Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

En Banc

UNITED COCONUT PLANTERS BANK, Petitioner,	**CTA EB Case No. 1108** (CTA Case No. 8274)
- versus -	Members: DEL ROSARIO, *P.J.*, CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, COTANGCO-MANALASTAS, and RINGPIS-LIBAN, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: NOV 12 2014 1:35 p.m.

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DECISION

CASANOVA, J.:

This is an appeal, by way of Petition for Review,[1] filed on December 18, 2013, by petitioner- United Coconut Planters Bank, seeking the reversal of the May 31, 2013 Decision[2] (Assailed Decision) and November 26, 2013 Resolution[3] (Assailed Resolution) of the Court of Tax Appeals (CTA) Special First Division in CTA Case No. 8274, entitled *"United Coconut Planters Bank vs. Commissioner of Internal Revenue"*.

The factual antecedents of the case as found by the CTA Special First Division are as follows:

> "Petitioner is a domestic corporation duly organized and existing under the laws of the Philippines, with

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[1] *En Banc* Rollo, pp. 7-34.
[2] Annex "A" to the Petition for Review, Ibid, pp. 36-58.
[3] Annex "B" to the Petition for Review, Id, pp. 59-61.

principal office at UCPB Building, Makati Avenue, Makati City. Petitioner was formed, among others, to operate under an expanded commercial banking authority; and by virtue thereof, to exercise the powers authorized for commercial banks, the powers of investment houses as provided in pertinent laws, and the authority to invest in the equity of allied and non-allied undertakings in accordance with applicable laws, rules and regulations. It is also duly registered with the Bureau of Internal Revenue (BIR) as evidenced by its Certificate of Registration No. OCN8RC0000019221.

On the other hand, respondent is the duly appointed Commissioner of the Bureau of Internal Revenue, with authority, among others, to decide, approve and grant claims for refund or tax credit of internal revenue taxes. She holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

Petitioner filed its Annual Income Tax Return for taxable year 2008 on April 17, 2009. Subsequently, petitioner filed its amended and 2nd amended Annual Income Tax Return for the same year on June 17, 2009 and September 14, 2009, respectively.

On April 13, 2011, through a letter dated April 13, 2011, petitioner filed with the BIR Large Taxpayer Regular Audit Division II an administrative claim for the issuance of tax credit certificate for its purported unutilized creditable withholding taxes for 2008 in the total amount of P65,033,972.00.

On April 15, 2011, petitioner filed the instant Petition for Review with the Court of Tax Appeals.

Respondent filed her Answer on May 26, 2011, raising the following special and affirmative defenses:

'4. Petitioner's alleged claim for refund is subject to administrative routinary investigation/examination by the Bureau of Internal Revenue (BIR).

5. Petitioner must prove that the alleged erroneously paid taxes were indeed paid and received by respondent.

6. Petitioner must prove that the administrative and judicial claims were filed within the period prescribed by law.

7. In claims for a refund, a claimant must first file a written claim for refund, categorically demanding recovery of overpaid taxes with the CIR, before resorting to an action in court, first, to afford the CIR an opportunity to correct the action of subordinate officers; and second, to notify the government that such taxes have been questioned, and notice should then be borne in mind in estimating the revenue available for expenditure. *(Bermejo vs. Collector, 87 Phil. 96 cited in CIR vs. Rosemarie Acosta, G.R. No. 154068, August 3, 2007)*

8. The case of *Ang Tibay vs. Court of Industrial Relations, G.R. No. L-46496,* states the primary rights which must be respected even in an administrative proceeding:

> 1) **The first of these rights is the right to a hearing, which includes the right of the party interested or affected to present his own case and submit evidence in support thereof.** In the language of Chief Hughes, in *Morgan v. U.S., 304 U.S. 1, 58 S. Ct. 773, 999, 82 Law. ed. 1129,* 'the liberty and property of the citizen shall be protected by the rudimentary requirements of fair play.
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> (2) Not only must the party be given an opportunity to present his case and to adduce evidence tending to establish the rights which he asserts but the tribunal *must consider* the evidence presented. *(Chief Justice Hughes in Morgan v. U.S. 298 U.S. 468, 56 S. Ct. 906, 80 law. ed. 1288.)* In the language of this court in *Edwards vs. McCoy, 22 Phil. 598,* 'the right to adduce evidence, without the corresponding duty on the part of the board to consider it, is vain. Such right is conspicuously futile if the person or persons to whom the evidence is presented can thrust it aside without notice or consideration.'
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> (3) 'While the duty to deliberate does not impose the obligation to decide right, it does imply a necessity which cannot be disregarded,

namely, that of having something to support it is a nullity, a place when directly attached.' *(Edwards vs. McCoy, supra.)* This principle emanates from the more fundamental is contrary to the vesting of unlimited power anywhere. Law is both a grant and a limitation upon power.

