REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

MACQUARIE OFFSHORE SERVICES PTY LTD – PHILIPPINE BRANCH Petitioner,	**CTA CASE NO. 9722**
	Members:
	CASTAÑEDA, JR., *Chairperson, and*
- versus -	**BACORRO-VILLENA, *JJ.***
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: JAN 14 2021 3:20 PM

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RESOLUTION

CASTAÑEDA, J.:

Submitted before this Court is petitioner's **Motion for Reconsideration (Re: Decision dated 12 March 2020)** filed on June 26, 2020, without respondent's comment per Records Verification dated October 21, 2020.

On March 12, 2020, the Court promulgated a Decision denying petitioner's claim for refund of unutilized input value-added tax (VAT) for failing to sufficiently establish that it has zero-rated sales during the four quarters of fiscal year 2016, the dispositive portion of which reads as follows:

> "**WHEREFORE**, in light of the foregoing considerations, the instant *Petition for Review* is **DENIED** for lack of merit.
>
> **SO ORDERED**."

In its Motion, petitioner raises the following grounds in support of its arguments, *viz.*:

A. AS FOUND BY THE HONORABLE COURT ITSELF, MACQUARIE FINANCIAL HOLDINGS LIMITED IS A NON-RESIDENT FOREIGN CORPORATION NOT DOING BUSINESS IN THE PHILIPPINES. DESPITE THE FINDING, THE COURT EXCLUDED THE SALE OF MACQUARIE FINANCIAL HOLDINGS LIMITED IN COMPUTING PETITIONER'S ZERO RATED SALES.

B. THE ICPA FOUND AND REPORTED THAT THE REMITTANCES TO MOSL' S ACCOUNT WERE ACCOUNTED FOR.

C. THE FINDINGS REPORTED BY THE ICPA, IF UNCHALLENGED, SHOULD BE ACCORDED RESPECT.

As to the first ground, petitioner points out that on page *45* of the Decision, the Court classified Macquarie Financial Holdings Limited as a non-resident foreign corporation (NRFC) doing business outside the Philippines. However, on page *48* of the said Decision, the Court failed to include Macquarie Financial Holdings Limited in the same category. As such, petitioner claims that the said error should be corrected so as to include the sales made in favor of Macquarie Financial Holdings Limited in petitioner's properly substantiated zero-rated sales.

With regard to the second ground, petitioner claims that the Independent Certified Public Account (ICPA)'s report and its supporting schedules sufficiently contain the answers to the Court's difficulties in ascertaining whether the amounts reflected in the Certificates of Inward Remittances correspond to the zero-rated sales. Petitioner insists that the evidence on record is so detailed that it leaves no doubt that the inward remittances correspond to the zero-rated sales made by it.

Lastly, as to the third ground, petitioner argues that since no objections were raised as to the findings made by the ICPA, the same should be given due respect considering that the function of the ICPA is similar to that of a commissioner under Rule 32 of the Rules of Court. As such, seeing that the ICPA has submitted proof that the inward remittances had been duly accounted, that the invoices were matched with the ORs, and that the dates were indicated when they were paid, petitioner insists that is has sufficiently submitted proof of its inward remittances had been duly accounted for.

Accordingly, this Court finds petitioner's Motion for Reconsideration bereft of merit.

At the onset, it is worth noting that the Court had already considered the supporting documents petitioner mentioned in its Motion but, nonetheless, still found them lacking. As held in the assailed Decision, to wit:

> "In the instant case, aside from the certifications of inward remittances from HSBC, petitioner submitted its schedule of zero-rated sales and the corresponding ORs to support its reported zero-rated sales of ₱5,259,593,325.50 for the four (4) quarters of FY 2016, detailed as follows

Exhibit No.	Period (FY 2016)	Zero-Rated Sales
"P-8"/"P-190"	1st Quarter	₱1,656,588,572.44
"P-9"/"P-191"	2nd Quarter	1,233,762,011.70
"P-10"/"P-192"	3rd Quarter	747,363,896.15
"P-11a"/"P-193"	4th Quarter	1,621,878,845.21
Total		**₱5,259,593,325.50**

> Upon verification, however, the Court finds that only the sales of US$11,548,329.10 which is equivalent to P537,611,641.02, was earned from the following clients, which as determined earlier qualify as non-resident foreign entities doing business outside the Philippines, and are duly supported by official receipts:

Name of Clients	OR Exhibit No.	OR No.	Zero-Rated Sales (in US$)	Zero-Rated Sales (in Peso)
Third Quarter				
Macquarie Bank Limited (Hong Kong Branch)	"P-35-8"	001043	171,468.00	7,830,305.82
			151,141.10	7,063,429.56
Macquarie Bank Limited Singapore Branch	"P-35-10"	001045	67,802.90	3,096,306.26
			63,379.80	2,961,992.15
Macquarie Bank Limited (London Branch)	"P-35-11"	001046	167,472.80	7,647,859.83
			144,768.80	6,765,626.45
PT Macquarie Capital	"P-35-	001072	344.30	16,090.51

