ED Philippines*").

In these instances, the taxpayer may ask for a refund. If the BIR fails to act on the request for refund, the taxpayer may bring the matter to the Court of Tax Appeals.

x x x x x x x x x

Petitioner argued that the Court of Tax Appeals had no jurisdiction to subject it to 6% capital gains tax or other taxes at the first instance. The Court of Tax Appeals has no power to make an assessment.

As earlier established, the Court of Tax Appeals has no assessment powers. In stating that petitioner's transactions are subject to capital gains tax, however, the Court of Tax Appeals was not making an assessment. It was merely determining the proper category of tax that petitioner should have paid, in view of its claim that it erroneously imposed upon itself and paid the 5% final tax imposed upon PEZA-registered enterprises.

The determination of the proper category of tax that petitioner should have paid is an incidental matter necessary for the resolution of the principal issue, which is whether petitioner was entitled to a refund.

The issue of petitioner's claim for tax refund is intertwined with the issue of the proper taxes that are due from petitioner. A claim for tax refund carries the assumption that the tax returns filed were correct. If the tax return filed was not proper, the correctness of the amount paid and, therefore, the claim for refund become questionable. In that case, the court must determine if a taxpayer claiming refund of erroneously paid taxes is more properly liable for taxes other than that paid.

In *South African Airways v. Commissioner of Internal Revenue*, South African Airways claimed for refund of its erroneously paid 2 1/2% taxes on its gross Philippine billings. This court did not immediately grant South African's claim for refund. This is because although this court found that South African Airways was not subject to the 2 1/2% tax on its gross Philippine billings, this court also found that it was subject to 32% tax on its taxable income.

In this case, petitioner's claim that it erroneously paid the 5% final tax is an admission that the quarterly tax return it filed in 2000 was improper. Hence, to determine if petitioner was entitled to the refund being claimed, the Court of Tax Appeals has the duty to determine if petitioner was indeed not liable for the 5% final tax and, instead, liable for taxes other than the 5% final tax. As in *South African Airways*, petitioner's request for

> **refund can neither be granted nor denied outright without such determination.**
>
> **If the taxpayer is found liable for taxes other than the erroneously paid 5% final tax, the amount of the taxpayer's liability should be computed and deducted from the refundable amount.**
>
> Any liability in excess of the refundable amount, however, may not be collected in a case involving solely the issue of the taxpayer's entitlement to refund. The question of tax deficiency is distinct and unrelated to the question of petitioner's entitlement to refund. Tax deficiencies should be subject to assessment procedures and the rules of prescription. The court cannot be expected to perform the BIR's duties whenever it fails to do so either through neglect or oversight. Neither can court processes be used as a tool to circumvent laws protecting the rights of taxpayers." *(Emphasis supplied and citations omitted)*

As may be gleaned from the above discussion, this Court is required to determine the proper category of tax to be paid by the taxpayer in refund cases only when such claims for refund are grounded on the theory of erroneous tax payments for the wrong category of tax, *i.e.*, that the taxpayer has paid a certain kind of tax that he or she is not subject to. In such instances, the issue of claim for tax refund is intertwined with the issue of proper taxes that are due from the taxpayer.

In contrast, the claim for refund subject of the present case is not based on theory of erroneous payment but is filed to recover excess and unutilized input value-added tax under Section 112(A) and (C) of the National Internal Revenue Code of 1997, as amended (1997 NIRC). Excess input tax or creditable input tax is not an erroneously, excessively, or illegally collected tax.[16]

Finally, petitioner maintains that respondent fell short of the invoicing requirements under Section 113 of the 1997 NIRC.[17]

Petitioner's position is untenable.