(4) **Not only must there be some evidence to support a finding or conclusion** *(City of Manila vs. Agustin, G.R. No. 45844, promulgated November 29, 1937, XXXVI O.G. 1335)*, **but the evidence must be 'substantial.'** *(Washington, Virginia and Maryland Coach Co. v. National Labor Relations Board, 301 U.S. 142, 147, 57 S. Ct. 648, 650, 81 Law, ed. 965.)* It means such relevant evidence as a reasonable mind accept as adequate to support a conclusion.' *(Appalachian Electric Power v. National Labor Relations Board, 4 Cir., 93 F. 2d 985, 989; National Labor Relations Board v. Thompson Products, 6 Cir., 97 F. 2d 13, 15; Ballston-Stillwater Knitting Co. v. National Labor Relations Board, 2 Cir., 98 F. 2d 758, 760.)* ... The statute provides that 'the rules of evidence prevailing in courts of law and equity shall not be controlling.' The obvious purpose of this and similar provisions is to free administrative boards from the compulsion of technical rules so that the mere admission of matter which would be deemed incompetent in judicial proceedings would not invalidate the administrative order. *(Interstate Commerce Commission v. Baird, 194 U.S. 25, 44, 24 S. Ct. 563, 568, 48 Law. ed. 860; Interstate Commerce Commission v. Louisville and Nashville R. Co., 227 U.S. 88, 93 33 S. Ct. 185, 187, 57, Law ed. 431; United States v. Abilene and Southern Ry. Co. S. Ct. 220, 225, 74 Law. ed. 624.)* But this assurance of a desirable flexibility in administrative procedure does not go far as to justify orders without a basis in evidence having rational probative force. Mere uncorroborated hearsay or rumor does not constitute substantial evidence. *(Consolidated Edison Co. v. National Labor Relations Board, 59 S. Ct. 206, 83 Law. ed. No. 4, Adv. Op., p. 131)'*

(5) **The decision must be rendered on the evidence presented at the hearing, or at least contained in the record and disclosed to the**

parties affected. *(Interstate Commerce Commission vs. L. & N. R. Co., 227 U.S. 88, 33 S. Ct. 185, 57 Law, ed. 431.)* **Only by confining the administrative tribunal to the evidence disclosed to the parties, can the latter be protected in their right to know and meet the case against them.** It should not, however, detract from their duty actively to see that the law is enforced, and for that purpose, to use the authorized legal methods of securing evidence and informing itself of facts material and relevant to the controversy. Boards of inquiry may be appointed for the purpose of investigating and determining the facts in any given case, but their report and decision are only advisory. (Section 9, Commonwealth Act No. 103.) The Court of Industrial Relations may refer any industrial or agricultural dispute or any matter under its consideration or advisement to a local board of inquiry, a provincial fiscal, a justice of the peace or any public official in any part of the Philippines for investigation, report and recommendation, and may delegate to such board or public official such powers and functions as the said Court of Industrial Relations may deem necessary, but such delegation shall not affect the exercise of the Court itself of any of its powers. (Section 10, *ibid.*)

(6) The Court of Industrial Relations or any of its judges, therefore, must act on its or his own independent consideration of the law and facts of the controversy, and not simply accept the views of a subordinate in arriving at a decision. It may be that the volume of work is such that it is literally Relations personally to decide all controversies coming before them. In the United States the difficulty is solved with the enactment of statutory authority authorizing examiners or other subordinates to render final decision, with the right to appeal to board or commission, but in our case there is no such statutory authority.