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Securities Indonesia	37"			
Macquarie Group Services Australia Pty. Ltd	"P-35-38"	001073	2,490,198.70	113,718,112.48
			2,483,005.80	116,040,816.07
Sub-total			***US$5,739,582.20***	***₱265,140,539.13***
Fourth Quarter				
Macquarie Bank Limited (Hong Kong Branch)	"P-38-8"	001086	194,540.50	9,106,954.36
			194,439.30	9,137,135.88
Macquarie Bank Limited Singapore Branch	"P-38-9"	001087	46,736.80	2,187,872.95
			67,984.40	3,194,738.42
Macquarie Bank Limited (London Branch)	"P-38-10"	001088	150,153.30	7,029,072.32
			245,733.40	11,547,559.95
PT Macquarie Capital Securities Indonesia	"P-38-36"	001114	2,592.70	121,371.12
			1,030.70	48,434.89
Macquarie Group Services Australia Pty. Ltd	"P-38-37"	001115	2,361,363.40	110,541,654.01
			2,543,910.60	119,544,026.27
PT Macquarie Capital Securities Indonesia	"P-38-75"	001153	261.80	12,281.72
Sub-total			**US$5,808,746.90**	**₱272,471,101.89**
TOTAL			**US$11,548,329.10**	**₱537,611,641.02**

Nevertheless, while petitioner was able to present the schedule of inward remittances and the certifications of inward remittances from HSBC purportedly showing the remittances of its foreign clients, the Court cannot ascertains whether the amounts reflected therein correspond to the zero-rated sales as determined above. It bears stressing that the amounts reflected in the certifications are in lump sum. As these amounts were not itemized, there is no way for the Court to determine whether the payment for the zero-rated sales of ₱537,611,641.02 were indeed *'accounted for in accordance with the rules and regulations of the BSP'*."[1] *(Citations omitted)*

More so, it must be pointed out that the schedules prepared by the ICPA are merely corroborative of the actual input VAT paid and the actual sales to non-resident foreign entities doing business outside the Philippines. In the case of *Atlas Consolidated Mining and Development Corporation v. Commissioner of Internal Revenue*,[2] the Supreme Court ruled that:

[1] Decision, pp. 47 to 59.
[2] G.R. No. 159490, February 18, 2008.

> "*Third*, the summary presented by Atlas does not replace the pertinent invoices, receipts, and export sales documents as competent evidence to prove the fact of refundable or creditable input VAT. Indeed, the summary presented with the certification by an independent Certified Public Accountant (CPA) and the testimony of Atlas' Accounting and Finance Manager are merely corroborative of the actual input VAT it paid and the actual export sales. Otherwise, the pertinent invoices, receipts, and export sales documents are the best and competent pieces of evidence required to substantiate Atlas' claim for tax credit or refund which is merely corroborated by the summary duly certified by a CPA and the testimony of Atlas' employee on the export sales. And when these pertinent documents are not presented, these could not be corroborated as is true in the instant case."

Accordingly, the pertinent invoices, receipts, and certifications of inward remittances are the best and competent pieces of evidence required to substantiate petitioner's claim for tax refund, which is merely corroborated by the schedules prepared by the ICPA. Indeed, while petitioner submitted several documents, the Court could still not ascertain from them the veracity of the figures as the documents presented were not sufficient to prove its action for tax refund. In other words, petitioner failed to meet the burden of proof required in order to establish the factual basis of its claim for a tax credit or refund.

As to the second ground, petitioner points heavily to the ICPA Report in assailing the Decision. Petitioner argues that it has submitted sufficient proof that the inward remittances had been duly accounted for, considering that the ICPA has matched the invoices with the ORs and indicated the dates when they were paid.

Unfortunately, this Court is not convinced.

Perforce, Section 3, Rule 13 of the Revised Rules of the Court of Tax Appeals (RRCTA) provides:

> "SEC. 3. *Findings of independent CPA.* — The submission by the independent CPA of pre-marked documentary exhibits shall be subject to verification and comparison with original documents, the availability of

> which shall be the primary responsibility of the party possessing such documents and, secondarily, by the independent CPA. **The findings and conclusions of the independent CPA** may be challenged by the parties and **shall not be conclusive upon the Court**, which may, in whole or in part, adopt such findings and conclusions subject to verification." *(Emphases supplied)*

From the above, it is evident that the findings and conclusions reached by the ICPA are not conclusive upon the Court. Otherwise stated, this Court can make its own determination apart from the findings and conclusions of the ICPA.

With regard to petitioner's third argument, this Court maintains that respondent's failure to object to the findings made by the ICPA is inconsequential. It must be emphasized that respondent's failure to refute the evidence presented by the taxpayer does not *ipso facto* entitle such taxpayer 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.[3] As cases filed before this Court are litigated *de novo*, party-litigants should prove every minute aspect of their cases.[4]

In fine, this Court reiterates its consistent ruling that actions for tax refund, as in the instant case, are in the nature of a claim for exemption and the law is not only construed in *strictissimi juris* against the taxpayer, but also the pieces of evidence presented entitling a taxpayer to an exemption is *strictissimi* scrutinized and must be duly proven.[5]

In view of the foregoing, the Court finds no cogent reason to disturb or modify the conclusions reached in the Decision assailed by petitioner.

WHEREFORE, premises considered, petitioner's Motion for Reconsideration (Re: Decision dated 12 March 2020) is **DENIED** for lack of merit.

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[3] *Commissioner of Internal Revenue v. Far East Bank & Trust Company (now Bank of the Philippine Islands)*, G.R. No. 173854, March 15, 2010.
[4] *Commissioner of Internal Revenue v. United Salvage and Towage (Phils.), Inc.*, G.R. No. 197515, July 2, 2014.
[5] *Atlas Consolidated Mining and Development Corporation v. Commissioner of Internal Revenue*, G.R. No. 159490, February 18, 2008.

SO ORDERED.

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

I Concur:

JEAN MARIE A. BACORRO-VILLENA
Associate Justice