REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

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FINANCIAL TIMES ELECTRONIC PUBLISHING PHILIPPINES, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB No. 2333
(CTA Case No. 9434)

Present:

DEL ROSARIO, *P.J.*,
CASTAÑEDA, JR.,
UY,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO, and
CUI-DAVID, *JJ.*

Promulgated:

JUN 22 2022 2:55

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RESOLUTION

UY, *J.*:

For this Court's resolution is petitioner's ***MOTION FOR RECONSIDERATION*** filed on March 7, 2022,[1] without respondent's comment despite due notice, as per Records Verification Report dated May 16, 2022.[2]

In the said *Motion*, petitioner prays for the reconsideration of the Decision promulgated on February 24, 2022, the dispositive portion of which reads:

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[1] EB Docket, pp. 68 to 76.

[2] Records Verification Report dated May 16, 2022 issued by Records Officer Leocadia D. Victoria of the Judicial Records Division, EB Docket, p. 81.

"**WHEREFORE**, in light of the foregoing considerations, the instant *Petition for Review* is hereby **DENIED** for lack of merit. Accordingly, the *Decision* promulgated on February 4, 2019, and the *Resolution* promulgated on July 21, 2020, by the Special Third Division of this Court in CTA Case No. 9434 are hereby **AFFIRMED**.

SO ORDERED."

Petitioner's Motion for Reconsideration:

In its *Motion for Reconsideration*, petitioner maintains that it has sufficiently shown that Financial Times Limited (FTL) is a non-resident foreign corporation doing business outside the Philippines as evidently shown in the Authenticated Articles of Incorporation of Financial Times Limited, Services Agreement, and the testimony of its witness, Paulito B. De Pano.

According to petitioner, the foregoing evidence was never disputed nor testified against by respondent. Such failure of respondent to present evidence on the status of FTL should work against respondent and not against petitioner.

Petitioner further asserts that since taxation cases (except tax fraud cases) are considered civil in nature, the burden of proof rests upon petitioner, who is required to establish his case by a preponderance of evidence. However, once the allegations are established by preponderance of evidence, the burden of evidence shifts to respondent, who in turn, has the burden to establish his defense. As previously argued, petitioner has presented sufficient evidence that FTL is a non-resident foreign corporation not doing business in the Philippines. Thus, the burden of evidence is shifted to the respondent who has the burden to show that FTL is engaged in business in the Philippines.

Petitioner also submits that FTL did not have a continuous business or any business in the Philippines since it only entered in a Service Agreement with petitioner wherein it rendered accounting process and support services to FTL.

Allegedly, petitioner does not fall in the definition of "doing business" as defined in Section 3(d) of Republic Act No. 7042 or the Foreign Investment Act of 1991; that petitioner did not solicit order, render service contracts or open offices in the Philippines, appoint representatives or distributors domiciled in the Philippines, participate in the management, supervision or control of any domestic business, entity or corporation including petitioner. Hence, FTL cannot be considered doing business in the Philippines.

Lastly, petitioner reiterates that there was merely an oversight when the Securities and Exchange Commission (SEC) indicated the name "FINANCIAL TIMES GROUP, LTD." instead of "FINANCIAL TIMES LIMITED" in the Certification of Non-Registration of Company.

THE COURT *EN BANC'S* RULING

Petitioner's *Motion for Reconsideration* lacks merit.

A careful perusal of the arguments raised by petitioner in its Motion for Reconsideration readily shows that the arguments are exact reiterations or restatements of the matters which have already been weighed, discussed and passed upon by the Court *En Banc* in the assailed Decision. Hence, We shall not belabor, in this Resolution, to repeat the disquisitions made therein.

Nevertheless, the Court *En Banc* reiterates that pursuant to Section 108 (B)(2) of the NIRC of 1997, as amended, two components must be established by the claimant: (1) the claimant's client is a non-resident foreign corporation and (2) that said client is not engaged in trade or business in the Philippines. In the instant case, petitioner failed to discharge the burden of proving that FTL is a non-resident foreign corporation not doing business in the Philippines.

Petitioner's claim that it was able to prove with preponderant evidence its claim for refund and the burden of disproving the same is shifted to respondent is of no moment.

The Court *En Banc* recognizes that the standard of proof in civil cases (such as judicial claims for refund) is only preponderance of evidence. However, it bears stressing that the strict construction in the appreciation of evidence will still apply in cases where compliance with documentary requirements is an important aspect to determine whether or not a taxpayer is entitled to the claim for refund like the instant case.

Here, petitioner fell short in discharging said burden.

Jurisprudence dictates that the burden of proof to establish entitlement to refund is on the claimant taxpayer.[3] Moreover, the fact that the respondent failed to present any evidence or to refute the evidence presented by the petitioner does not *ipso facto* entitle the petitioner to a tax refund. It is not the duty of the government to disprove a taxpayer's claim for refund. Rather, the burden of establishing the factual basis of a claim for a refund rests on the taxpayer.[4]

Hence, for failing to prove its entitlement to a tax refund, petitioner's claim must be denied. Since tax refunds partake of the nature of tax exemptions, which are construed *strictissimi juris* against the taxpayer, evidence in support of a claim must likewise be *strictissimi* scrutinized and duly proven.[5]

In sum, We find no valid or cogent reason to overturn or modify our findings and conclusions in the assailed Decision.

WHEREFORE, petitioner's *Motion for Reconsideration* is **DENIED** for lack of merit.

SO ORDERED.

ERLINDA P. UY
Associate Justice

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[3] *Eastern Telecommunications Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 168856, August 29, 2012, citing Philippine Phosphate Fertilizer Corporation vs. Commissioner of Internal Revenue, 500 Phil. 149, 163.
[4] *Commissioner of Internal Revenue vs. Far East Bank & Trust Company (now Bank of the Philippine Islands)*, G.R. No. 173854, March 15, 2010.
[5] *Id.*

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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

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

LANEE S. CUI-DAVID
Associate Justice