(7) The Court of Industrial Relations should, in all controversial questions, render its decision in such a manner that the parties to the proceeding can know the various issues involved, and the reasons for the decision rendered. The

performance of this duty is inseparable from the authority conferred upon it. (Emphasis supplied)

Petitioner is mandated to present evidence to support its administrative claim and such evidence will be used as basis for the decision of the quasi-judicial body. If there is lack of evidence, then the decision will probably be contrary to petitioner. Only the evidence presented will be reviewed by the quasi-judicial body. An administrative claim is meant to expedite the proceedings where all the relevant evidence is presented. Petitioner, however, instead chose not to submit any evidence to support its claim.

9. Furthermore, in an action for refund the burden of proof is on the taxpayer to establish its right to refund and failure to sustain the burden is fatal to the claim for refund/credit. This is so because exemptions from taxation are highly disfavored in law and he who claims exemption must be able to justify his claim by the clearest grant of organic or statutory law. An exemption from the common burden cannot be permitted to exist upon vague implications. **(Asiatic Petroleum Co. vs. Llanes, 49 Phil. 466 cited in Collector of Internal Revenue v. Manila Jockey Club, Inc., 98 Phil. 670).'**

During the pre-trial held on July 1, 2011, the Court granted the parties' joint motion for a period of fifteen (15) days from said date to file a Joint Stipulation of Facts and Issues. Thereafter, the parties filed their Joint Stipulation of Facts and Issues, and Supplemental Joint Stipulation of Facts and Issues on July 28, 2011 and August 8, 2011, respectively. In the Resolution dated August 17, 2011, the Court approved the same and pre-trial was terminated.

During trial, only petitioner presented its witnesses, namely: Jennifer Anne C. Cabral and Court-commissioned Independent Certified Public Accountant (CPA) Emmanuel Y. Mendoza, as well as its documentary evidence. During the hearing held on August 16, 2012, respondent's counsel manifested that she will no longer present any evidence. However, petitioner's counsel manifested that he filed a Motion for Reconsideration with Tender of Excluded Evidence on August 3, 2012. Thus, respondent's counsel was given a period of fifteen (15) days to file Comment thereto. And receipt of the Court's resolution of said incident, both parties were directed to file their respective Memorandum.

In the Resolution dated September 26, 2012, the Court granted petitioner's Motion for Reconsideration with Tender of Excluded Evidence and the denied Exhibits "P-1278, R-57a, R-58b, R-59b and R-60a" were made part of the records of this case.

On December 19, 2012, this case was submitted for decision, considering the respective Memorandum filed by respondent and petitioner on November 5, 2012 and December 12, 2012."[4]

In a Decision promulgated on May 31, 2013, the Special First Division denied petitioner's Petition for Review in this wise:

> **"WHEREFORE,** premises considered, the instant Petition for Review is hereby **DENIED** for lack of merit.
>
> **SO ORDERED."**

Undaunted, petitioner filed a Motion for Reconsideration[5] on July 10, 2013, but the same was denied for lack of merit in a Resolution[6] promulgated on November 26, 2013. Thus, this Petition for Review filed before the Court *En Banc* on December 18, 2013.

In a Resolution[7] dated January 29, 2014, the Court ordered respondent to file her Comment to petitioner's Petition for Review. Instead of filing the same, respondent filed a Motion for Additional Time[8] on February 17, 2014 which was granted by the Court in a Minute Resolution[9] dated February 19, 2014. On February 26, 2014, respondent filed a Motion to Admit[10] the attached Comment (RE: Petition for Review dated 16 December 2013),[11] which was granted in the March 20, 2014 Resolution[12] of this Court.

Thereafter, the case was submitted for Decision taking into consideration petitioner's Memorandum[13] filed on May 26, 2014, sans

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[4] Decision dated May 31, 2013, Annex "A" to the Petition for Review, Ibid, pp. 36-42.
[5] Division Docket, pp. 458-468.
[6] Ibid, 590-592.
[7] *En Banc* Rollo, pp. 152-153.
[8] Ibid, pp. 154-157.
[9] Id, p. 158.
[10] Id, pp. 159-164.
[11] Id, pp. 165-168.
[12] Id, pp. 170-171.
[13] Id, pp. 183-200.

respondent's Memorandum per Records Verification dated June 18, 2014.

Hence, this Decision.