The Court *En Banc* notes that the present Petition for Review miserably failed to specify which of the respondent's invoices and/or receipts admitted by the Court in Division in the Assailed Decision that are

---

[16] *Coca-Cola Bottlers Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 222428, February 19, 2018, 856 SCRA 76; *CE Luzon Geothermal Power Company, Inc. v. Commissioner of Internal Revenue*, G.R. No. 197526, G.R. Nos. 199676-77, July 26, 2017, 832 SCRA 604; *Commissioner of Internal Revenue v. San Roque Power Corporation*, G.R. No. 187485, February 12, 2013, G.R. No. 187485, February 12, 2013, 703 Phil. 310, 365.

[17] Court *En Banc*'s Docket, pp. 12-14.

not compliant with the invoicing requirements under the law. The Petition merely alleges the following:

> "x x x In the present case, respondent's claimed input taxes must be disallowed because the VAT was not separately indicated in the supporting VAT official receipts/sales invoices.
>
> In addition, some of respondent's invoices/receipts to support its claimed input taxes do not have the quantity, unit cost and description of the goods or properties or nature of the service; hence, shall likewise be disallowed from the duly supported input taxes.
>
> Moreover, respondent's input taxes supported by sales invoices/official receipts with no TIN and address of respondent indicated thereon must be disallowed from respondent's claim for not being properly substantiated by VAT invoices or receipts as prescribed under Section 113(A) and (B) of the 1997 Tax Code, as amended.
>
> Accordingly, for petitioner's (sic) failure to substantiate its zero-rated sales for the four quarters of CY 2014, the partially granted claimed (sic) of P5,377,036.52 input VAT cannot be refunded."

The above statements are in the nature of general assignments of error which are not allowed under the rules and established jurisprudence.

In the case of *De Liano et. al. v. Hon. Court of Appeals*,[18] the Supreme Court emphasized the need for litigants to specify in their appeal briefs the error or errors alleged to have been committed by a lower court. The relevant portion of the said decision reads:

> "An assignment of errors in appellate procedure is an enumeration by appellant or plaintiff in error of the errors alleged to have been committed by the court below in the trial of the case upon which he seeks to obtain a reversal of the judgment or decree; it is in the nature of a pleading, and performs in the appellate court the same office as a declaration or complaint in a court of original jurisdiction. Such an assignment is appellant's complaint, or pleading, in the appellate court, and takes the place of a declaration or bill; an appeal without an assignment of errors would be similar to a suit without a complaint, bill, or declaration. The assignment is appellant's declaration or complaint against the trial judge, charging harmful error, and proof vel non of assignment is within the record on appeal. Jr

[18] G.R. No. 142316, November 22, 2001, 370 SCRA 362, 363 citing *Santiago v. Felix*, G.R. No. L-7344, February 27, 1913, 94 Phil. 378, 384.

xxx xxx xxx

> **The object of such pleadings is to point out the specific errors claimed to have been committed by the court below, in order to enable the reviewing court and the opposing party to see on what points appellant or plaintiff in error intends to ask a reversal of the judgment or decree, and to limit discussion to those points.** The office of an assignment of errors is not to point out legal contentions, but only to inform the appellate court that appellant assigns as erroneous certain named rulings; the function of the assignment is to group and bring forward such of the exceptions previously noted in the case on appeal as appellant desires to preserve and present to the appellant.
>
> **It has been held that a general assignment of errors is unacceptable under the rules. Thus, a statement of the following tenor: that 'the Court of First Instance of this City incurred error in rendering the judgment appealed from, for it is contrary to law and the weight of the evidence,' was deemed insufficient. The appellant has to specify in what aspect of the law or the facts that the trial court erred.** The conclusion, therefore, is that the appellant must carefully formulate his assignment of errors. xxx" *(Emphasis supplied)*

Consistent with the foregoing ruling, the Court *En Banc* holds that petitioner's failure to identify with reasonable specificity the flawed invoices and/or receipts purportedly introduced by respondent and admitted by the Court in Division is fatal to its appeal. Such infirmity prevents respondent from squarely confronting the issue and bars the Court *En Banc* from rendering a well-informed decision, especially considering that the case involves voluminous invoices and receipts.

WHEREFORE, the present Petition for Review is **DENIED** for lack of merit.

SO ORDERED.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

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 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