In this Petition, petitioner raised the following issues for the resolution of this Court:

> **"A.**
> **Whether or not Petitioner has unutilized creditable withholding tax in the amount of Sixty Five Thirty Three Thousand Nine Seventy Two Pesos (sic) (Php65,033,972.00) pursuant to Sections 76, 204 and 229 of the 1997 NIRC, as amended.**
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> **B.**
> **Whether or not the administrative claim for refund was filed within the period prescribed by law.**
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> **C.**
> **Whether or not Petitioner's unutilized creditable withholding taxes in the amount of Sixty Five Thirty Three Thousand Nine Seventy Two Pesos (sic) (Php65,033,972.00) are duly substantiated by documentary evidence.**
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> **D.**
> **Whether or not the income upon which the subject unutilized creditable withholding taxes withheld were declared as part of Petitioner's gross revenue in its Annual Income Tax Return for calendar year 2008.**
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> **E.**
> **Whether or not Petitioner is entitled to its claim for refund or tax credit of its unutilized creditable withholding taxes for the year 2008."**

After a careful and thorough evaluation and consideration of the records of the case, the Court *En Banc* finds no merit in the instant Petition for Review. The records of the case indubitable show that the CTA Special First Division had already fully and exhaustively resolved the foregoing issues since they are mere rehash of the arguments proffered by petitioner in its July 10, 2013 Motion for Reconsideration. Be that as it may, *We* deem it proper to reiterate the points stressed by the CTA Special First Division.

It bears noting that petitioner cited the following findings of the Court in Division, without refuting the same: (i) that petitioner has creditable taxes withheld in 2008 in the amount of P65,033,972.00 which may be the subject of a claim for refund pursuant to Section 76 of the NIRC of 1997; (ii) that petitioner has sufficiently complied with the two (2)-year prescriptive period provided under Sections 204 (C) in relation to Section 229 of the Code; and, (iii) that petitioner was able to substantiate only the amount of P64,923,755.13 of the creditable withholding taxes for 2008.

Proceeding therefrom, the only issue left to be resolved would be whether or not petitioner's income upon which the taxes were withheld was included in the return of the recipient.

Unfortunately, petitioner failed to prove its compliance therewith as established in the Assailed Resolution dated November 26, 2013, to which *We* fully agree, to wit:

> "Upon perusal of the records, the Court finds that some of the income payments are in the General Ledger as they have been traced with their transaction sheet numbers. Partly, petitioner's argument is true.
>
> Notwithstanding, petitioner still failed to present documents, i.e., reconciliation schedules of the Income Tax Return and General Ledger, that will indisputably prove that the income payments related to the claimed CWT indeed formed part of petitioner's gross income in its 2008 Annual Income Tax Return. It is noteworthy that in the assailed Decision, the Court ruled as follows:
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> > "xxx The questioned income payments cannot be traced with certainty from the GL provided by petitioner, more so, with the Annual Income Tax Return.
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> **It must be emphasized that the Annual Income Tax Return merely provides summarized data without the supporting scheduler notes that**

> **will apprise the Court as to the detailed items included therein. Petitioner should have presented,** among others, detailed General Ledger, **reconciliation schedules or any other documents whereby the Court can trace the discrepancy and can determine with certainty that the income payments related to the claimed CWT formed part of its taxable gross income in its 2008 Annual Income Tax Return.** Failure to present the foregoing documents is fatal to petitioner's claim." *(Emphasis supplied.)*

As such, the Court still cannot determine, even with the schedules attached in petitioner's motion, that the income payments were included in the taxable gross income in petitioner's Annual Income Tax Return."[14]

Finding no reversible error, *We* affirm the Assailed Decision dated May 31, 2013 and the Assailed Resolution dated November 26, 2013 both rendered by the CTA Special First Division.

WHEREFORE, premises considered, the present Petition for Review is hereby **DENIED**, and accordingly, **DISMISSED** for lack of merit.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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

LOVELL R. BAUTISTA
Associate Justice

[14] Resolution dated November 26, 2013, Annex "B" to the Petition for Review, *En Banc* Rollo, pp. 60-61.

ERLINDA P. UY
Associate Justice

(On Leave)
ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the above Decision has been reached in consultation with the members of the Court *en banc* before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice